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OF THE

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FROM

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2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. 2008-15-SC. May 31, 2011]

RE: THEFT OF THE USED GALVANIZED IRON (GI) SHEETS IN THE SC COMPOUND, BAGUIO CITY

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; IN ADMINISTRATIVE PROCEEDINGS, ONLY SUBSTANTIAL EVIDENCE IS REQUIRED; STANDARD OF SUBSTANTIAL EVIDENCE, WHEN SATISTFIED.—** In administrative proceedings, only substantial evidence, that is, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. The standard of substantial evidence is satisfied when there is reasonable ground to believe that the person indicted is responsible for the alleged wrongdoing or misconduct.

2. **ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT, DEFINED; GRAVE MISCONDUCT, ELUCIDATED.—** 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. Furthermore, misconduct warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to misadministration or willful, intentional neglect and failure to discharge the duties of the office.

3. ID.; ID.; ID.; COURT PERSONNEL; SECURITY GUARDS; GRAVE MISCONDUCT; A CASE OF.— Security guards, by the very nature of their work, are mandated to secure the court premises and protect its property from pilferage. It should go without saying that their duty should never be compromised to advance their own interests. As a security guard, Tugas is bound to safeguard the court premises and its properties. Tugas very clearly violated his duty by taking the GI sheets with the intention to use it for personal house repairs. In so doing, he unlawfully used his position to procure benefit for himself, blatantly contrary to his duty. With the element of corruption accompanying his unlawful behaviour, Tugas is guilty of grave misconduct.

4. ID.; ID.; ID.; ID.; ID.; GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; ACT OF WATCHING A DVD WHILE ON DUTY, A CASE OF; DISMISSAL FROM THE SERVICE, WARRANTED.— Tugas further violated his duty by watching a DVD at the time he was on duty, in violation of General Order No. 11, requiring him to be "especially watchful at night." Such also amount to grave misconduct, and at the same time, is clearly prejudicial to the best interest of the service. Thus, when the very person charged with the protection of court property has not only failed to do so but instead become the perpetrator of the very misdeeds he is mandated to prevent, dismissal from the service is warranted.

5. ID.; ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GRAVE MISCONDUCT; A GRAVE OFFENSE PUNISHABLE WITH DISMISSAL FROM THE SERVICE FOR THE FIRST OFFENSE.— Under Rule IV, Section 52(A)(3) of the Uniform Rules on

Administrative Cases in the Civil Service, grave misconduct is a grave offense punishable with dismissal from the service for the first offense. The Court, however, notes that Villanueva has served the Court for 21 years with only a single prior administrative case for which he was meted the penalty of suspension of one month and one day without pay. Considering such, the Court deems that a suspension of six (6) months would be proper under the circumstances.

R E S O L U T I O N

***PER CURIAM*:**

This administrative matter refers to the theft of used galvanized iron *(GI)* sheets in the Supreme Court *(SC)* Compound in Baguio City.

On July 18, 2008, the Office of Administrative Services *(OAS)* received reports of an accidental discovery of used GI sheets removed and found below the perimeter fence of the back post of the SC Compound in Baguio City.

A joint investigation by the Complaints and Investigation Division *(CID)* and Security Division of OAS was conducted.

The facts, as gathered from the investigation, are summarized as follows:

On the morning of July 18, 2008, maintenance personnel, Utility Worker II Oscar Estonilo *(Estonilo)* and Utility Worker II Danilo Padilla *(Padilla)*, were working on the fence behind Cottage H as part of the upgrading of the perimeter fence[1] situated at the back portion of the SC Compound.[2] While working, they noticed a dog giving birth below the perimeter fence in a vacant lot owned by the Villanueva family.

While they were marveling to such occurrence, a man from the neighborhood told them from afar, "*Baka kami ang*

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[1] *Rollo*, p. 32.

[2] *Id.* at 33.

mapagbintangan, mga kasama nyo rin ang kumuha dyan."[3] The remark was made on the mistaken belief that Estonilo and Padilla were looking at the GI sheets[4] piled down in the vacant lot. They were also informed that one of the boarders in the neighborhood saw the GI sheets being lowered from the back post down to the vacant lot.

Estonilo and Padilla informed Utility Worker II Saturnino Rivera *(Rivera)* about the incident and the latter, in turn, informed the Officer-in-Charge *(OIC)* Maintenance Personnel, Baguio City, Engineer Teofilo Sanchez *(Engr. Sanchez)*. At around 10:15 o'clock of that same morning, Engr. Sanchez requested Assistant OIC, Security Division, Inocencio De Guzman *(De Guzman)*, to verify the incident.

De Guzman, together with Security-in-Charge *(SIC)* Edgar Carbonel *(Carbonel)*, went to the back post of the SC Compound and the surrounding neighborhood to investigate. They found out that twelve (12) GI sheets were lowered to the vacant lot. The boarder, who witnessed the incident and whose house was near the SC fence, informed them that on July 16, 2008, between 8:00 o'clock and 9:00 o'clock in the evening, he heard clanking sounds of GI sheets being moved. He saw two men, one below in the vacant lot and another above in the SC Compound, both wearing raincoats. He saw that the man who removed the GI sheets from the SC Compound was an SC personnel in a black raincoat.[5]

The guards on duty at the time of the incident were identified from the security logbook and the testimonies of the security personnel. Temporarily assigned at the back post from where the GI sheets were taken, on July 16, 2008 from 3:00 o'clock in the afternoon to 11:00 o'clock in the evening was watchman Nick Antonio *(Antonio)* as replacement for Watchman II-Casual Advin Tugas *(Tugas)* who was unavailable at the time due to a

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[3] *Id.* at 45 and 49.

[4] *Id.* at 34-35, 63 and 104.

[5] *Id.* at 54-55 and 66.

basketball intramural game for court employees. At 5:00 o'clock in the afternoon, however, Antonio went back to his regular post when Tugas arrived and assumed duty thereat from 5:00 o'clock in the afternoon to 7:00 o'clock in the morning of the following day. Meanwhile, manning the front gate of the SC Compound from 5:00 o'clock in the afternoon to 11:00 o'clock in the evening were Jerome Romero *(Romero)* and Ramon Torres *(Torres),* as the SIC.

Romero testified that no outsider entered the SC Compound during his shift. Only on-duty and stay-in maintenance personnel had entered the compound during their shifts. He had seen Tugas carrying an umbrella and a DVD player. Antonio, on the other hand, recalled that during his turn-over of the back post, Tugas was wearing boots, black pants and a black long-sleeved jacket with the marking "Judiciary."

Engr. Sanchez stated that the perimeter fence at the back post was being upgraded to prevent intrusion into the SC Compound. He opined that "nobody would steal from the outside, if there [were] thefts committed, it would come from inside,"[6] as the SC Compound was high and elevated, and there was no other entrance but the front gate. Quoted hereunder are pertinent portions of his testimony:

Q: *Ang lalim nito ah*?
A: *Ang lalim nito pag nasilip nyo ito. (referring to the fence) Nagtataka nga ako… pero may sumasalo kasi hindi nagkakahol ang aso, hindi nagkalampagan.*[7]

x x x x x x x x x

Q: *At sino namang magbababa dito sa* area *na ito* except those with access dito?
A: *Yun nga eh. Liban na lang kung sasabihin ni Advin na sya na rin kasi sya yung nakaduty o idamay nya yung kapatid ng biyenan nya kasi yun ang umakyat dito at naghagdanan ng mataas.*

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[6] *Id* at 41.

[7] *Id.*

Subukan nyong silipin yan, malalim yan. At saka hindi kumahol ang aso eh may [pitbull] dyan.[8]

Security Guard I Arturo Villanueva *(Villanueva)* is the brother of the father-in-law of Tugas. Engr. Sanchez and De Guzman testified that Villanueva was then making house repairs, and the vacant lot where the GI sheets were found was owned by the Villanueva family.

Torres testified that on July 16, 2008, at the time of the incident, he was the 2nd shift SIC. He conducted a roving inspection at the back post at around 9:00 o'clock in the evening and Tugas was at his post. Torres disclosed that Tugas wore a black jacket and black pants, andhad a DVD player in his possession.[9] As to the DVD player, Torres testified:

Q: *Totoo ba yung sinabi ni Tugas na meron syang dalang* DVD?
A: *Nanonood sya* sir.

Q: *So bilang isang SIC anong ginawa mo*?
A: *Ang sabi ko, kasi malakas ang ulan, bumabagyo nga, sabi ko, "Maganda yata yung pinapanood mo. Paki-log na umikot ako noong oras na ito."*[10]

Watchman II-Casual Elena Javier *(Javier)*, who was the guard on duty at the back post from 7:00 o'clock in the morning to 3:00 o'clock in the afternoon of July 18, 2008, said that Tugas reacted angrily when he learned that she was ordered to take pictures of the GI sheets. Her testimony is quoted hereunder:

Q: Confidential *ito. Hindi nila malalaman. Sasabihin mo lang ang alam mo.*
A: *Noon naka duty ako noong 18. Parang galit sa akin si Advin. Kasi inutusan po ako ni* Assistant OIC *na kunan ng litrato eh nalaman nya, pinagalitan ba naman ako.*

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[8] *Id.* at 43.

[9] *Id.* at 109-110.

[10] *Id.* at 110.

Q: *Bakit daw*?
A: *Bakit ko daw kinuhanan ng picture. Sabi ko naman inutusan lang ako. Ang matindi sir, sabi nya bakit alam nyo bang property ng* Supreme Court. *Sabi ko naman, bakit property din ba yan ng* Tugas-Villanueva?[11]

The alleged theft occurred on July 16, 2008 and was discovered on July 18, 2008. The GI sheets were retrieved from the vacant lot only three days later or on July 21, 2008. Antonio testified that Villanueva relayed to him that the GI sheets were returned by Tugas, with the knowledge of Engr. Sanchez. Villanueva and Tugas had varying accounts on the matter.

Villanueva testified:

Q: *Kasi sya ang nagbalik*?
A: *Opo, sya ang nagbalik*. [Referring to Advin Tugas] *kaya kako, "Sigurado ka ba na kwan*?" … "*Oo, nag-usap na kami ni* Engr. Sanchez," sabi nya, "*para matigil na yung mga haka haka dyan: sabi nya, "O sige kapag yung kwan kako, sinabi ni Engr, o di sige ibalik mo kako para maayos mo yung problema mo*."

Q: *So tinulungan mo sya pag-akyat*?
A: *Opo, tinulungan ko na*.

Q: *Ikaw ang tumulong para mailagay mo sa taas*?
A: *Opo sir, para mailagay sa taas*.[12]

x x x x x x x x x

Q: According to Advin Tugas. *Ngayon sa* logbook *mo, makikita ba dito sa turn over mo na* twelve (12) GI sheets *kay Engr. Sanchez*?
A: *Wala ho yata akong* turn-over *eh, kasi napagod ako eh kaya di ko na naturn-over kaya sinabi ko na lang kay* Antonio, *yung papalit sa kin sa kwan ko.. sa poste ko,*

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[11] *Id.* at 62-63.

[12] *Id.* at 78.

nung mga Eleven (11:00) to Seven (7:00) *kako, may yero dyan na ibinalik ni* Advin with the consent of Engr. Sanchez.[13]

On the other hand, Tugas denied retrieving the GI sheets:

Q: *Tanungin kita uli, hindi ka lumapit kay Mr. Villanueva na magpapatulong ka na maibalik yung GI sheets na labing dalawa (12)*?
A: Yes, sir.

Q: *Oo o hindi? Lumapit ka ba sa kanya at nagpatulong na itong doseng (12) GI sheets maiakyat ulit so itass*?
A: *Hindi sir*.

Q: *So sino sa palagay mo ang nag-akyat ng GI sheets na galing dito sa baba, inakyat sa taas*?
A: *Hindi ko po alam sir*.[14]

Torres testified that Villanueva was stationed at the back post at the time the GI sheets were returned, and that Tugas probably returned the GI sheets as he had left his post at around 5:00 o'clock in the afternoon and came back after more than an hour.

As an alibi, Villanueva testified that at the time of the incident on July 16, 2008, he was off-duty and was asleep in his house beside the SC Compound. He stated that he had no knowledge of the incident and only became aware of it when he was called by de Guzman and was questioned on the matter.

While, Tugas, in his defense, contends that the allegations against him are malicious, baseless and biased. He surmises that he is being harassed because he is aware of certain illegal activities of SC personnel in Baguio.

OAS recommended that Tugas be dismissed from the service for grave misconduct for taking the GI sheets without lawful authority. If not for such recommended dismissal, OAS would

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[13] *Id.* at 80.

[14] *Id.* at 85-86.

have recommended that Tugas be suspended for six (6) months for conduct prejudicial to the best interest of the service for watching a DVD while on duty.

As to Villanueva, OAS recommended that he be suspended for eight (8) months for grave misconduct; while Torres be suspended for twenty (20) days with warning for tolerating Tugas' DVD watching while on duty; and De Guzman be admonished for falling short of his responsibility as Assistant OIC.

The Court adopts the findings and recommendations[15] of the OAS, with modification.

In administrative proceedings, only substantial evidence, that is, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. The standard of substantial evidence is satisfied when there is reasonable ground to believe that the person indicted is responsible for the alleged wrongdoing or misconduct.[16]

From the established facts and circumstances, there is reasonable ground to believe that Tugas is indeed responsible for the taking of the GI sheets from the SC Compound.

Tugas was the back post duty guard at the time the GI sheets were moved out of the SC Compound. Per testimony of Romero, the front gate duty guard at the time, and as appearing in the security logbook, no outsider had entered the SC Compound at the time the GI sheets were taken, but only those on duty and stay-in maintenance personnel.

It is hard to believe that Tugas, being the back post guard at the time, did not hear the rattling and clanging sound of 12 pieces of GI sheets being moved and dropped below the perimeter fence. Tugas' attire at the night of the incident matched that of the culprit as described by the boarder.

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[15] *Id.* at 12.

[16] *Babante-Capales v. Capales*, A.M. No. HOJ-10-03, November 15, 2010.

Other circumstances support the conclusion that Tugas is responsible for taking the GI sheets. The vacant lot is owned by the Villanueva family, who are the relatives of the wife of Tugas, rendering access to the area possible despite the locked gate and presence of guard dogs on the property. According to Villanueva, Tugas had plans to make house repairs and had planned to borrow a ladder from Engr. Sanchez for an alleged different purpose but never pushed through with it. Lastly, Tugas' angry reaction when Javier was taking pictures was unusual and suspicious.

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.[17] 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.[18] Furthermore, misconduct warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to misadministration or willful, intentional neglect and failure to discharge the duties of the office.[19]

Security guards, by the very nature of their work, are mandated to secure the court premises and protect its property from pilferage. It should go without saying that their duty should never be compromised to advance their own interests. As a

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

[18] *Id.*

[19] *Largo v. Court of Appeals*, G.R. No. 177244, November 20, 2007, 537 SCRA 721, 730-731, citing *Manuel v. Calimag, Jr.*, 367 Phil. 162, 166-167 (1999).

security guard, Tugas is bound to safeguard the court premises and its properties. Tugas very clearly violated his duty by taking the GI sheets with the intention to use it for personal house repairs. In so doing, he unlawfully used his position to procure benefit for himself, blatantly contrary to his duty. With the element of corruption accompanying his unlawful behaviour, Tugas is guilty of grave misconduct.

Tugas further violated his duty by watching a DVD at the time he was on duty, in violation of General Order No. 11,[20] requiring him to be "especially watchful at night." Such also amount to grave misconduct, and at the same time, is clearly prejudicial to the best interest of the service. Thus, when the very person charged with the protection of court property has not only failed to do so but instead become the perpetrator of the very misdeeds he is mandated to prevent, dismissal from the service is warranted.

Similarly, there is reasonable ground to believe that Villanueva is guilty of grave misconduct. A memorandum dated August 5, 2008 to Engr. Sanchez, reveals that Villanueva needed ten (10) pieces of GI sheets for the repair of his house. This request, however, was denied and Villanueva was informed to wait for another disposal schedule of GI sheets. Photos of the house of Villanueva show GI sheets closely resembling those SC GI sheets at the back post.[21]

Furthermore, the Villanueva family owns the lot below the SC perimeter fence. Half of it is occupied with rented houses while the other half is vacant. Outsiders cannot enter. The vacant lot has a locked gate and two pitbull guard dogs that deter outsiders from entering the area. The height of the perimeter fence and the testimony of the boarder indicate that at least two people would be required to lower the GI sheets from the SC Compound

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[20] Sec. 7. General Orders, of the 1994 revised rules and regulations implementing R.A. No. 5487, as amended, governing the organization and operation of private security agencies and company security forces throughout the Philippines.

[21] *Rollo*, p. 36.

down to the vacant lot. Villanueva was off-duty at the time of the incident. This fact, taken with the abovementioned circumstances, constitutes reasonable ground to believe that Villanueva was the person receving the GI sheets down in the vacant lot.

Under Rule IV, Section 52(A)(3) of the Uniform Rules on Administrative Cases in the Civil Service,[22] grave misconduct is a grave offense punishable with dismissal from the service for the first offense.The Court, however, notes that Villanueva has served the Court for 21 years with only a single prior administrative case for which he was meted the penalty of suspension of one month and one day without pay. Considering such, the Court deems that a suspension of six (6) months would be proper under the circumstances.

As for Torres, the 2nd shift SIC, the Court finds his explanation satisfactory and acceptable, that his remark, "*Maganda yata yung pinapanood mo,*" was a sarcastic order for Tugas to cease watching the DVD. Indeed, Tugas did immediately stop watching the DVD after such comment was made. As to his failure to initiate the retrieval of the GI sheets, he cannot be faulted for such because he was not tasked with the investigation of the incident.

Meanwhile, the Court agrees with the OAS recommendation that De Guzman should be admonished for falling short of his duties as Assistant OIC. De Guzman, the acting OIC of the Security Division at the time tasked with the verification of the incident, should have conducted a more exhaustive probe. Given the report that it was an SC personnel who effected the taking of the GI sheets, he should have immediately conducted an inquiry with the personnel on duty at the time and place in question. No intiative was taken by De Guzman to summon Tugas for questioning, as it was the latter himself who later approached De Guzman to ask what should be done. Furthermore, after determining that the GI sheets were in fact SC property, he failed to order their immediate retrieval.

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[22] CSC Resolution No. 99-1936.

WHEREFORE,

1. Advin Tugas, Watchman II-Casual, is hereby found *GUILTY* of grave misconduct and conduct prejudicial to the best interest of the service, and is ordered *DISMISSED* from the service.

2. Arturo Villanueva, Security Guard I, is hereby found *GUILTY* of grave misconduct, and is ordered *SUSPENDED* for Six (6) Months without pay.

3. Inocencio De Guzman, Security Guard II, is hereby *ADMONISHED* to be more diligent in performing his duties as Acting OIC.

SO ORDERED.

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

Nachura and *Del Castillo, JJ.,* on leave.

EN BANC

[A.M. No. P-04-1813. May 31, 2011]
(Formerly A.M. No. 04-5-119-MeTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **NELIA D.C. RECIO, ERALYN S. CAVITE, RUTH G. CABIGAS and CHONA AURELIA R. RENIEDO, all of the Metropolitan Trial Court, San Juan, Metro Manila,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; FAILURE TO REMIT COLLECTIONS UPON DEMAND BY THE COURT CONSTITUTES *PRIMA FACIE* EVIDENCE THAT SUCH MISSING FUNDS HAVE BEEN PUT TO PERSONAL USE; CASE AT BAR.— Recio failed to present a satisfactory explanation regarding her cash shortages. She also failed to refute the accuracy of the financial audit. x x x Clearly, Recio's failure to remit these collections upon demand by the Court constitutes *prima facie* evidence that she has put such missing funds to personal use.

2. ID.; ID.; ID.; ID.; ID.; CIRCULAR NO. 50-95; SECTION B (4) THEREOF; VIOLATED WHEN THERE IS DELAY IN THE REMITTANCE OF COURT COLLECTIONS AS IN THE CASE AT BAR.— Recio likewise violated Section B (4) of Circular No. 50-95 due to her delay in the remittance of the court collections. As found by the Audit Team, fiduciary collections were deposited several days after collection. To make up for the undeposited collections, Recio would instead deposit a big amount of money to even out the court collections as reflected in the cashbook.

3. ID.; ID.; ID.; ID.; ID.; ENJOINED TO FAITHFULLY PERFORM THEIR DUTIES AND RESPONSIBILITIES AS CUSTODIANS OF COURT'S FUNDS AND REVENUES, RECORDS, PROPERTIES AND PREMISES; UNWARRANTED FAILURE TO FULFILL RESPONSIBILITIES DESERVES ADMINISTRATIVE SANCTION.— Settled is the role of clerks of courts as judicial officers entrusted with the delicate function with regard to collection of legal fees. They are expected to correctly and effectively implement regulations relating to proper administration of court funds. Clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer, accountant, guard and physical plant manager thereof. It is the clerks of court's duty to faithfully perform their duties and responsibilities as such to the end that there was full compliance with function, that of being

custodians of the court's funds and revenues, records, properties and premises. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of Court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes and concerns. Thus, the unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment of the collection shortages will exempt the accountable officer from liability.

4. ID.; ID.; ID.; ID.; ID.; MANDATED BY ADMINISTRATIVE CIRCULAR NO. 3-2000 TO DEPOSIT IMMEDIATELY ALL FIDUCIARY COLLECTIONS UPON RECEIPT THEREOF WITH AN AUTHORIZED GOVERNMENT DEPOSITORY BANK; IN THE CASE AT BAR, RESPONDENT CLERK OF COURT'S ACTION WAS IN COMPLETE VIOLATION OF THE CIRCULAR.— Here, Recio's action was in complete violation of Administrative Circular No. 3-2000, dated June 15, 2000, which commands that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. x x x These Circulars are mandatory in nature, designed to promote full accountability for government funds and no protestation of good faith can override such mandatory nature. Failure to observe these Circulars resulting to loss, shortage, destruction or impairment of court funds and properties makes Recio liable thereto. Clerks of Court are presumed to know their duty to immediately deposit with the authorized government depositories the various funds they receive, for they are not supposed to keep funds in their personal possession. Even undue delay in the remittances of the amounts that they collect, at the very least, constitutes misfeasance. Although Recio had subsequently deposited her other cash accountability, she was nevertheless liable for failing to immediately deposit the said collections into the court's funds. Her belated remittance will not free her from punishment. Even restitution of the whole amount cannot erase her administrative liability. More so, that in the instant case, she failed to fully comply with all the Court's directives.

5. ID.; ID.; ID.; ID.; ID.; FAILURE TO PROPERLY REMIT CASH COLLECTIONS CONSTITUTING PUBLIC FUNDS CONSTITUTES GROSS NEGLECT OF DUTY AND GROSS DISHONESTY; PENALTY OF DISMISSAL, PROPER.— By failing to properly remit the cash collections constituting public funds, Recio violated the trust reposed in her as disbursement officer of the Judiciary. Her failure to explain satisfactorily the fund shortage, and to restitute the shortage and fully comply with the Court's directives leave us no choice but to hold her liable for gross neglect of duty and gross dishonesty. In *Lirios v. Oliveros* and *Re: Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, RTC, Oras, Eastern Samar,* the Court held that the unreasonable delay in the remittance of fiduciary funds constitutes serious misconduct. x x x The long delay in the remittance of court's funds, as well as the unexplained shortages which remained unaccounted for, raises grave doubts regarding the trustworthiness and integrity of Recio. The failure to remit the funds in due time constitutes gross dishonesty and gross misconduct. It diminishes the faith of the people in the Judiciary. Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service even if committed for the first time.

6. ID.; ID.; ID.; ID.; CASH CLERKS; AS PUBLIC OFFICERS, THEIR DUTY WAS NOT ONLY TO PERFORM THEIR ASSIGNED TASKS BUT TO PREVENT THE COMMISSION OF ACTS INIMICAL TO THE JUDICIARY AND TO THE PUBLIC IN GENERAL; VIOLATED IN CASE AT BAR.— A cash clerk is an accountable officer entrusted with the great responsibility of collecting money belonging to the funds of the court. Thus, Cavite should have realized that the money she was receiving were public funds. It was incumbent upon her to be more circumspect and discerning in performing her assigned tasks. Respondents' defense of good faith and that they were merely following the orders of Recio cannot justify their actions. As public officers, their duty was not only to perform their assigned tasks, but to prevent the commission of acts inimical to the Judiciary and to the public, in general. At the first instance, they should have reported Recio's conduct to the Executive Judge.

D E C I S I O N

***PER CURIAM*:**

This administrative matter stemmed from the financial audit of the Metropolitan Trial Court (MeTC), San Juan, Metro Manila, conducted by the Audit Team of the Court Management Office (Audit Team). The audit covered the accountability period of Clerk of Court Nelia D.C. Recio from February 1985 to December 31, 2003; March 1995 to December 31, 2003 and November 1994 to December 31, 2003, respectively.

The audit revealed discrepancies between the amounts recorded in the cashbook and those reflected in the official receipts. It also discovered, as per sampling of official receipts, that the latter "on its face" appeared to be tampered. These, thus, prompted the Audit Team to conduct a more detailed and comprehensive financial audit on all the books of accounts of the court.

Initial findings revealed that the Clerk of Court has incurred shortages in the following court collections:

Judiciary Development Fund (JDF):
For the period of February 1985 to December 31, 2003 - ₱ 138,101.80

Clerk of Court General Fund (GF):
For the period of March 1995 to December 31, 2003 - ₱ 167,860.64

Fiduciary Fund (FF):

Total collections from November 1994 to December 31, 2003		₱ 15,990,202.74
Less: Total withdrawals from January 1995 to December 31, 2003		₱ 11,330,298.24
Total Unwithdrawn Fiduciary Fund, as of December 31, 2003		₱ 4,659,904.50

Deduct: Bank Balance as of December 31, 2003	₱ 2,059,921.51	
Less: Unwithdrawn interest	₱ 70, 269.29	₱ 1,989,654.22
Balance of Accountability		**₱ 2,670,250.28**[1]

Other findings include:

A. Missing Official Receipts particularly: 16226151 and 1637426;

B. Missing triplicate copies of official receipts used for some JDF collections, particularly: a) 0425807-850; b) 0425851-900; c) 0425901-950; d) 0425951-0426000; e) 3639951-54; f) 3639958;

C. Cancelled Official Receipts; (duplicate and triplicate copies were likewise not attached to the cashbook);

D. Confiscated personal bonds of bonding companies amounting to Three Hundred Twenty-Four Thousand Pesos (₱324,000.00) were unremitted;[2]

E. There were orders sentencing accused to pay fines amounting to a total of ONE HUNDRED TWENTY-FOUR THOUSAND SIX HUNDRED NINETY PESOS (₱124,690.00) but were found to be unrecorded;

Moreover, the Audit Team also discovered that certain personnel of the Office of the Clerk of Court (OCC)-MeTC, San Juan were involved in the following anomalies, to wit:

As to Nelia D.C. Recio, Clerk of Court

1. Improper use of the official receipts such as some official receipts were issued for two different transactions;[3]

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[1] Not yet final since the Clerk of Court was given time to submit supporting documents to justify withdrawals amounting to ₱2,288,454.75, which are unsupported by court orders.

[2] Based on the records, there were no motions for reconsiderations, yet there were no execution of all the orders.

[3] Annex A.1- A.2 and Exhibit 1.

2. Delay in the reporting of court transactions/collections;[4]
3. Altered Official Receipts particularly the actual dates;[5]
4. Non-disclosure of the true amount collected;[6]
5. Falsifying the cash book;[7]
6. Falsifying the Monthly Report;
7. Withdrawing cash bonds without the signature/approval of the Executive Judge;
8. Delay in the deposit of court collections;
9. Alterations of public documents such as Affidavit and Acknowledgment Receipt;
10. Reporting the official receipt as cancelled when in truth it was not;[8]
11. Violation of the following Circulars, to wit: a) OCA Circular No. 26-97, par. 1 (2); b) OCA Circular No. 22-94, par.1 (4); c) OCA Circular No. 50-95; and
12. Concealment of the infractions of Ariel M. Salazar by depositing the amount of THREE HUNDRED NINETY-NINE THOUSAND SEVEN HUNDRED FIFTY-THREE PESOS & 48/100 (₱399,753.48) to cover the shortages Salazar committed.

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[4] Exhibit 2.

[5] Exhibit 3.

[6] Exhibit 4; The Audit Team discovered that some of the original copies of the official receipts showed different amounts from the triplicate; and the amounts reflected in the triplicate copies were the ones disclosed in the monthly report;

[7] Exhibit 5; As there were recordings in the cash book which do not conform to the amounts written in the triplicate copies of the official receipts.

[8] Exhibit 6.

As to Ariel M. Salazar, former Cash Clerk/Sheriff [9]

1. Tampered official receipts;[10]
2. Issuance of same official receipt number for two different transactions; and
3. Misappropriation of court collections amounting to ₱768,700.00.[11]

As to Eralyn M. Cavite, Cash Clerk of Court II

1. Tampered official receipts;[12]
2. Altered the actual dates of the collections resulting to the delay in reporting and remittance of court collections;[13]
3. Issuance of the same official receipt number for two different transactions; and
4. Misappropriation of court collections amounting to ₱13,000.00.

As to Ruth M. Germano-Cabigas, Records Officer 1

1. Tampered official receipts;[14]
2. Altered the actual dates of the collections resulting to the delay in reporting and remittance of court collections;[15] and

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[9] Former Cash Clerk and Court Sheriff, until he was dropped from the service effective October 1, 2001 due to Absence Without Official Leave (AWOL), as per Court Resolution of the First Division, dated July 17, 2002.

[10] The original copy of the official receipt reflected a different amount as that of in the triplicate copy; the triplicate of the same official receipt declared a lower amount.

[11] Exhibit 9.

[12] Exhibit 10; The original copy of the official receipt reflected a different amount as that of in the triplicate copy; the triplicate of the same official receipt declared a lower amount.

[13] Exhibit 11.

[14] Exhibit 12.

[15] Exhibit 13.

3. Misappropriation of court collections amounting to ₱10,000.00.

As to Chona Aurelia R. Reniedo, Cashier 1

- Altered the actual dates of the collections resulting to the delay in reporting and remittance of court collections;[16]

In view of the foregoing audit findings, the Court, in a Resolution dated May 25, 2004, ordered the following directives:

As to Nelia D.C. Recio, she was required to explain why no administrative charges should be filed against her

1. For misappropriating the following court collections:

a.) Judiciary Development Fund collections amounting to ONE HUNDRED THIRTY-EIGHT THOUSAND ONE HUNDRED ONE PESOS & 80/100 (₱138,101.80);

b.) Clerk of Court General Fund collections amounting to ONE HUNDRED SIXTY-SEVEN THOUSAND EIGHT HUNDRED SIXTY PESOS & 64/100 (₱167,860.64); and

c.) Fiduciary Fund collections amounting to THREE HUNDRED EIGHTY-ONE THOUSAND SEVEN HUNDRED NINETY-FIVE PESOS & 53/100 (₱381,795.53).

2. For willful violation of the SC/OCA Circulars;

3. For failure to present the following:

a.) Duplicate and triplicate copies of cancelled official receipts; and

b.) Missing Official Receipts such as OR # 16226151 and # 1637426.

4. For falsely declaring that an Official Receipt has been cancelled when in fact and in truth it was not;

5. For intentionally delaying the remittances of court collections;

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[16] Exhibit 14.

6. For deliberate concealment of Mr. Ariel M. Salazar's grave misconduct.
7. For the missing triplicate copies of the official receipt listed hereunder:

    a.) 0425807-850;
    b.) 0425851-900;
    c.) 0425901-950;
    d.) 0425951-0426000;
    e.) 3639951-54;
    f.) 3639958

8. For issuing Official Receipt No. 10405482 on September 9, 1999 without indicating the name of the payor;
9. For the unauthorized withdrawals due to lack of court orders and acknowledgment receipts.
10. For the unreported fines amounting to ONE HUNDRED TWENTY-FOUR THOUSAND SIX HUNDRED NINETY PESOS (₱124,690.00); and
11. For the confiscated cash bonds amounting to THREE HUNDRED TWENTY-FOUR THOUSAND PESOS (₱324,000.00) which were never remitted.

Recio was also directed to restitute the shortages incurred in the following funds, to wit:

a.) Judiciary Development Fund amounting to ONE HUNDRED THIRTY-EIGHT THOUSAND ONE HUNDRED ONE & 80/100 PESOS (₱138,101.80);
b.) Clerk of Court General Fund amounting to ONE HUNDRED SIXTY SEVEN THOUSAND EIGHT HUNDRED SIXTY & 64/100 PESOS (₱167,860.64); and
c.) Fiduciary Fund amounting to THREE HUNDRED EIGHTY-ONE THOUSAND SEVEN HUNDRED NINETY-FIVE & 53/100 PESOS (₱381,795.53)

Moreover, Recio was required to deposit to the General Fund Account the amount of Sixty-Five Thousand Eight Hundred Pesos & 29/100 (₱65,800.29) representing the unwithdrawn interest of fiduciary fund, under GF Account No. 0012-2222-56 with the LBP.

Meanwhile, Recio was placed under preventive suspension in order to refrain her from intervening with court transactions as well as to avoid the commission of similar offense in the future.

As to Salazar, he was required to pay the Court the amount of SEVEN HUNDRED SIXTY-EIGHT THOUSAND SEVEN HUNDRED PESOS (₱768,700.00) found to be the result of the tampering of official receipts. Said amount shall be deducted from Recio's accountability.

As to Cavite, she was required to explain why no administrative sanction shall be taken against her

1. For misappropriating the amount of

   a.) TWELVE THOUSAND EIGHT HUNDRED PESOS (₱12,800.00) for supersedeas bond posted by Nicolasa Padilla in Civil Case No 8481; and

   b.) TWO HUNDRED PESOS (₱200.00) for the fine paid by Atty. Miranda Obias;

2. For concealing the true amount of court collection;

3. For deliberate issuance of the same official receipt for two different transactions; and

4. For altering the actual dates of collection resulting to the delay in the reporting and remittances of court collections.

Cavite was also directed to restitute the misappropriated court collections amounting to THIRTEEN THOUSAND PESOS (₱13,000.00) by depositing Twelve Thousand Eight Hundred Pesos (₱12,800.00) to the Fiduciary Fund and Two Hundred Pesos (₱200.00) to the Judiciary Development Fund.

As to Cabigas, she was required to explain why no administrative sanction shall be taken against her

1. For misappropriating the Judiciary Development Fund collection amounting to TEN THOUSAND PESOS (₱10,000.00);
2. For the concealment of the true amount of the collection;
3. For the deliberate issuance of the same official receipt for two different transaction; and
4. For altering the actual dates of collection resulting to the delay in the reporting and remittances of court collections.

As to Reniedo, she was required to explain why no administrative sanction shall be taken against her for falsifying the public documents such as the official receipts entrusted to her.

In the same Resolution, the Court resolved to docket the instant case as A.M. No. P-04-1813, *Office of the Court Administrator (OCA) v. Nelia D.C. Recio, Eralyn D. Cavite, Ruth G. Cabigas and Chona Aurelia R. Reniedo, all of the MeTC, San Juan, Metro Manila.*

In addition, the Court issued a Hold Departure Order on May 25, 2004 against Recio to prevent her from leaving the country, pending resolution of this administrative matter.

In their individual compliances, respondents refuted the audit findings, to wit:

NELIA D.C. RECIO

With respect to the alleged shortages in the JDF, GF and FF, Recio claimed that she cannot comply with the restitution of the shortages because she was relieved of her duties as Clerk of Court and was replaced as one of the signatories to bank transactions.

As to the allegation of missing triplicate copies of the original receipts used for JDF collections, Recio explained that:

a.) Official Receipt Nos. 0425807-850 were actually used for the JDF collections for the period March 3, 1987 to March 19, 1987 and had already been reported in the monthly report for the month of March 1987;

b.) Official Receipt Nos. 0425851-900 were actually used for the JDF collections for the period March 20, 1987 to April 8, 1987 and had already been reported in the monthly report for the months of March and April 1987;

c.) Official Receipt Nos. 0425901-950 were actually used for the JDF collections for the period April 18, 1987 to May 20, 1987 and had already been reported in the monthly report for the months of April and May 1987;

d.) Official Receipt Nos. 0425951-0426000[17] were actually used for the JDF collection for the period May 20, 1987 to June 17, 1987 and had already been reported in the monthly report for the months of May and June 1987; and

e.) Official Receipts Nos. 3639951-54 and Official Receipt No. 3639958[18] were actually used for the JDF collections for the period June 10, 1994 to June 13, 1994 and June 14, 1994, respectively, and had already been reported in the monthly report for the month of June 1994.

As to the Clerk of Court General fund, Recio submitted cash deposit slips in the amount of ₱67,500.00 which she claimed to be erroneously dated January 21, 2003, but was received and machine validated by the LBP on January 21, 2003. Likewise, she submitted validated deposit slips for the following remittances, to wit:

1. ₱ 5,600.00 – deposited on May 21, 1999;
2. ₱12,054.00 – deposited on April 4, 2000;
3. ₱ 1,440.00 – deposited on August 1, 2002; and
4. ₱ 3,394.00 – deposited on October 18, 2002

Total: ₱22,488.50[19]

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[17] Annexes "5" to "5-K", Compliance dated December 14, 2004.

[18] Annex "5-1", Compliance dated December 14, 2004.

[19] Annexes "6" to "6-C", Compliance dated December 14, 2004- (LBP issued a certification as to the deposit of the above-mentioned amounts).

Thus, Recio requested that the amounts of ₱67,500.00 and ₱22,488.50 be deducted from her accountability for ₱167,860.64 in the Clerk of Court General Fund (GF).

Recio offered no explanation as to the shortages in the JDF.

With regards to the FF, Recio claimed that Team Leader Asuncion Bitancor may not have coordinated with the Accounting Division of the Supreme Court the reported withdrawals of cash bonds and focused only on the triplicates of official receipts and case folders from Branches 57 and 58 of the MeTC, San Juan. She alleged that most of these withdrawals were from Branch 57 which did not transmit case folders of terminated or disposed cases. She further claimed that she had the supporting documents for the withdrawals that were submitted to the Supreme Court, together with the monthly report.

Moreover, Recio alleged that since she assumed office in 1986, the original and duplicate copies of cancelled official receipts were submitted to the Accounting Division of the Supreme Court and later on to the Commision on Audit (COA), and only triplicate copies were retained by the OCC, MeTC, San Juan for record purposes. She added that O.R. No. 16226151 was not missing, but was used on August 29, 2002 for mediation fee; and O.R. No. 1637426 was used for Certification of Record Fee.

Recio also alleged that the confiscated cash bonds in the amount of Three Hundred Twenty-Four Thousand Pesos (₱324,000.00) were deposited to the JDF.

However, as to the unreported fines in the amount of One Hundred Twenty-Four Thousand Six Hundred and Ninety Pesos (₱124,690.00), Recio alleged that when she assumed the position of Clerk of Court of the MeTC, San Juan, Metro Manila, Branches 57 and 58 do not submit folders of disposed cases.

Recio likewise countered that she was unaware of OCA Circular No. 26-97, since the Property Division of the Supreme Court failed to provide them of any legal forms in connection with OCA Circular No. 26-97. She claimed that she came to know of said Circular only when she was provided with a copy of the

Clerk of Court Manual during the Regional Judicial Career Enhancement Program. Nevertheless, she pointed out that even before the enactment of OCA Circular No. 26-97, they have started writing the amount of filing fees, summons fees and legal fees on the upper right hand corner of the complaint or petition with the use of improvised rubber stamp to indicate the filing fees.

With regards to her alleged violation of Section (4) of OCA Circular No. 22-94,[20] Recio explained that the supplies of ballpens and carbon papers they received from the Property Division of the Supreme Court were of inferior quality that it does not produce carbon reproduction. She further claimed that the function of issuing receipts for collection was not her duty and, in fact, was delegated to her subordinates.

Furthermore, Recio asserted that all withdrawals from the Savings Account in the name of the MeTC were made with the signature of the Executive/Presiding Judge and countersigned by the Clerk of Court, supported by duly issued court orders for that purpose.

Finally, as to her alleged concealment of the infractions committed by Ariel M. Salazar, she questioned how the Audit Team came up with ₱768,700.00 as she claimed that unless the case is terminated and the court ordered the release or withdrawal of cash bond, the tampering of official receipts made by Ariel Salazar cannot be detected. She added that while the case is pending, the official receipts remain with the court. It is only after the case is terminated and the court ordered the release of cash bonds that the original of the receipts can be compared from the duplicate copies on file with the Supreme Court, or triplicate copies on file with the OCC. Recio further alleged that when she suspected Salazar to have been tampering the records, she sought the assistance of the Accounting Division of the Supreme Court. She even borrowed money amounting

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[20] OCA Circular No. 22-94 provides that the DUPLICATE and TRIPLICATE copies of court receipt must be carbon reproductions in all respects of whatever may have been written in the ORIGINAL.

to ₱399,753.48 and deposited the shortages caused by Salazar to the Court.[21]

ERALYN S. CAVITE:

Respondent Cavite asserted that she did not misappropriate the amount of ₱12,800.00. She explained that said amount was the *supersedeas* bond in Civil Case No. 8481 which defendant deposited to the OCC, MeTC, San Juan after much delay due to defendant's confusion as to where to deposit the amount. Cavite alleged that said *supersedeas* bond was eventually deposited with the OCC, MeTC, San Juan under O.R. No. 13713921 in the amount of ₱13,800.00 and another ₱1,000.00 under O.R. No. 13713932. She, however, reserved her right to submit the photocopies of the pertinent receipts.

RUTH G. CABIGAS:

Cabigas alleged that it was never her duty to issue receipts; thus, she was prone to commit mistakes. She claimed that the discrepancies coming from O.R. No. 1733533 was merely due to confusion and exhaustion. With regard to the allegation of altering the actual dates of collection, Cabigas explained that she had no intention to delay the remittance or to benefit from the collection. She claimed that the delay in the remittance was an honest mistake.

CHONA AURELIA R. RENIEDO:

In her defense, Reniedo claimed that, in several instances, Recio instructed her to issue unused receipts and ignore the actual sequence of the receipts. She added that Recio also ordered her not to write the actual date on the duplicate and triplicate copies of the receipts so that she could still use the money.

Reniedo further alleged that when the duplicate copies of the receipts were submitted to the Supreme Court, together with the monthly report of the collections for the Fiduciary Fund, she was unaware that someone had already placed the date on

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[21] Annexes "1" to "1-C", Compliance dated December 14, 2005.

the duplicate and triplicate copies of the receipts wherein the date written was different from the actual date the original official receipt was used.

Reniedo explained that she was afraid to disobey Recio's orders and be accused of insubordination; hence, she was forced to obey her instructions.

In a Resolution dated February 13, 2007, the Court resolved to refer the case as well as respondents' compliances to the OCA for evaluation, report and recommendation.

In compliance, in a Memorandum dated September 13, 2007, the OCA found Recio guilty of gross neglect of duty, dishonesty and gross misconduct, and recommended that she be dismissed from the service. The OCA recommended that Recio be directed to restitute the amount of ₱3,139,166.00 representing the collections which she failed to remit to the Court. Recio was also found guilty of contempt of court for failing to return the missing funds despite repeated demands.

As regards the shortage in the Clerk of Court General Fund, Recio's accountability is reduced to ₱145,373.14, in view of the submission of the certifications issued by the LBP and the COA confirming the deposit of ₱22,488.50 to this account.

As to respondents Cavite, Cabigas and Reniedo, the OCA recommended that they be fined in the amount of Five Thousand Pesos (₱5,000.00) and be sternly warned.

Meanwhile, on January 7, 2009, Maurito L. Reniedo, raising human compassion, sought the dismissal of the case against his wife, respondent Chona Reniedo, due to the latter's death on December 9, 2007.

In a Resolution dated September 7, 2010, the Court referred the Motion to Dismiss filed by Maurito Reniedo to the OCA for evaluation, report and recommendation.

On October 1, 2010, the OCA recommended that the Motion to Dismiss be granted for humanitarian consideration, considering that this is Reniedo's first offense.

RULING

No less than the Constitution mandates that "public office is a public trust." Service with loyalty, integrity and efficiency is required of all public officers and employees, who must, at all times, be accountable to the people. In a long line of cases, the Court had untiringly reminded employees involved in the administration of justice to faithfully adhere to their mandated duties and responsibilities. Whether committed by the highest judicial official or by the lowest member of the workforce, any act of impropriety can seriously erode the people's confidence in the Judiciary. *Verily, the image of a court of justice is necessarily mirrored in the conduct of its personnel. It is their sacred duty to maintain the good name and standing of the court as a true temple of justice*.[22]

Administrative Liability of Nelia D.C Recio, Clerk of Court

Recio failed to present a satisfactory explanation regarding her cash shortages. She also failed to refute the accuracy of the financial audit. Thus, after evaluation of the records, including Recio's compliances, the following shortages remained unremitted:

a.) JDF	-	~~₱~~ 138,101.80;
b.) Clerk of Court General Fund	-	~~₱~~ 145,373.14;
c.) Fiduciary Fund	-	~~₱~~2,413,002.97;[23]
d.) Unaccounted Fines	-	~~₱~~ 124,690.00;
e.) Confiscated Cash Bonds	-	~~₱~~ 316,000.00
Total:		***~~₱~~3,139,166.91***

Clearly, Recio's failure to remit these collections upon demand by the Court constitutes as *prima facie* evidence that she has put such missing funds to personal use.[24] Recio likewise violated

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[22] *Yu-Asensi v. Villanueva*, 379 Phil. 258, 275 (2000).

[23] Annex K; Evaluation Report dated June 25, 2007.

[24] *OCA v. Atty. Fermin M. Ofilas and Ms. Aranzazu V. Baltazar, COC and Clerk IV, RTC, San Mateo, Rizal*, A.M. No. P-05-1935, April 23, 2010 (Formerly A.M. No. 04-10-599-RTC).

Section B (4) of Circular No. 50-95[25] due to her delay in the remittance of the court collections. As found by the Audit Team, fiduciary collections were deposited several days after collection. To make up for the undeposited collections, Recio would instead deposit a big amount of money to even out the court collections as reflected in the cashbook.

Settled is the role of clerks of courts as judicial officers entrusted with the delicate function with regard to collection of legal fees. They are expected to correctly and effectively implement regulations relating to proper administration of court funds.

Clerks of Court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer, accountant, guard and physical plant manager thereof. It is the clerks of court's duty to faithfully perform their duties and responsibilities as such to the end that there was full compliance with function, that of being custodians of the court's funds and revenues, records, properties and premises. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes and concerns. Thus, the unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment of the collection shortages will exempt the accountable officer from liability.

Here, Recio's action was in complete violation of Administrative Circular No. 3-2000, dated June 15, 2000, which commands that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. The procedural guidelines of this Circular provide:

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[25] (4) All collections from bail bonds, rental deposits, and other fiduciary funds shall be deposited within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof with the Land Bank of the Philippines.

II. Procedural Guidelines
A. Judiciary Development Fund

x x x x x x x x x

3. Systems and Procedures

x x x x x x x x x

c. In the RTC, MeTC, MTCC, MTC, MCTC, SDC and SCC. – **The daily collections for the Fund in these courts shall be deposited everyday with the nearest LBP branch for the account of the Judiciary Development Fund, Supreme Court, Manila – SAVINGS ACCOUNT NO. 0591-0116-34 or if depositing daily is not possible, deposits for the Fund shall be at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the period above-indicated.**

x x x x x x x x x

Collections shall not be used for encashment of personal checks, salary checks, *etc*. x x x

x x x x x x x x x

B. General Fund (GF)

(1.) *Duty of the Clerks of Court, Officers-in-Charge or Accountable Officers*.—The Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court, or their accountable duly-authorized representatives designated by them in writing, who must be accountable officers, shall receive the General Fund collections, issue the proper receipt therefor, **maintain a separate cash book properly marked CASH BOOK FOR CLERK OF COURT'S GENERAL FUND AND SHERIFF'S GENERAL FUND, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections and Deposits for said Fund**.

x x x x x x x x x[26]

These Circulars are mandatory in nature, designed to promote full accountability for government funds and no protestation of

[26] Emphasis ours.

good faith can override such mandatory nature.[27] Failure to observe these Circulars resulting to loss, shortage, destruction or impairment of court funds and properties makes Recio liable thereto. Clerks of Court are presumed to know their duty to immediately deposit with the authorized government depositories the various funds they receive, for they are not supposed to keep funds in their personal possession. Even undue delay in the remittances of the amounts that they collect, at the very least, constitutes misfeasance. Although Recio had subsequently deposited her other cash accountability, she was nevertheless liable for failing to immediately deposit the said collections into the court's funds. Her belated remittance will not free her from punishment. Even restitution of the whole amount cannot erase her administrative liability. More so, that in the instant case, she failed to fully comply with all the Court's directives.

By failing to properly remit the cash collections constituting public funds, Recio violated the trust reposed in her as disbursement officer of the Judiciary. Her failure to explain satisfactorily the fund shortage, and to restitute the shortage and fully comply with the Court's directives leave us no choice but to hold her liable for gross neglect of duty and gross dishonesty. In *Lirios v. Oliveros*[28] and *Re: Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, RTC, Oras, Eastern Samar*,[29] the Court held that the unreasonable delay in the remittance of fiduciary funds constitutes serious misconduct.

Moreover, Recio abused her position as Branch Clerk of Court and misappropriated the collections for the judiciary funds. As pointed out by the Audit Team, the documents retrieved from Recio's office appeared to be deliberately tampered.[30]

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[27] *OCA v. Quintana-Malanay*, A.M. No. P-04-1820, August 6, 2008, 561 SCRA 14, 34.

[28] 323 Phil. 318 (1996).

[29] A.M. No. P-06-2177, June 27, 2006, 493 SCRA 44.

[30] Annexes "M-1" to "M-12" and Annexes "N-1" to "N-5".

Thus, the infractions, *i.e.*, tampering of the official receipts; tampering of the cash book; failure to record and remit collections; and failure to file monthly reports, were committed not by mere inadvertence but with conscious and deliberate efforts which evince a malicious and immoral propensity.

It is also noteworthy to mention that the withdrawal slips submitted by Recio, which showed that they were duly signed by the Judge and the accountable officer, were not the ones subject of the audit findings; thus, they will not have bearing on the instant case. Likewise, most of the documents submitted relative to unremitted confiscated bonds were not subject of the audit findings.

In sum, after considering Recio's partial compliance, the unallowed withdrawals amounting to ₱2,288,454.75 is reduced to ₱2,023,550.40.

The long delay in the remittance of court's funds, as well as the unexplained shortages which remained unaccounted for, raises grave doubts regarding the trustworthiness and integrity of Recio. The failure to remit the funds in due time constitutes gross dishonesty and gross misconduct. It diminishes the faith of the people in the Judiciary. Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service even if committed for the first time.

Administrative Liability of Eralyn S. Cavite, Ruth G. Cabigas, and Chona Aurelia R. Reniedo

A cash clerk is an accountable officer entrusted with the great responsibility of collecting money belonging to the funds of the court. Thus, Cavite should have realized that the money she was receiving were public funds. It was incumbent upon her to be more circumspect and discerning in performing her assigned tasks.

Respondents' defense of good faith and that they were merely following the orders of Recio cannot justify their actions. As public officers, their duty was not only to perform their assigned

tasks, but to prevent the commission of acts inimical to the Judiciary and to the public, in general. At the first instance, they should have reported Recio's conduct to the Executive Judge.

Those charged with the dispensation of justice, from the justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility. A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity, and should be made accountable to all those whom he serves. There is no place in the Judiciary for those who cannot meet the exacting standards of judicial conduct and integrity.

Thus, the Court "condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and would diminish, or even just tend to diminish, the faith of the people in the Judiciary."[31]

WHEREFORE, premises considered, the Court resolves to declare:

(1) Nelia D.C. Recio, Clerk of Court, Metropolitan Trial Court, San Juan, Metro Manila, *GUILTY* of Gross Misconduct, Dishonesty and Gross Neglect of Duty, and is hereby ordered *DISMISSED* from the service with forfeiture of retirement benefits, including her accrued leave credits, with perpetual disqualification for re-employment in the government service. She is *ORDERED* to immediately *PAY* the following amounts to their respective accounts:

a.) JDF		₱ 138,101.80;
b.) Clerk of Court General Fund		₱ 145,373.14;
c.) Fiduciary Fund		₱2,413,002.97;
d.) Unaccounted Fines		₱ 124,690.00;
e.) Confiscated Cash Bonds		₱ 318,000.00
	Total:	***₱3,139,166.00***

[31] *Mendoza v. Mabutas,* A.M. No. MTJ-88-142, June 17, 1993, 223 SCRA 411, 419.

(2) The Employees Leave Division, Office of Administrative Services, OCA, is *DIRECTED* to compute the balance of respondent Recio's earned leave credits and forward the same to the Financial Management Office, Office of the Court Administrator; and the latter is *DIRECTED* to process the earned leave credits of Recio, as well as other benefits she may be entitled to, and to remit the same to the Fiduciary Fund account of the MeTC, San Juan, Metro Manila.

(3) Respondents Eralyn S. Cavite and Ruth G. Cabigas *GUILTY* of Inefficiency and are *FINED* in the amount of Five Thousand Pesos (₱5,000.00) each with *STERN WARNING* that repetition of the same or similar acts in the future will be dealt with more severely.

(4) The Legal Office, Office of the Court Administrator, is hereby *DIRECTED* to file the appropriate criminal charges against Nelia D.C. Recio and Ariel M. Salazar.

In view of the untimely demise of respondent Chona Aurelia R. Reniedo during the pendency of this case and the removal of Ariel M. Salazar from the service as per Resolution of the First Division, dated July 17, 2002 in A.M. No. 02-6-151-MeTC, administrative disciplinary sanction against them is no longer appropriate.

SO ORDERED.

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

Nachura, J., on leave.

Del Castillo, J., on official leave.

EN BANC

[G.R. No. 175276. May 31, 2011]

ISABELO L. GALANG, *petitioner, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

[G.R. No. 175282. May 31, 2011]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **ISABELO L. GALANG,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; OMNIBUS RULES IMPLEMENTING BOOK V OF EXECUTIVE ORDER NO. 292 AND OTHER PERTINENT CIVIL SERVICE LAWS; REINSTATEMENT; DEFINED.— The Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws define reinstatement as the issuance of an appointment to a person who has been previously appointed to a position in the career service and who has, through no delinquency or misconduct, been separated therefrom, or to the restoration of one who has been exonerated of the administrative charges filed against him.

2. ID.; ID.; ID.; AN ILLEGALLY TERMINATED CIVIL SERVICE EMPLOYEE IS ENTITLED TO BACK SALARIES LIMITED ONLY TO A MAXIMUM PERIOD OF FIVE YEARS, AND NOT FULL BACK SALARIES FROM HIS ILLEGAL TERMINATION UP TO HIS REINSTATEMENT; CASE AT BAR.— It is settled that an illegally terminated civil service employee is entitled to back salaries limited only to a maximum period of five years, and not full back salaries from his illegal termination up to his reinstatement. Hence, in Galang's case, he is entitled to back salaries from July 1990 to June 1995.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A JUDGMENT OR ORDER BECOMES FINAL UPON THE LAPSE OF THE PERIOD TO APPEAL, WITHOUT AN APPEAL BEING PERFECTED OR A MOTION FOR

RECONSIDERATION BEING FILED.— Well-entrenched is that a judgment or order becomes final upon the lapse of the period to appeal, without an appeal being perfected or a motion for reconsideration being filed.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AN INDEPENDENT ACTION AND IS NEITHER A CONTINUATION NOR A PART OF THE TRIAL RESULTING IN THE JUDGMENT COMPLAINED OF.— [A]n original action for *certiorari* is an independent action and is neither a continuation nor a part of the trial resulting in the judgment complained of. It does not interrupt the course of the original action if there was no writ of injunction, even if in connection with a pending case in a lower court. Section 7, Rule 65 on *certiorari* provides: SEC. 7. *Expediting proceedings; injunctive relief.* – The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. **The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against public respondent from further proceeding in the case.** Clearly, the petition for *certiorari* filed by Land Bank in G.R. No. 131186 did not suspend the running of the prescriptive period to appeal. Besides, no temporary restraining order or writ of preliminary injunction was issued in its favor that could effectively toll the running of the prescriptive period.

5. ID.; PRINCIPLE OF JUDICIAL COURTESY; NOT APPLICABLE IN CASE AT BAR.— It is true that there are instances where, even if there is no writ of preliminary injunction or temporary restraining order issued by a higher court, it would be proper for a lower court or court of origin to suspend its proceedings on the precept of judicial courtesy. The principle of judicial courtesy, however, remains to be the exception rather than the rule. Unfortunately for Land Bank, this is not a proper case for the operation of the said principle.

6. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE;

CONCOMITANT WITH REINSTATEMENT IS THE PAYMENT OF BACK SALARIES.— Land Bank's failure to interpose an appeal within fifteen (15) days from its receipt on September 15, 1997 of the Resolution dated September 5, 1997, rendered the same final and executory on October 1, 1997. Galang's reinstatement therefore must be reckoned, not from August 16, 2001 but from October 1, 1997. This entitles him to receive back wages as well from the date when he should have been reinstated on October 1, 1997 to August 15, 2001, one day before he was actually reinstated. Concomitant with reinstatement is the payment of back salaries. Section 59(e) of the Uniform Rules on Administrative Cases in the Civil Service on the effect of exoneration on certain penalties provides that in case the penalty imposed is dismissal, he shall immediately be reinstated without loss of seniority rights with payment of back salaries. It was enunciated in *Philippine Amusement and Gaming Corporation v. Salas* that: When an official or employee was illegally dismissed and his reinstatement has later been ordered, for all legal purposes he is considered as not having left his office. Therefore, he is entitled to all the rights and privileges that accrue to him by virtue of the office he held.

7. ID.; ID.; ID.; ID.; ID.; CONTROLLING RULE ON THE RATE AT WHICH BACK SALARIES SHALL BE PAID; CASE AT BAR.— The controlling rule on the rate at which back salaries shall be paid was laid down by the Court as early as 1977 in the case of *Balquidra v. CFI of Capiz, Branch II.* In said case, the Court awarded back salaries to the petitioner therein at the rate last received by him or his "original salary" for five years without qualification and deduction. This means that the illegally dismissed government employee shall be paid back salaries at the rate he was receiving when he was terminated unqualified by salary increases and without deduction from earnings received elsewhere during the period of his illegal dismissal. We have invariably held so in *Gementiza v. Court of Appeals, Ginson v. Municipality of Murcia, et al., Gabriel v. Domingo,* and *Del Castillo v. Civil Service Commission.* We find no reason to depart from the said rule in the instant case. Be that as it may, we cannot apply the foregoing rule in the computation of Galang's back salaries from October 1, 1997 to August 15, 2001. His back salaries for such period

represent recompense for the earnings he failed to realize because he was *belatedly reinstated*. Following this Court's pronouncement in *Cristobal v. Melchor*, Galang's back salaries for October 1, 1997 to August 15, 2001 should be computed at the rate prevailing at the proper date of his reinstatement on October 1, 1997, inclusive of allowances, benefits and increases in salary prior to reinstatement.

8. ID.; ID.; ID.; ID.; ID.; BACKWAGES; REPRESENT THE COMPENSATION THAT SHOULD HAVE BEEN EARNED BUT WERE NOT COLLECTED BECAUSE OF UNJUST DISMISSAL.— Back wages represent the compensation that should have been earned but were not collected because of the unjust dismissal. This includes other monetary benefits attached to the employee's salary following the principle that an illegally dismissed government employee who is later reinstated is entitled to all the rights and privileges that accrue to him by virtue of the office he held.

9. ID.; ID.; ID.; DEPARTMENT OF BUDGET AND MANAGEMENT (DBM) MANUAL ON POSITION CLASSIFICATION AND COMPENSATION; REPRESENTATION AND TRANSPORTATION ALLOWANCE (RATA); NATURE, DISCUSSED; ENTITLEMENT OF REINSTATED GOVERNMENT EMPLOYEES THERETO IN CERTAIN FISCAL YEARS, QUALIFIED.— Representation and Transportation Allowance or RATA is a fringe benefit distinct from salary. Unlike salary which is paid for services rendered, RATA belongs to a basket of allowances to defray expenses deemed unavoidable in the discharge of office. Hence, it is paid only to certain officials who, by the nature of their offices, incur representation and transportation expenses. The Department of Budget and Management (DBM) Manual on Position Classification and Compensation discusses the nature of the RATA and qualifies the entitlement of reinstated government employees thereto in certain fiscal years: The pertinent general provisions of the General Appropriations Acts (GAAs) prior to FY 1993 and in the FY 1999 GAA provided that the officials listed therein and those of equivalent ranks as may be determined by the Department of Budget and Management (DBM) are to be granted monthly commutable RATA. Hence, prior to FY 1993 and in FY 1999, RATA were allowances attached to the position. The

pertinent provisions of the FYs 1993 to 1998 GAAs and in the FY 2000 GAA provided that the officials listed therein and those of equivalent ranks as may be determined by the DBM **while in the actual performance of their respective functions** are to be granted monthly commutable RATA. This provision was reiterated in the pertinent general provisions of the subsequent GAAs. Hence, **in FYs 1993 to 1998 and beginning FY 2000 and up to the present, the actual performance of an official's duties and responsibilities was a pre-requisite to the grant of RATA**. The rationale behind the qualifying phrase, "while in the actual performance of their respective functions," is to provide the official concerned with additional funds to meet necessary expenses incidental to and connected with the exercise or the discharge of the functions of the office. Thus, if the official is out of office, whether voluntary or involuntary, the official does not and is not supposed to incur expenses. There being no expenses incurred, there is nothing to reimburse. Since RATA are privileges or benefits in the form of reimbursement of expenses, they are not salaries or part of basic salaries. **Forfeiture or non-grant of the RATA does not constitute diminution in pay.** RATA may be spent in variable amounts per work day depending on the situation. Entitlement thereto should not be proportionate to the number of work days in a month, inclusive of regular and special holidays falling on work days.

10. ID.; ID.; ID.; REPUBLIC ACT NO. 8250 (GENERAL APPROPRIATIONS ACT FOR CY 1997); PERSONNEL ECONOMIC RELIEF ALLOWANCE (PERA); GRANTED TO ALL GOVERNMENT EMPLOYEES AND OFFICIALS AS A REPLACEMENT OF THE COST OF LIVING ALLOWANCE (COLA).— Personnel Economic Relief Allowance (PERA) is a ₱500 monthly allowance authorized under the pertinent general provision in the annual GAA. It is granted to augment the pay of government employees due to the rising cost of living. On February 12, 1997, Congress enacted R.A. No. 8250 (GAA for CY 1997), which granted PERA to all government employees and officials as a replacement of the Cost of Living Allowance (COLA). This explains why Land Bank employees began receiving PERA only in 1997 – because prior to 1997, said benefit was called by another name, COLA. Hence, Land Bank is still liable to pay the monthly PERA to Galang.

11. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; MONETARY CLAIMS; BURDEN OF PROVING PAYMENT THEREOF RESTS ON THE EMPLOYER; RATIONALE; PAYMENT OF MEAL ALLOWANCE IN CASE AT BAR, NOT CONCLUSIVELY PROVEN.— As to Meal Allowance, Land Bank concedes Galang's entitlement thereto, *albeit*, it claims that it had already paid the same. Jurisprudence dictates that the burden of proving payment of monetary claims rests on the employer. The *rationale* for this rule was explained in *G & M Philippines, Inc. v. Cuambot*: x x x [O]ne who pleads payment has the burden of proving it. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents - which will show that overtime, differentials, service incentive leave, and other claims of workers have been paid - are not in the possession of the worker but in the custody and absolute control of the employer. Thus, the burden of showing with legal certainty that the obligation has been discharged with payment falls on the debtor, in accordance with the rule that one who pleads payment has the burden of proving it. x x x To prove payment of Galang's meal allowance for 1988 and July 1990 to 1995 in the amount of ₱34,860.00, Land Bank annexed Disbursement Order No. 02-02-0170 dated February 8, 2002 to its Comment in CA-G.R. SP No. 91910. However, said disbursement order lacks the signature of Galang as recipient. Verily, we cannot take such document as conclusive proof that Galang has been paid his meal allowance. Taking into account our determination that Galang ought to be reinstated earlier, Land Bank shall likewise be liable to pay his Meal Allowance from October 1, 1997 to August 15, 2001.

APPEARANCES OF COUNSEL

Somera Penano & Associates for Isabelo L. Galang.
LBP Legal Services Group for LBP.

D E C I S I O N

VILLARAMA, JR., *J.*:

These are two consolidated petitions for review on *certiorari*[1] filed by Isabelo L. Galang and Land Bank of the Philippines (Land Bank) to assail the Decision[2] dated May 25, 2006 and Resolution[3] dated October 25, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 91910. The CA had reversed and set aside Resolution Nos. 040894[4] and 051256[5] of the Civil Service Commission (CSC) denying Galang's Motion for Issuance of Writ of Execution[6] and motion for reconsideration.

The facts of the case are undisputed.

On June 20, 1988, Isabelo L. Galang, the Branch Manager of Land Bank Baliuag, Bulacan was charged with Dishonesty, Misconduct, Conduct Prejudicial to the Best Interest of the Service, Gross Neglect of Duty, Violation of Rules and Regulations, and Receiving for Personal Use a Fee, Gift or Other Valuable Thing in the Course of Official Duties or in Connection Therewith when such Fee is Given by Any Person in the Hope or Expectation of Receiving a Favor or Better Treatment than that Accorded Other Persons or Committing Acts Punishable Under the Anti-Graft Laws. The case was docketed as Administrative Case No. 88-002.[7]

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[1] *Rollo* (G.R. No. 175276), pp. 10-33; *Rollo* (G.R. No. 175282), pp. 20-34.

[2] *Rollo* (G.R. No. 175282), pp. 35-47. Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Magdangal M. De Leon, concurring.

[3] *Id.* at 48.

[4] *Id.* at 50-54.

[5] *Id.* at 56-59.

[6] *Id.* at 139-141.

[7] *Id.* at 88-90.

Allegedly, Galang demanded money from four borrowers of the bank, namely, Ceferino Manahan, Gregorio Modelo, Sotero Santos and Feliza de Vera, in return for a reduction of interest rates and condonation of penalty charges on their overdue loans. The complaint further accuses Galang of making unauthorized disbursements for the repair of the company car. Along with Galang, the borrowers also charged Conrado Ocampo, a Project Analyst in the same branch, for his alleged participation in soliciting money from them.

On November 3, 1989, the Hearing Officer of Land Bank issued a Joint Resolution dismissing both charges for insufficiency of evidence. This was later reversed by Land Bank's General Counsel, Corazon P. Del Rosario, who recommended Galang and Ocampo's dismissal to the Board of Directors.

On April 26, 1990, the Board of Directors issued Resolution No. 90-043[8] which approved Del Rosario's recommendation but modified the penalty to forced resignation with forfeiture of all benefits. Aggrieved, Galang and Ocampo appealed to the Merit Systems Protection Board (MSPB).

In a Decision[9] dated March 8, 1991, the MSPB sustained the penalty imposed upon Galang and Ocampo but found them liable only for Dishonesty, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, and Receiving for Personal Use a Fee, Gift or Other Valuable Thing in the Course of Official Duties or in Connection Therewith when such Fee is Given by Any Person in the Hope of Receiving a Favor or Better Treatment than that Accorded Other Persons. The MSPB, however, absolved Galang of the charges of Gross Neglect of Duty and Violation of Rules and Regulations. Galang and Ocampo filed a motion for reconsideration, which was denied in a Decision[10] dated June 11, 1991.

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[8] *Id.* at 97.

[9] *Id.* at 98-114.

[10] CA *rollo*, pp. 110-112.

Before the CSC, Galang and Ocampo's appeal was dismissed for lack of merit through Resolution No. 93-1001[11] dated March 12, 1993. Their motion for reconsideration was likewise denied in Resolution No. 93-3812.[12]

Galang alone filed a petition for *certiorari*[13] with the Supreme Court alleging grave abuse of discretion committed by the CSC. In a Resolution[14] dated June 20, 1995, the Court referred the matter to the CA pursuant to Revised Administrative Circular No. 1-95.[15]

On November 21, 1996, the CA rendered a Decision[16] in CA-G.R. SP No. 37791 nullifying Resolution Nos. 93-1001 and 93-3812. The appellate court excluded the affidavits of the complainants as inadmissible in evidence for lack of cross-examination. Without them, it found no substantial evidence to hold Galang administratively liable.

Subsequently, Galang filed a Motion for Clarification and/or Reconsideration[17] with a prayer for the CA to order his reinstatement and the payment of his back wages, bonuses and other fringe benefits reckoned from the date of his dismissal. Land Bank, likewise, moved for reconsideration.

In a Resolution[18] dated September 5, 1997, the CA granted Galang's motion and directed Land Bank to reinstate him and to pay him back salaries not exceeding five years. Land Bank

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[11] *Id.* at 113-121.

[12] *Rollo* (G.R. No. 175282), pp. 115-116.

[13] *Id.* at 300-337.

[14] CSC records, p. 468.

[15] RULES GOVERNING APPEALS TO THE COURT OF APPEALS FROM JUDGMENTS OR FINAL ORDERS OF THE COURT OF TAX APPEALS AND QUASI-JUDICIAL AGENCIES.

[16] *Rollo* (G.R. No. 175282), pp. 338-363.

[17] *Id.* at 364-369.

[18] *Id.* at 382-384.

received notice of said resolution on September 15, 1997, but filed no appeal.

Consequently, Galang filed a Motion to Effect Entry of Judgment.[19] On November 14, 1997, Land Bank filed before this Court a Petition for *Certiorari*[20] which was docketed as G.R. No. 131186.

In a Resolution[21] dated January 17, 2001, this Court dismissed the petition. This Court concluded that Land Bank's petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended, was merely an afterthought considering that it failed to file a petition for review on *certiorari* under Rule 45 of said Rule. The bank moved for reconsideration but was denied. Thus, on August 7, 2001, this Court issued an Entry of Judgment.[22]

In the meantime, Galang was reinstated in the payroll on August 16, 2001. However, on December 14, 2001, Galang wrote Land Bank's President, Margarito Teves, complaining that he has yet to receive Personnel Economic Relief Allowance (PERA), Representation and Travel Allowance (RATA), Meal Allowance and Rice Subsidy. He claimed that since this Court found Land Bank's petition for *certiorari* to be a mere afterthought, he should have been reinstated on October 1, 1997 – after the fifteen (15)-day period to appeal the Resolution dated September 5, 1997 had lapsed. Galang also insisted that his back salaries be computed based on the current salary rate prescribed for his previous position.[23]

In a letter[24] dated February 8, 2002, Land Bank expressed its willingness to pay Galang Meal Allowance and Rice Subsidy. It, however, refused to include PERA and RATA as part of his

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[19] *Id.* at 385-387

[20] *Id.* at 388-425.

[21] *Id.* at 426-428.

[22] *Id.* at 429.

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

[24] *Id.* at 433-434.

back salaries for 1990 to 1995; the former, because it was authorized to be paid to LBP employees only in 1997 and the latter, because he was unable to discharge the functions of his office. Land Bank further explained that Galang could not be reinstated, or his back wages paid from October 1, 1997 since there was yet no final and executory decision of the court then. The bank maintained that his salaries were computed correctly, based on the prevailing rate for the period when he was unable to work in accordance with the Court's ruling in *Bangalisan v. Court of Appeals*.[25]

On June 7, 2002, Galang filed a Motion for Clarification[26] with this Court to settle the following issues:

9.1 Whether Respondent is entitled to Meal and Rice Allowances, Representation and Travel Allowance and Housing Allowance, and the basis thereof;

9.2 Whether the payment of Provident Fund is limited to five (5) years only;

9.3 The basis for computing the 5-year backwages;

9.4 Whether Respondent should have been reinstated since October 1, 1997.[27]

On July 24, 2002, this Court issued a Resolution[28] which noted without action Galang's motion for clarification in view of the Entry of Judgment[29] on August 7, 2001.

On May 15, 2003, Galang filed a Motion for Issuance of Writ of Execution[30] with the CSC to enforce the November 21, 1996 Decision of the CA in CA-G.R. SP No. 37791, which

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[25] G.R. No. 124678, July 31, 1997, 276 SCRA 619.

[26] *Rollo* (G.R. No. 175282), pp. 435-445.

[27] *Id.* at 439.

[28] *Id.* at 446.

[29] *Supra* note 22.

[30] *Id.* at 447-450.

ordered his reinstatement and the payment of his backwages for five years.

The Commission denied said motion in Resolution No. 040894 dated August 9, 2004. Galang moved for reconsideration, but his motion was denied in Resolution No. 05-1256 dated September 13, 2005. The CSC held that execution will not lie because Land Bank had complied with the appellate court's decision.

On November 5, 2005, Galang filed a Petition for Review[31] under Rule 43 with the CA.

In the assailed Decision dated May 25, 2006, the appellate court granted said petition and declared Galang entitled to PERA, RATA and other benefits attached to his position. However, it upheld his reinstatement on August 16, 2001 and sustained the computation of his back wages based on the prevailing rate at the time of his dismissal. The motions for reconsideration respectively filed by Galang and Land Bank were likewise denied by the appellate court in its Resolution dated October 25, 2006.

Hence, on December 8, 2006, Galang filed a petition for review on *certiorari* with this Court raising the following issues:

I.

THE HONORABLE COURT ERRED IN NOT RULING THAT THE COMPUTATION OF PETITIONER'S BACKWAGES SHOULD BE BASED ON HIS CURRENT SALARY LEVEL; AND

II.

THE HONORABLE COURT ERRED IN NOT RULING THAT PETITIONER IS ENTITLED TO REINSTATEMENT AS EARLY AS 01 OCTOBER 1997.[32]

For its part, Land Bank filed a petition for review on *certiorari* on December 22, 2006 based on the following assignment of errors:

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[31] *Id.* at 465-491.

[32] *Rollo* (G.R. No. 175276), p. 21.

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS HAS COMMITTED A GRAVE AND REVERSIBLE ERROR WHEN IT RULED THAT [PERSONNEL] ECONOMIC RELIEF ALLOWANCE (PERA) AND REPRESENTATION AND [TRANSPORTATION] ALLOWANCE (RATA) SHOULD BE INCLUDED IN THE PAYMENT OF RESPONDENT'S BACKWAGES.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS HAS LIKEWISE COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT HELD THAT RESPONDENT GALANG IS STILL ENTITLED TO THE PAYMENT OF MEAL ALLOWANCE AND RICE SUBSIDY.[33]

In order to resolve these twin petitions, the Court must address the following questions: (1) When should Galang be reinstated? (2) What should be the basis of computing his back salaries? and (3) Is he entitled to PERA, RATA, Meal Allowance and Rice Subsidy?

Citing the case of *Cristobal v. Melchor*,[34] Galang contends that his back wages should be computed based on the rate of his salary at reinstatement. He argues that since Land Bank availed of the wrong remedy, his reinstatement should be reckoned from October 1, 1997 or after the reglementary period to appeal had lapsed.

Land Bank, on the other hand, disputes Galang's demand for PERA and RATA. It reasons that since the five-year period for which Galang shall receive back salaries is from July 1990 to June 1995, he is not entitled to PERA, a benefit which employees of the Land Bank started receiving only in 1997. As to RATA, Land Bank maintains that the nature of such benefit precludes

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[33] *Rollo* (G.R. No. 175282), pp. 24-25.

[34] No. L-43203, December 29, 1980, 101 SCRA 857.

Galang from claiming it since he did not incur expenses for representation and transportation while he was not allowed to work. Finally, it claims that it had already paid Galang's Rice Subsidy and Meal Allowance.

We find the petition partly meritorious.

The Omnibus Rules Implementing Book V of Executive Order No. 292[35] and Other Pertinent Civil Service Laws define reinstatement as the issuance of an appointment to a person who has been previously appointed to a position in the career service and who has, through no delinquency or misconduct, been separated therefrom, or to the restoration of one who has been exonerated of the administrative charges filed against him.

In the present case, Galang was absolved of the administrative charges against him in the CA Decision dated November 21, 1996. Upon motion, the appellate court issued the Resolution dated September 5, 1997, which ordered his reinstatement and the payment of his back salaries for five years.

It is settled that an illegally terminated civil service employee is entitled to back salaries limited only to a maximum period of five years, and not full back salaries from his illegal termination up to his reinstatement.[36] Hence, in Galang's case, he is entitled to back salaries from July 1990 to June 1995. This is not disputed by the parties. Rather, the uncertainty centers on when he should be reinstated.

The records show that Galang was reinstated in Land Bank's payroll on August 16, 2001. He argues, however, that he should be reinstated on October 1, 1997, after the fifteen (15)-day period to appeal the Resolution dated September 5, 1997 had lapsed.

Galang's position on the effective date of his reinstatement is correct.

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[35] INSTITUTING THE "ADMINISTRATIVE CODE OF 1987."

[36] *Yenko v. Gungon*, G.R. Nos. 165450 & 165452, August 13, 2009, 595 SCRA 562, 580.

Well-entrenched is that a judgment or order becomes final upon the lapse of the period to appeal, without an appeal being perfected or a motion for reconsideration being filed.[37]

In this case, Land Bank received notice of the CA Resolution dated September 5, 1997 on September 15, 1997. Thus, it had fifteen (15) days from September 15, 1997, or until September 30, 1997 to file an appeal. Yet, Land Bank did not do so. Instead, it filed a petition for *certiorari* with this Court on November 14, 1997.

However, an original action for *certiorari* is an independent action and is neither a continuation nor a part of the trial resulting in the judgment complained of. It does not interrupt the course of the original action if there was no writ of injunction, even if in connection with a pending case in a lower court.[38] Section 7, Rule 65 on *certiorari* provides:

> SEC. 7. *Expediting proceedings; injunctive relief.* – The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. **The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against public respondent from further proceeding in the case.** (Emphasis supplied.)

Clearly, the petition for *certiorari* filed by Land Bank in G.R. No. 131186 did not suspend the running of the prescriptive period to appeal. Besides, no temporary restraining order or writ of preliminary injunction was issued in its favor that could effectively toll the running of the prescriptive period.

It is true that there are instances where, even if there is no writ of preliminary injunction or temporary restraining order issued by a higher court, it would be proper for a lower court

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[37] *Philippine Veterans Bank v. Solid Homes, Inc.*, G.R. No. 170126, June 9, 2009, 589 SCRA 40, 46.

[38] *Id.* at 49-50.

or court of origin to suspend its proceedings on the precept of judicial courtesy. The principle of judicial courtesy, however, remains to be the exception rather than the rule.[39] Unfortunately for Land Bank, this is not a proper case for the operation of the said principle.

Land Bank's failure to interpose an appeal within fifteen (15) days from its receipt on September 15, 1997 of the Resolution dated September 5, 1997, rendered the same final and executory on October 1, 1997. Galang's reinstatement therefore must be reckoned, not from August 16, 2001 but from October 1, 1997. This entitles him to receive back wages as well from the date when he should have been reinstated on October 1, 1997 to August 15, 2001, one day before he was actually reinstated.

Concomitant with reinstatement is the payment of back salaries. Section 59(e) of the Uniform Rules on Administrative Cases in the Civil Service on the effect of exoneration on certain penalties provides that in case the penalty imposed is dismissal, he shall immediately be reinstated without loss of seniority rights with payment of back salaries. It was enunciated in *Philippine Amusement and Gaming Corporation v. Salas*[40] that:

> When an official or employee was illegally dismissed and his reinstatement has later been ordered, for all legal purposes he is considered as not having left his office. Therefore, he is entitled to all the rights and privileges that accrue to him by virtue of the office he held.

In this case, the second issue for resolution pertains to the base figure to be used in computing Galang's back salaries.

Galang invokes the 1980 case of *Cristobal v. Melchor*[41] as authority in saying that the computation of his back wages should

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[39] *De Leon v. Public Estates Authority*, G.R. Nos. 181970 & 182678, August 3, 2010, 626 SCRA 547, 562.

[40] G.R. No. 138756, August 1, 2002, 386 SCRA 94, 100, citing *Tañala v. Legaspi*, No. L-22537, March 31, 1965, 13 SCRA 566, 576.

[41] *Supra* note 34.

be based on his salary at reinstatement. However, we find Galang's reliance on said case misplaced.

In *Cristobal v. Melchor*, Jose C. Cristobal was reinstated as an Assistant in the Office of the President, a position different from his position as Private Secretary I which he held when he was terminated. Upon being reinstated, he was paid the salary corresponding to that of a Private Secretary I at the rate when he was wrongfully dismissed fifteen (15) years back. The Court ruled therein that Cristobal must be given a position and compensation commensurate and comparable to that which he held, taking into account the increases in salary during the fifteen (15)-year period preceding his reinstatement. To stress this point, the Court fixed his compensation at the rate prevailing at the time of his reinstatement inclusive of allowances, benefits and increases in salary. Moreover, it ordered the respondents therein to pay Cristobal the differential between the current rate of the salary, for a position commensurate to a Private Secretary I, and the old rate from the time he "reported for duty"[42] that is, from the time he was reinstated.

Clearly, what was in issue in *Cristobal v. Melchor* was the rate of Cristobal's compensation upon his reinstatement, not the rate of his back salaries. In fact, he did not dispute the payment of his back salaries for five years computed at the rate when he was dismissed.[43]

The controlling rule on the rate at which back salaries shall be paid was laid down by the Court as early as 1977 in the case of *Balquidra v. CFI of Capiz, Branch II*.[44] In said case, the Court awarded back salaries to the petitioner therein at the rate last received by him or his "original salary"[45] for five years without qualification and deduction. This means that the illegally

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[42] *Id.* at 866.

[43] *Id.* at 862.

[44] No. L-40490, October 28, 1977, 80 SCRA 123.

[45] *Id.* at 136.

dismissed government employee shall be paid back salaries at the rate he was receiving when he was terminated unqualified by salary increases and without deduction from earnings received elsewhere during the period of his illegal dismissal. We have invariably held so in *Gementiza v. Court of Appeals*,[46] *Ginson v. Municipality of Murcia, et al.*,[47] *Gabriel v. Domingo*,[48] and *Del Castillo v. Civil Service Commission*.[49] We find no reason to depart from the said rule in the instant case.

Be that as it may, we cannot apply the foregoing rule in the computation of Galang's back salaries from October 1, 1997 to August 15, 2001. His back salaries for such period represent recompense for the earnings he failed to realize because he was *belatedly reinstated*. Following this Court's pronouncement in *Cristobal v. Melchor*, Galang's back salaries for October 1, 1997 to August 15, 2001 should be computed at the rate prevailing at the proper date of his reinstatement on October 1, 1997, inclusive of allowances, benefits and increases in salary prior to reinstatement.

Apart from back salaries, Galang demands payment of RATA, PERA, Meal Allowance and Rice Subsidy from Land Bank.

Back wages represent the compensation that should have been earned but were not collected because of the unjust dismissal.[50] This includes other monetary benefits[51] attached to the employee's salary following the principle that an illegally dismissed government employee who is later reinstated is entitled to all the rights and privileges that accrue to him by virtue of the office he held.

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[46] No. L-41717-33, April 12, 1982, 113 SCRA 477, 489.

[47] No. L-46585, February 8, 1988, 158 SCRA 1, 8.

[48] G.R. No. 87420, September 17, 1990, 189 SCRA 672, 679.

[49] G.R. No. 112513, August 21, 1997, 278 SCRA 209, 215.

[50] *Malig-on v. Equitable General Services, Inc.*, G.R. No. 185269, June 29, 2010, 622 SCRA 326, 332.

[51] *Civil Service Commission v. Magnaye, Jr.*, G.R. No. 183337, April 23, 2010, 619 SCRA 347, 363.

Pertinent to this case, Republic Act (R.A.) No. 6758,[52] otherwise known as the Compensation and Position Classification Act of 1989, was enacted on July 1, 1989 to integrate certain benefits received by government official and employees into their salaries. Section 12 of said Act provides:

SEC. 12. *Consolidation of Allowances and Compensation*. - All allowances, **except for representation and transportation allowances**; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such **other additional compensation** not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by the incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

Section 17 of the Act, however, exempts incumbent government officials and employees from the operation of Section 12, thus:

SEC. 17. *Salaries of Incumbents*. - Incumbents of positions presently receiving salaries and additional compensation/fringe benefits including those absorbed from local government units and other emoluments, the aggregate of which exceeds the standardized salary rate as herein prescribed, shall continue to receive such excess compensation, which shall be referred to as transition allowance. The transition allowance shall be reduced by the amount of salary adjustment that the incumbent shall receive in the future.

The transition allowance referred to herein shall be treated as part of the basic salary for purposes of computing retirement pay, year-end bonus and other similar benefits.

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[52] AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES.

Being an incumbent at the time, Galang would have continued to receive RATA, Meal Allowance and Rice Subsidy, separate from his salary, had he not been illegally dismissed from service.

Representation and Transportation Allowance or RATA is a fringe benefit distinct from salary. Unlike salary which is paid for services rendered, RATA belongs to a basket of allowances to defray expenses deemed unavoidable in the discharge of office. Hence, it is paid only to certain officials who, by the nature of their offices, incur representation and transportation expenses.[53] The Department of Budget and Management (DBM) Manual on Position Classification and Compensation discusses the nature of the RATA and qualifies the entitlement of reinstated government employees thereto in certain fiscal years:

> The pertinent general provisions of the General Appropriations Acts (GAAs) prior to FY 1993 and in the FY 1999 GAA provided that the officials listed therein and those of equivalent ranks as may be determined by the Department of Budget and Management (DBM) are to be granted monthly commutable RATA. Hence, prior to FY 1993 and in FY 1999, RATA were allowances attached to the position.
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> The pertinent provisions of the FYs 1993 to 1998 GAAs and in the FY 2000 GAA provided that the officials listed therein and those of equivalent ranks as may be determined by the DBM **while in the actual performance of their respective functions** are to be granted monthly commutable RATA. This provision was reiterated in the pertinent general provisions of the subsequent GAAs. Hence, **in FYs 1993 to 1998 and beginning FY 2000 and up to the present, the actual performance of an official's duties and responsibilities was a pre-requisite to the grant of RATA**.
>
> The rationale behind the qualifying phrase, "while in the actual performance of their respective functions," is to provide the official concerned with additional funds to meet necessary expenses incidental to and connected with the exercise or the discharge of the functions of the office. Thus, if the official is out of office, whether voluntary or involuntary, the official does not and is not supposed to incur expenses. There being no expenses incurred, there is nothing to reimburse.

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[53] *Department of Budget and Management v. Leones*, G.R. No. 169726, March 18, 2010, 616 SCRA 72, 79.

Since RATA are privileges or benefits in the form of reimbursement of expenses, they are not salaries or part of basic salaries. **Forfeiture or non-grant of the RATA does not constitute diminution in pay.** RATA may be spent in variable amounts per work day depending on the situation. Entitlement thereto should not be proportionate to the number of work days in a month, inclusive of regular and special holidays falling on work days. (Emphasis supplied.)

For emphasis, the five-year period covered in the computation of Galang's back salaries and other benefits is from July 1990 to June 1995. Also, he shall receive back salaries and other benefits for the period during which he should have been reinstated from October 1, 1997 to August 15, 2001. Since the General Appropriations Act (GAA) for 1993 to 1998 and in the year 2000 onwards require the actual performance of duty as a condition for the grant of RATA, Galang shall not receive RATA in those years but shall be entitled to RATA only from July 1990 to December 1992 and in the year 1999.

On the other hand, Personnel Economic Relief Allowance (PERA) is a ₱500 monthly allowance authorized under the pertinent general provision in the annual GAA. It is granted to augment the pay of government employees due to the rising cost of living.

On February 12, 1997, Congress enacted R.A. No. 8250[54] (GAA for CY 1997), which granted PERA to all government employees and officials as a replacement of the Cost of Living Allowance (COLA).[55] This explains why Land Bank employees began receiving PERA only in 1997 – because prior to 1997, said benefit was called by another name, COLA. Hence, Land Bank is still liable to pay the monthly PERA to Galang.

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[54] AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY[-]ONE, NINETEEN HUNDRED NINETY[-]SEVEN, AND FOR OTHER PURPOSES.

[55] *Re: Request of Chief Justice Andres R. Narvasa (Ret.) for Re-computation of His Creditable Government Service*, A.M. No. 07-6-10-SC, July 23, 2008, 559 SCRA 296, 302.

In his Motion for Issuance of Writ of Execution, Galang acknowledges receipt of "Rice Allowance, which was monetized based on the value of a sack of rice within the period from July 1990 to June 1995."[56] Still, he claims Rice Subsidy for the succeeding years. Considering, however, that Galang is entitled to back wages only from July 1990 to June 1995 and from October 1, 1997 to August 15, 2001, his claim for Rice Subsidy for the intervening years has no legal basis.

As to Meal Allowance, Land Bank concedes Galang's entitlement thereto, *albeit*, it claims that it had already paid the same.

Jurisprudence dictates that the burden of proving payment of monetary claims rests on the employer. The *rationale* for this rule was explained in *G & M Philippines, Inc. v. Cuambot*:[57]

> x x x [O]ne who pleads payment has the burden of proving it. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents - which will show that overtime, differentials, service incentive leave, and other claims of workers have been paid - are not in the possession of the worker but in the custody and absolute control of the employer. Thus, the burden of showing with legal certainty that the obligation has been discharged with payment falls on the debtor, in accordance with the rule that one who pleads payment has the burden of proving it. x x x[58]

To prove payment of Galang's meal allowance for 1988 and July 1990 to 1995 in the amount of ₱34,860.00, Land Bank annexed Disbursement Order No. 02-02-0170[59] dated February 8, 2002 to its Comment[60] in CA-G.R. SP No. 91910. However, said disbursement order lacks the signature of Galang as recipient.

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[56] *Supra* note 6, at 140.

[57] G.R. No. 162308, November 22, 2006, 507 SCRA 552, 570.

[58] *Dansart Security Force & Allied Services Company v. Bagoy*, G.R. No. 168495, July 2, 2010, 622 SCRA 694, 699-700.

[59] CA *rollo*, p. 312.

[60] *Id.* at 296-309.

Verily, we cannot take such document as conclusive proof that Galang has been paid his meal allowance. Taking into account our determination that Galang ought to be reinstated earlier, Land Bank shall likewise be liable to pay his Meal Allowance from October 1, 1997 to August 15, 2001.

WHEREFORE, the Decision dated May 25, 2006 and Resolution dated October 25, 2006 of the Court of Appeals in CA-G.R. SP No. 91910 are *AFFIRMED WITH MODIFICATIONS*. Land Bank of the Philippines is ordered to pay Isabelo L. Galang: (a) back salaries for five (5) years from the time of his unlawful dismissal in July 1990 to June 1995 at the rate last received by him without qualification and deduction; (b) back salaries from the proper date of his reinstatement on October 1, 1997 until August 15, 2001, at the rate prevailing on October 1, 1997 inclusive of increases in salary; (c) Cost of Living Allowance (COLA) from July 1990 to June 1995; (d) Personnel Economic Relief Allowance (PERA) from October 1, 1997 to August 15, 2001; (e) Representation and Transportation Allowance (RATA) from July 1990 to December 1992 and for the year 1999; (f) Meal Allowance in the amount of ₱34,860.00; and (g) Meal Allowance and Rice Subsidy for October 1, 1997 to August 15, 2001.

No pronouncement as to costs.

SO ORDERED.

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

Nachura, J., on leave.

del Castillo, J., took no part.

EN BANC

[G.R. No. 180141. May 31, 2011]

RIMANDO A. GANNAPAO, *petitioner, vs.* **CIVIL SERVICE COMMISSION (CSC), THE CHIEF OF PHILIPPINE NATIONAL POLICE, THE SECRETARY OF DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, ARIEL G. RONQUILLO, J. WALDEMAR V. VALMORES, JOSE F. ERESTAIN, JR., and KARINA CONSTANTINO-DAVID, ALL NAMED INDIVIDUALS IN THEIR CAPACITY AS OFFICERS OF THE CSC, RICARDO BARIEN, INOCENCIO M. NAVALLO, LIGAYA M. GANDO, LEA MOLLEDA, FE R. VETONIO, PRIMO V. BABIANO, PATIGA J., JOSE TAEZA, G. DELOS SANTOS, LOSBAÑES, W., AVE PEDIGLORIO and CRESENCIA ROQUE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; ADMINISTRATIVE DUE PROCESS; ELUCIDATED; NO DENIAL IN CASE AT BAR.— Time and again, we have held that the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. In the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard. As long as a party was given the opportunity to defend his interests in due course, he was not denied due process. Reviewing the records, we find that petitioner was afforded due process during the proceedings before the Office of the Legal Service of the PNP.

2. ID.; ID.; ID.; ID.; RIGHT TO CROSS-EXAMINE DOES NOT NECESSARILY REQUIRE AN ACTUAL CROSS EXAMINATION BUT MERELY AN OPPORTUNITY TO EXERCISE THE RIGHT IF DESIRED BY THE PARTY

ENTITLED TO IT; CASE AT BAR.— Petitioner's assertion that the complainants/witnesses against him have not been cross-examined by him, is likewise bereft of merit. While the right to cross-examine is a vital element of procedural due process, the right does not necessarily require an actual cross examination but merely an opportunity to exercise this right if desired by the party entitled to it. In this case, while Memorandum Circular No. 96-010 provides that the sworn statements of witnesses shall take the place of oral testimony but shall be subject to cross-examination, petitioner missed this opportunity precisely because he did not appear at the deadline for the filing of his supplemental answer or counter-affidavit, and accordingly the hearing officer considered the case submitted for decision.

3. ID.; ID.; ID.; MEMORANDUM CIRCULAR NO. 93-024 (GUIDELINES IN THE APPLICATION OF PENALTIES IN POLICE ADMINISTRATIVE CASES); GRAVE OFFENSES; SERIOUS IRREGULARITIES IN THE PERFORMANCE OF DUTIES; ACTING AS BODYGUARD FOR PRIVATE PERSON UNLESS APPROVED BY THE PROPER AUTHORITIES CONCERNED; A CASE OF.— Under Memorandum Circular No. 93-024 (*Guidelines in the Application of Penalties in Police Administrative Cases)*, the following acts of any member of the PNP are considered Grave Offenses: x x x C. The following are *Grave Offenses*: x x x *Serious Irregularities in the Performance of Duties*. This is incurred by any member of the PNP who shall: x x x c. **act as bodyguard or security guard** for the person or property of any public official, or **private person unless approved by the proper authorities concerned**; x x x The CSC found that petitioner indeed worked for Atty. Gironella as the latter's bodyguard — at least during the relevant period, from April 1995 up to December 1995 when Barien, *et al*. filed their verified complaint before the Inspectorate Division on the basis of the following: 1) Certification of the San Jose Del Monte Police Station and the police blotter entries Nos. 6050-95 and 6051-95 dated November 22, 1995 as certified by SPO2 Rafael delos Reyes; 2) A document reflecting the payment made to SPO1 Rimando Gannapao as security signed by Atty. Gironella; 3) A document changing the name of the payee to "Reynaldo" instead of "Rimando" signed by Atty. Gironella; and 4) Affidavits of Primo Babiano, Ricardo Barien, Cresencia Roque and Jocelyn

Evangelista. On the other hand, petitioner presented the Certification dated January 2, 1996 by Atty. Gironella stating that petitioner was not an employee of UWTC. This piece of evidence is unreliable, and at best, self-serving.

4. ID.; ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; SECTION 10, RULE II THEREOF; WITHDRAWAL OF THE COMPLAINT DOES NOT RESULT IN ITS OUTRIGHT DISMISSAL NOR DISCHARGE THE PERSON COMPLAINED OF FROM ANY ADMINISTRATIVE LIABILITY; CASE AT BAR.— The CSC, on appeal, likewise gave scant weight to the alleged retraction of some of the respondents. It noted that respondents Inocencio M. Navallo, Ligaya Gando, Lea Molleda, Fe R. Vetonio, Jose Taeza, among others did not desist from pursuing the case. Before the CA, petitioner submitted a joint affidavit of desistance dated August 7, 2002 allegedly signed by Navallo, Vetonio, Gando, Patiga, Taeza and G. delos Santos. Nonetheless, the CSC, citing Section 10, Rule II of the Uniform Rules on Administrative Cases in the Civil Service, held that the withdrawal of the complaint does not result in its outright dismissal nor discharge the person complained of from any administrative liability. Where there is obvious truth or merit to the allegation in the complaint or where there is documentary evidence that would tend to prove the guilt of the person complained of, the same should be given due course. We find no error in the CSC's appreciation of the foregoing evidence adduced by the petitioner.

5. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES THAT ARE AFFIRMED BY THE COURT OF APPEALS ARE CONCLUSIVE ON THE PARTIES AND NOT REVIEWABLE BY THE SUPREME COURT.— As a rule, administrative agencies' factual findings that are affirmed by the Court of Appeals are conclusive on the parties and not reviewable by this Court, except only for very compelling reasons. Where the findings of the administrative body are amply supported by substantial evidence, such findings are accorded not only respect but also finality, and are binding on this Court. It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its own judgment for that of the administrative agency on the sufficiency

of evidence. We find no cogent reason to deviate from the general rule in this case.

6. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; SECTION 53, RULE IV THEREOF; DISCIPLINING AUTHORITY IS GRANTED THE DISCRETION TO CONSIDER MITIGATING CIRCUMSTANCES IN THE IMPOSITION OF PENALTY; IN CASE AT BAR, LENGTH OF SERVICE CANNOT BE CONSIDERED IN LOWERING THE PENALTY; EXPLAINED; PENALTY OF DISMISSAL, UPHELD.— Public respondent CSC did not err in not considering length of service as a mitigating circumstance and in imposing the maximum penalty of dismissal on the petitioner. Length of service as a factor in determining the imposable penalty in administrative cases is a double-edged sword. Despite the language of Section 4 of Memorandum Circular No. 93-024, length of service is not always a mitigating circumstance in every case of commission of an administrative offense by a public officer or employee. Length of service is an alternative circumstance which can mitigate or possibly even aggravate the penalty, depending on the circumstances of the case. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. Said rule provides thus: SEC. 53. *Extenuating, Mitigating, Aggravating, or Alternative Circumstances.* – In the determination of the penalties to be imposed, mitigating, aggravating and *alternative circumstances* attendant to the commission of the offense shall be considered. The following circumstances shall be appreciated: x x x j. **Length of service in the government.** Petitioner apparently failed to grasp the gravity of his transgression which, not only impacts negatively on the image of the PNP, but also reflects the depravity of his character. Under the circumstances, the Court cannot consider in his favor his fourteen (14) years in the police service and his being a first time offender. The CSC thus correctly imposed on him the maximum penalty of dismissal. Pursuant to Section 6 of Memorandum Circular No. 93-024, the penalty of dismissal, which results in the separation of the respondent from the service, shall carry with it the cancellation

of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification from reemployment in the police service.

APPEARANCES OF COUNSEL

Emmanuel S. Santos & Francisco A. Sanchez III for petitioner.
The Solicitor General for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Petitioner SPO1 Rimando A. Gannapao appeals the Decision[1] dated April 27, 2007 and Resolution[2] dated October 10, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 70605. The CA affirmed Civil Service Commission (CSC) Resolution No. 020487[3] which upheld the decision of the Philippine National Police (PNP) Chief finding petitioner guilty of Serious Irregularities in the Performance of Duties, as affirmed by the Secretary of Department of Interior and Local Government (DILG), but modified the penalty of three months suspension to dismissal from the service.

The facts are as follows:

On December 22, 1995, respondents Ricardo Barien, Inocencio M. Navallo, Ligaya M. Gando, Lea Molleda, Fe R. Vetonio, Primo V. Babiano, Patiga J., Jose Taeza, G. Delos Santos, Losbañes, W., Ave Pediglorio and Cresencia Roque (Barien, *et al.*) who are stockholders and board members of United Workers Transport Corp. (UWTC), filed a verified complaint before the PNP Inspectorate Division at Camp Crame, charging petitioner with Grave Misconduct and Moonlighting with Urgent Prayer

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[1] *Rollo,* pp. 27-38. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Rebecca De Guia-Salvador and Magdangal M. De Leon, concurring.

[2] *Id.* at 40-41.

[3] CA *rollo,* pp. 36-47.

for Preventive Suspension and Disarming.[4] Barien, *et al.* are former drivers, conductors, mechanics and clerks of the defunct Metro Manila Transit Corporation (MMTC). In April 1995, UWTC started operating MMTC's buses which it acquired under a conditional sale with right of repossession. At about the same time, petitioner was allegedly employed by Atty. Roy G. Gironella, the general manager appointed by the Board of Directors of UWTC, as his personal bodyguard with compensation coming from UWTC. In October 1995, Barien, *et al.* representing the majority stockholders of UWTC sued Atty. Gironella and five other members of the UWTC Board of Directors for gross mismanagement.

Barien, *et al.* further alleged that upon orders of Atty. Gironella, the buses regularly driven by them and other stockholders/drivers/workers were confiscated by a "task force" composed of former drivers, conductors and mechanics led by petitioner. Armed with deadly weapons such as guns and knives, petitioner and his group intimidated and harassed the regular bus drivers and conductors, and took over the buses. Petitioner is not authorized to use his firearm or his authority as police officer to act as bodyguard of Atty. Gironella and to intimidate and coerce the drivers/stockholders and the bus passengers. Barien, *et al.* thus prayed for the preventive suspension of petitioner, the confiscation of his firearm and his termination after due hearing.

The complaint passed a pre-charge investigation with The Inspector General, Internal Affairs Office (TIG-IAO) of the PNP, and petitioner filed his Answer[5] on January 12, 1996. Petitioner specifically denied the allegations of the complaint and averred that he was never employed by Atty. Gironella as bodyguard. Instead, it was his twin brother, Reynaldo Gannapao, who worked as messenger at UWTC. In an undated Memorandum,[6] Chief Service Inspectorate Police Superintendent Atty. Joselito Azarcon Casugbo recommended the dismissal of

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[4] *Id.* at 60-63.

[5] *Id.* at 67-72.

[6] *Id.* at 49-50.

the complaint, citing the affidavit of desistance allegedly executed by Avelino Pediglorio.

Subsequently, National Police Commission (NAPOLCOM) Memorandum Circular No. 96-010[7] dated July 31, 1996, was issued, and a summary hearing on the complaint was conducted by the Office of the Legal Service, PNP National Headquarters in accordance with the newly promulgated rules. The case was docketed as Adm. Case No. 09-97.

On January 30, 1997, Atty. Eduardo Sierra of the Office of the Director General, PNP, issued a subpoena to petitioner requiring him to appear at the hearing of Adm. Case No. 09-97 before the Office of the Legal Service in Camp Crame.[8] Petitioner moved to dismiss the complaint on the ground of *res judicata*, citing the earlier dismissal of the complaint against him by Chief Service Inspectorate Casugbo.[9] However, PNP Chief Recaredo A. Sarmiento II denied the motion to dismiss.

On November 26, 1997, PNP Chief Sarmiento rendered his Decision,[10] as follows:

> WHEREFORE, premises considered, this Headquarters finds respondent SPO1 RIMANDO A. GANNAPAO GUILTY of the charge of serious irregularities in the performance of duties, thus, he is hereby sentenced to suffer the penalty of three (3) months suspension from the police service without pay.
>
> SO ORDERED.[11]

Petitioner's motion for reconsideration was likewise denied under the Resolution[12] dated April 14, 1998 of Police Director

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[7] RULES AND REGULATIONS IN THE DISPOSITION OF ADMINISTRATIVE CASES INVOLVING PNP MEMBERS BEFORE THE PNP DISCIPLINARY AUTHORITIES.

[8] CA *rollo*, p. 94.

[9] *Id.* at 97-99.

[10] *Rollo*, pp. 58-61.

[11] *Id.* at 61.

[12] CA *rollo*, pp. 115-119.

General Santiago L. Aliño. Petitioner elevated the case to the NAPOLCOM National Appellate Board. His appeal, however, was dismissed in a Resolution dated December 29, 1999.[13]

Aggrieved, petitioner brought his case to the Department of Interior and Local Government (DILG). In an Order[14] dated July 18, 2000, DILG Secretary Alfredo Lim denied petitioner's appeal and affirmed his suspension for three months.

Petitioner then appealed to the CSC claiming that he had been denied due process in the proceedings before the Office of the Legal Service. He also sought to set aside the penalty of three months suspension.

On April 3, 2002, the CSC issued Resolution No. 020487 dismissing petitioner's appeal but modifying his penalty of three months suspension to dismissal. The CSC noted that the only evidence submitted by petitioner during the investigation of the case is the picture of his alleged twin brother, Reynaldo and said that the best evidence would have been the birth certificate or any document or the presentation of the person himself, which would verify the existence and employment in UWTC of such person. As to the assertion of petitioner that the complaint has no more basis since some of the complainants (Cresencia Roque, Primo V. Babiano and Avelino Pediglorio) have filed affidavits of desistance with the PNP, the CSC pointed out that these affidavits were submitted after the PNP Chief had rendered his decision and attached to petitioner's motion for reconsideration of said decision. More importantly, the withdrawal of the complaint does not result in its outright dismissal nor discharge the person complained of from any administrative liability. The CSC ruled that petitioner's act of serving as bodyguard of Atty. Gironella and harassing the bus drivers of UWTC is so grave as to warrant the penalty of dismissal. The dispositive portion of the CSC resolution reads:

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[13] *Rollo,* p. 29.

[14] CA *rollo,* p. 140.

WHEREFORE, the appeal of Rimando A. Gannapao is hereby DISMISSED. However, the Order dated February 26, 2001 of then DILG Secretary Alfredo S. Lim affirming the suspension of Gannapao for a period of three (3) months is modified to dismissal from the service.[15]

Petitioner thus filed with the CA a Petition for Review with an Urgent Motion for Issuance of Temporary Restraining Order and/or Preliminary Injunction. The CA issued a TRO on September 4, 2002[16] and a writ of preliminary injunction on January 14, 2003.[17] In a petition for *certiorari* filed with this Court, the CSC questioned the validity of the CA's issuance of the writ of preliminary injunction, arguing that the injunctive relief violates the Administrative Code and the CSC rules which state that administrative disciplinary penalties shall be immediately executory, notwithstanding the pendency of an appeal. By Decision[18] dated November 17, 2005, we sustained the CA ruling and found no grave abuse of discretion in the issuance of the preliminary injunction. The CA, however, dissolved the writ in its Decision dated April 27, 2007 affirming CSC Resolution No. 020487. The CA ruled that petitioner cannot claim denial of due process since he was given ample opportunity to present his side. According to the CA, where the opportunity to be heard, either through oral arguments or pleadings, is accorded, and the party could present its side or defend its interest in due course, there is no denial of procedural due process. Thus, the CA decreed:

WHEREFORE, premises considered, the instant petition is DENIED. The assailed Resolution No. 020487 dated 3 April 2002 of the Civil Service Commission is hereby AFFIRMED. Accordingly, the Preliminary Injunction issued on 14 January 2003 enjoining the Civil Service Commission from implementing the assailed Resolution is DISSOLVED.

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[15] CA *rollo*, p. 47.

[16] *Id.* at 184-185.

[17] *Id.* at 275-276.

[18] *Civil Service Commission v. Court of Appeals*, G.R. No. 159696, November 17, 2005, 475 SCRA 276.

SO ORDERED.[19]

On October 10, 2007, the CA denied petitioner's motion for reconsideration.

Hence, this petition.

Petitioner contends that he was denied due process in the proceedings before the Office of the Legal Service of the PNP since no notice and summons were issued for him to answer the charges and no hearing was conducted. He claims that his dismissal was not proper and legal as there was no introduction and presentation of evidence against him and he was not given the opportunity to defend his side. Also, petitioner assails the penalty of dismissal imposed upon him by the CSC, alleging that it was improperly imposed considering the mitigating circumstance of his length of service (14 years at the time the decision of the PNP Director General was rendered[20]).

On the other hand, the Office of the Solicitor General (OSG), representing public respondent CSC, maintains that petitioner was not denied due process. The OSG points out that petitioner answered the complaint during the pre-charge investigation and when the case was heard at the Office of the Legal Service, petitioner was given the opportunity to answer the charges or to submit his supplemental answer or counter-affidavit, but he instead moved for the dismissal of the case. Atty. Sierra, the hearing officer of the Office of the Legal Service, also issued a subpoena for petitioner to appear on February 10, 1997, but he failed to appear on the said date. Moreover, petitioner's culpability was proven by substantial evidence through the documentary evidence consisting of individual sworn statements from all the complainants, the police blotter of the incident involving Atty. Gironella and the UWTC drivers and conductors which also established that petitioner was present thereat and his firearm identified, and the photocopies of documents signed by Atty. Gironella showing payments to petitioner as security

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[19] *Rollo,* p. 37.

[20] *Id.* at 60.

personnel. In addition, a document changing the name of the payee to 'Reynaldo' instead of 'Rimando' also signed by Atty. Gironella was presented to prove that petitioner's claim that it was really his 'twin brother' who was employed at UWTC is just an alibi. Lastly, the OSG is of the view that the penalty of dismissal was correctly imposed on petitioner, stressing that his act of serving as bodyguard of Atty. Gironella and harassing the bus drivers of UWTC is a grave offense.

The Court is tasked to resolve the following issues: (1) whether petitioner was denied due process, and (2) whether the CA correctly affirmed the CSC decision modifying the penalty of petitioner from three months suspension to dismissal from the service.

The petition must fail.

Time and again, we have held that the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[21] In the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard.[22] As long as a party was given the opportunity to defend his interests in due course, he was not denied due process.[23]

Reviewing the records, we find that petitioner was afforded due process during the proceedings before the Office of the Legal Service of the PNP. The pertinent provisions of NAPOLCOM Memorandum Circular No. 96-010 prescribe the following procedure:

x x x x x x x x x

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[21] *Montoya v. Varilla*, G.R. No. 180146, December 18, 2008, 574 SCRA 831, 841.

[22] *Id.* at 842.

[23] *Cayago v. Lina*, G.R. No. 149539, January 19, 2005, 449 SCRA 29, 45, citing *Rodriguez v. Court of Appeals*, G.R. No. 134278, August 7, 2002, 386 SCRA 492, 499-500.

D. Pre-Charge Investigation

SECTION 1. *Procedure.* —

4.01 Within three (3) days from the receipt of the complaint, the Command/Unit Inspector, upon directive from the Disciplinary Authority concerned, shall conduct a preliminary inquiry/pre-charge investigation wherein both the complainant and the respondent and their witnesses, if any shall be summoned to appear. x x x After the inquiry, the Command/Unit Inspector shall *submit to the Disciplinary Authority* concerned his Report of Investigation, together with his recommendation x x x:

x x x x x x x x x

E. Summary Hearing

SECTION 1. *Notification of Charges/Complaint Order to Answer.*

5.01 After it has been determined from the results of the pre-charge investigation that the complaint is a proper subject of summary hearing, the respondent PNP member shall be furnished with a copy of the complaint or charges filed against him to include copies of affidavits of witnesses and other documents submitted by the complainant should there be any, and he shall be directed to submit an answer within five (5) days from receipt of the complaint, attaching therewith pertinent documents or evidence in support of his defense.

x x x x x x x x x

As records bear out, petitioner was adequately apprised of the charges filed against him and he submitted his answer to the complaint while the case was still under a pre-charge investigation. When the Office of the Legal Service conducted a summary hearing on the complaint, petitioner was again duly notified of the proceedings and was given an opportunity to explain his side. Extant on the records, particularly in the Resolution[24] dated April 14, 1998 issued by Police Director General Santiago L. Aliño, was the manner in which the summary hearing before the Office of the Legal Service was conducted. We quote the relevant portions thereof:

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[24] CA *rollo,* pp. 115-119.

Having elevated this case to the Summary Dismissal Authority of the C,(sic) PNP through the Office of the Legal Service, a hearing was set by P/SInsp. Eduardo T[.] SIERRA, the Hearing Officer, on January 29, 1997, at 2:00 p.m., but respondent failed to appear (LS-3); per Memo of the Director, HSS, respondent was no longer assigned at HSS (LS-4). On February 10, 1997, respondent appeared for hearing without counsel after the subpoena was served at his home address (LS-5). During the clarificatory questions propounded by the Hearing Officer, respondent reiterated that it was his twin brother who was the bodyguard of Atty. Gironella and not him; he also mentioned that this case was already dismissed by Atty. Joselito Azarcon-CASUGBO; *since the records show no evidence of said dismissal*, respondent was asked by the Hearing Officer that he may submit a supplemental answer or counter-affidavit until February 17, 1997, *or he may adapt (sic) his answer to complaint he filed with TIG, IIAO* and submit the case for decision. Nonetheless, he was given copies of the complaint and affidavits of complainants in case he wants to submit a supplemental answer or counter-affidavit.

On February 17, 1997, the deadline for respondent to file a supplemental answer or counter-affidavit, he did not appear, hence the Hearing Officer considered the case submitted for decision. On February 18, 1997, at about 2:00 p.m., however, respondent showed up and submitted not a supplemental Answer or counter-affidavit but a *Motion to be Furnished Official Copy of the Complaint/ Information and its Annexes and to (sic) Respondent to Answer within Fifteen (15) Days from Receipt* (LS-6). As prayed for, the Motion was granted.

x x x x

On March 6, 1997, respondent submitted not a supplemental answer or counter-affidavit, but a *Motion to Dismiss* (LS-11) upon the ground that this case was already dismissed by Atty. Joselito Azarcon-CASUGB[O]. The Hearing Officer clarified to respondent (who always appeared without counsel) that the *Motion to Dismiss* was deemed submitted for resolution, and in the event that the said *Motion to Dismiss* was denied, this case was likewise submitted for decision.[25] (Additional italics supplied.)

Petitioner's claim that he did not file an answer since no subpoena was issued to him thus deserves scant consideration.

[25] *Id.* at 116-117.

Petitioner had ample opportunity to present his side during the hearing and he was even advised by the hearing officer that he may file a supplemental answer or a counter affidavit until February 17, 1997 or he may adopt his answer filed with the TIG-IAO. Instead, petitioner filed a motion to dismiss, reiterating the ground of *res judicata*, based on his own assertion that the case against him had already been heard, tried and finally terminated. Petitioner, however, did not present proof of such dismissal. Indeed, he could not have presented such proof because, as correctly pointed out by the OSG, the undated memorandum of Atty. Casugbo, the hearing official who conducted the preliminary inquiry/pre-charge investigation, was merely *recommendatory*. Atty. Casugbo's report and recommendation was not approved by the PNP Director General, the disciplinary authority to whom such report of investigation is submitted, pursuant to Section (D) 4.01 of Memorandum Circular No. 96-010. Consequently, when the Office of the Legal Service of the PNP found the complaint to be a proper subject of a summary hearing, and a further investigation was conducted pursuant to the rules, the recommendation to dismiss was deemed not adopted or carried out. Having been given a reasonable opportunity to answer the complaint against him, petitioner cannot now claim that he was deprived of due process.[26]

Petitioner's assertion that the complainants/witnesses against him have not been cross-examined by him, is likewise bereft of merit. While the right to cross-examine is a vital element of procedural due process, the right does not necessarily require an actual cross examination but merely an opportunity to exercise this right if desired by the party entitled to it.[27] In this case, while Memorandum Circular No. 96-010 provides that the sworn statements of witnesses shall take the place of oral testimony but shall be subject to cross-examination, petitioner missed this opportunity precisely because he did not appear at the deadline

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[26] See *Garcia v. Pajaro*, G.R. No. 141149, July 5, 2002, 384 SCRA 122, 138.

[27] *Philippine Banking Corporation v. Court of Appeals*, G.R. No. 127469, January 15, 2004, 419 SCRA 487, 503.

for the filing of his supplemental answer or counter-affidavit, and accordingly the hearing officer considered the case submitted for decision. And even with the grant of his subsequent motion to be furnished with copy of complaint and its annexes, he still failed to file a supplemental answer or counter-affidavit and instead filed a motion to dismiss reiterating the previous recommendation for dismissal made by Atty. Casugbo. Moreover, after the PNP Director General rendered his decision, petitioner filed a motion for reconsideration which was denied. He was also able to appeal from the decision of the PNP Director General to the DILG Secretary, and eventually to the CSC. We have held that the fact that a party filed motions for reconsideration and appeals with the tribunals below, in which she presented her arguments and through which she could have proffered her evidence, if any, negates her claim that she was denied opportunity to be heard.[28]

As to the second issue, we hold that the CA did not err in affirming the CSC ruling which modified the penalty imposed by the PNP Director General as affirmed by the DILG Secretary, from three months suspension to dismissal.

Under Memorandum Circular No. 93-024 (*Guidelines in the Application of Penalties in Police Administrative Cases)*, the following acts of any member of the PNP are considered Grave Offenses:

x x x x x x x x x

C. The following are *Grave Offenses*:

x x x x x x x x x

Serious Irregularities in the Performance of Duties. This is incurred by any member of the PNP who shall:

x x x x x x x x x

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[28] *Batongbakal v. Zafra,* G.R. No. 141806, January 17, 2005, 448 SCRA 399, 410.

c. **act as bodyguard or security guard** for the person or property of any public official, or **private person unless approved by the proper authorities concerned**;

x x x (Emphasis ours.)

The CSC found that petitioner indeed worked for Atty. Gironella as the latter's bodyguard — at least during the relevant period, from April 1995 up to December 1995 when Barien, *et al.* filed their verified complaint before the Inspectorate Division on the basis of the following:

1) Certification of the San Jose Del Monte Police Station and the police blotter entries Nos. 6050-95 and 6051-95 dated November 22, 1995 as certified by SPO2 Rafael delos Reyes;
2) A document reflecting the payment made to SPO1 Rimando Gannapao as security signed by Atty. Gironella;
3) A document changing the name of the payee to "Reynaldo" instead of "Rimando" signed by Atty. Gironella; and
4) Affidavits of Primo Babiano, Ricardo Barien, Cresencia Roque and Jocelyn Evangelista.[29]

On the other hand, petitioner presented the Certification[30] dated January 2, 1996 by Atty. Gironella stating that petitioner was not an employee of UWTC. This piece of evidence is unreliable, and at best, self-serving.

Petitioner reiterates that it was his twin brother Reynaldo whom Barien, *et al.* encountered during the incident when their buses were confiscated by armed men in October 1995. He submitted a photograph of his twin brother but this was not given credence by the CSC. Before the CA, petitioner also attached a photograph of himself together with his alleged twin brother Reynaldo, as well as birth certificates issued by the Local Civil Registrar of Salcedo, Ilocos Sur stating their similar dates of birth and parents, and the affidavit of Reynaldo Gannapao.[31]

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[29] CA *rollo*, pp. 83-84, 109.

[30] *Id.* at 87.

[31] *Id.* at 568-570.

However, there was no certification issued by UWTC that Reynaldo Gannapao was indeed employed therein for the period relevant to this case, nor any document evidencing receipt of his wages or salary from UWTC. Also, the police blotter entries[32] dated October 13, 1995 and November 22, 1995 tend to support the claim of Barien, *et al.* that Atty. Gironella threatened them when they complained of his mismanagement of company funds and that in this conflict, petitioner had used his firearm and authority as police officer to lead in the taking of the MMTC buses from UWTC drivers and conductors. Thus, even assuming that petitioner in fact had a twin brother by the name of Reynaldo, Barien, *et al.* in their sworn statements categorically pointed to him, not his twin brother, as the one leading the armed group sent by Atty. Gironella to confiscate their buses and acted as bodyguard of Atty. Gironella. Barien, *et al.* positively identified him as the *police officer with officially issued firearm* who actively assisted Atty. Gironella and committed acts of harassment which were narrated in the verified complaint and sworn statements executed by respondents Primo Babiano, Ricardo C. Barien, Cresencia Roque and Jocelyn Evangelista. Consequently, no error was committed by the CSC in giving more weight to the positive declarations of Barien, *et al.* than the denials of petitioner.

In his motion for reconsideration of the decision rendered by PNP Director General Sarmiento, petitioner attached the alleged affidavits of desistance executed by Babiano, Roque and Avelino Pediglorio. Director Aliño, however, in denying the motion found these insignificant and not credible considering that Babiano's signature in the April 12, 1996 retraction[33] was starkly different from his original January 2, 1996 sworn statement[34] while the supposed affidavit of desistance of Roque[35] dated October 14, 1997 should have already been alleged or submitted by him

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[32] *Rollo,* pp. 169-170.

[33] CA *rollo,* p. 125.

[34] *Id.* at 88, 118.

[35] *Id.* at 126.

before Director General Sarmiento rendered his decision on November 26, 1997.[36]

The CSC, on appeal, likewise gave scant weight to the alleged retraction of some of the respondents. It noted that respondents Inocencio M. Navallo, Ligaya Gando, Lea Molleda, Fe R. Vetonio, Jose Taeza, among others did not desist from pursuing the case. Before the CA, petitioner submitted a joint affidavit of desistance dated August 7, 2002 allegedly signed by Navallo, Vetonio, Gando, Patiga, Taeza and G. delos Santos.[37] Nonetheless, the CSC, citing Section 10, Rule II of the Uniform Rules on Administrative Cases in the Civil Service,[38] held that the withdrawal of the complaint does not result in its outright dismissal nor discharge the person complained of from any administrative liability. Where there is obvious truth or merit to the allegation in the complaint or where there is documentary evidence that would tend to prove the guilt of the person complained of, the same should be given due course.[39] We find no error in the CSC's appreciation of the foregoing evidence adduced by the petitioner. Section 6, Article XVI of the Constitution provides that the State shall establish and maintain one police force which shall be civilian in character. Consequently, the PNP falls under the civil service pursuant to Section 2(1), Article IX-B, also of the Constitution.[40] Section 91 of the DILG Act of 1990 expressly declared that the Civil Service Law and its implementing rules and regulations shall apply to all personnel of the Department.

As a rule, administrative agencies' factual findings that are affirmed by the Court of Appeals are conclusive on the parties

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[36] *Id.* at 118.

[37] *Id.* at 167-168.

[38] CSC Resolution No. 991936 dated August 31, 1999.

[39] CA *rollo,* pp. 44-45.

[40] *Section 2.* (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

and not reviewable by this Court,[41] except only for very compelling reasons.[42] Where the findings of the administrative body are amply supported by substantial evidence, such findings are accorded not only respect but also finality, and are binding on this Court. It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its own judgment for that of the administrative agency on the sufficiency of evidence.[43] We find no cogent reason to deviate from the general rule in this case.

As mentioned, acting as private bodyguard without approval of the proper authorities is classified as a grave offense. Memorandum Circular No. 93-024 (*Guidelines in the Application of Penalties in Police Administrative Cases)*[44] provides for the following schedule of penalties:

SEC. 2. *Schedule of Penalties.* — The penalties for light, less grave, and grave offenses shall be made in accordance with the following schedule:

x x x x x x x x x

C. *For Grave Offenses*:

a. Maximum suspension imposable (minimum period);
b. Forced Resignation/Demotion of not more than one (1) rank (medium period);
c. Dismissal (maximum period).

x x x x x x x x x

SEC. 4. *Qualifying Circumstances.* — In the determination of the penalties to be imposed, mitigating and aggravating circumstances attendant to the commission of the offense shall be considered:

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[41] *Miralles v. Go,* G.R. No. 139943, January 18, 2001, 349 SCRA 596, 604, citing *Vda. de Nazareno v. Court of Appeals,* G.R. No. 98045, June 26, 1996, 257 SCRA 589, 598.

[42] *Manotok IV v. Heirs of Homer L. Barque,* G.R. Nos. 162335 & 162605, December 12, 2005, 477 SCRA 339, 355.

[43] *Nacu v. Civil Service Commission,* G.R. No. 187752, November 23, 2010, p. 16, citing *Remolona v. Civil Service Commission,* 414 Phil. 590, 601 (2001).

[44] Adopted November 1993.

The following are mitigating circumstances:

a. physical illness
b. good faith
c. *length of service in the government*
d. analogous circumstances.

x x x x x x x x x

In refusing to be swayed by petitioner's argument that his fourteen (14) years of service in government with no record of previous administrative offense should have mitigated his liability, the CSC held:

The Commission finds the act of Gannapao of serving as a bodyguard of UTWC General Manager Atty. Gironella and harassing the bus drivers of the said agency so grave that the decision of then DILG Secretary Alfredo S. Lim, affirming his suspension from the service for three (3) months is modified to dismissal from the service.

In the case of *University of the Philippines vs. Civil Service Commission, et al., G.R. No. 89454 dated April 20, 1992,* the Supreme Court held, as follows:

> 'We do not agree that private respondent's length of service and the fact that it was her first offense shall be taken into account. Respondent Commission failed to consider that private respondent committed not only one act, but a series of acts which were deliberately committed over a number of years while respondent was in the service. These acts were of the gravest character which strikes at the very integrity and prestige of the University.'

It must be emphasized that the PNP, as an institution, was organized to ensure accountability and uprightness in the exercise of police discretion as well as to achieve efficiency and effectiveness of its members and units in the performance of their functions thus, its leadership would be well within its right to cleanse itself of wrongdoers.[45]

Public respondent CSC did not err in not considering length of service as a mitigating circumstance and in imposing the maximum penalty of dismissal on the petitioner. Length of service

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[45] CA *rollo,* pp. 46-47.

as a factor in determining the imposable penalty in administrative cases is a double-edged sword.[46] Despite the language of Section 4 of Memorandum Circular No. 93-024, length of service is not always a mitigating circumstance in every case of commission of an administrative offense by a public officer or employee.

Length of service is an alternative circumstance which can mitigate or possibly even aggravate the penalty, depending on the circumstances of the case. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.[47] Said rule provides thus:

SEC. 53. *Extenuating, Mitigating, Aggravating, or Alternative Circumstances.* – In the determination of the penalties to be imposed, mitigating, aggravating and *alternative circumstances* attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

a. Physical illness
b. Good faith
c. Taking undue advantage of official position
d. Taking undue advantage of subordinate
e. Undue disclosure of confidential information
f. Use of government property in the commission of the offense
g. Habituality
h. Offense is committed during office hours and within the premises of the office or building

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[46] *Narvasa v. Sanchez, Jr.*, G.R. No. 169449, March 26, 2010, 616 SCRA 586, 593, citing *Mariano v. Nacional*, A.M. No. MTJ-07-1688, February 10, 2009, 578 SCRA 181, 188.

[47] *Fact-Finding and Intelligence Bureau, Office of the Ombudsman v. Campaña*, G.R. No. 173865, August 20, 2008, 562 SCRA 680, 691, citing *Gonzales v. Civil Service Commission*, G.R. No. 156253, June 15, 2006, 490 SCRA 741, 749; CSC Memorandum Circular No. 19-99, Rule IV, Section 53(J) and *Re: Failure of Jose Dante E. Guerrero to Register His Time In and Out in Chronolog Time Recorder Machine on Several Dates*, A.M. No. 2005-07-SC, April 19, 2006, 487 SCRA 352, 367.

i. Employment of fraudulent means to commit or conceal the offense
j. **Length of service in the government**
k. Education, or
l. Other analogous circumstances (Emphasis ours.)

In *University of the Philippines v. Civil Service Commission*,[48] cited by CSC, we did not consider length of service in favor of the private respondent; instead, we took it against said respondent because her length of service, among other things, helped her in the commission of the offense.

Where the government employee concerned took advantage of long years of service and position in public office, length of service may not be considered in lowering the penalty. This Court has invariably taken this circumstance against the respondent public officer or employee in administrative cases involving *serious offenses*, even if it was the first time said public officer or employee was administratively charged. Thus, we held in *Civil Service Commission v. Cortez*:[49]

Petitioner CSC is correct that length of service should be taken against the respondent. Length of service is not a magic word that, once invoked, will automatically be considered as a mitigating circumstance in favor of the party invoking it. Length of service can either be a mitigating or aggravating circumstance depending on the factual *milieu* of each case. Length of service, in other words, is an alternative circumstance. That this is so is clear in Section 53 of the Uniform Rules on Administrative Cases in the Civil Service, which amended the Omnibus Civil Service Rules and Regulations dated 27 December 1991. x x x

x x x x x x x x x

Moreover, **a review of jurisprudence shows that, although in most cases length of service is considered in favor of the respondent, it is not considered where the offense committed is found to be serious.** x x x

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[48] G.R. No. 89454, April 20, 1992, 208 SCRA 174, 178.

[49] G.R. No. 155732, June 3, 2004, 430 SCRA 593.

x x x x x x x x x

x x x we cannot also consider length of service in favor of the respondent because of the gravity of the offense she committed and the fact that it was her length of service in the CSC which helped her in the commission of the offense.

x x x x x x x x x

x x x it is clear from the ruling of the CSC that respondent's act irreparably tarnished the integrity of the CSC. x x x

x x x x x x x x x

The gravity of the offense committed is also the reason why we cannot consider the "first offense" circumstance invoked by respondent. In several cases, we imposed the heavier penalty of dismissal or a fine of more than ₱20,000, considering the gravity of the offense committed, even if the offense charged was respondent's first offense. Thus, in the present case, even though the offense respondent was found guilty of was her first offense, the gravity thereof outweighs the fact that it was her first offense.[50] (Emphasis ours.)

Petitioner contends that this case should be distinguished from *University of the Philippines v. Civil Service Commission*[51] because he was "not committing any crime assuming he served a bodyguard," "was not in uniform or in the performance of duty there being no such allegation in the complaint," and "was not deceiving or cheating anybody." Even the ruling in *Civil Service Commission v. Cortez*[52] is not applicable since the respondent therein committed acts of dishonesty.

We are not persuaded.

As already pointed out, Serious Irregularities in the Performance of Duties, like those offenses (*e.g.*, Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service) enumerated under Section 52 (A) of the Civil Service Law, is

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[50] *Id.* at 604-607.

[51] *Supra* note 48.

[52] *Supra* note 49.

a grave offense. Grave offenses have the most deleterious effects on government service. By acting as a private bodyguard without approval by the proper authorities for several months, petitioner reneged on his primary duties to the community in the maintenance of peace and order and public safety. Such mercenary tendencies undermine the effectivity and integrity of a national police force committed to provide protection and assistance to citizens in times of danger and emergency. But what is worse, petitioner allowed himself to be used in perpetrating violence and intimidation upon ordinary workers embroiled in a legal conflict with management.

Petitioner apparently failed to grasp the gravity of his transgression which, not only impacts negatively on the image of the PNP, but also reflects the depravity of his character. Under the circumstances, the Court cannot consider in his favor his fourteen (14) years in the police service and his being a first time offender. The CSC thus correctly imposed on him the maximum penalty of dismissal. Pursuant to Section 6 of Memorandum Circular No. 93-024, the penalty of dismissal, which results in the separation of the respondent from the service, shall carry with it the cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification from reemployment in the police service.

WHEREFORE, the petition for review on certiorari is DENIED. The Decision dated April 27, 2007 and Resolution dated October 10, 2007 of the Court of Appeals in CA-G.R. SP No. 70605 are hereby AFFIRMED.

With costs againts the petitioner.

SO ORDERED.

Corona, C.J., Carpio Morales, Velasco. Jr, Leonardo-De Castro, Brion, Peralta, Bersamin, Abad, Perez, Mendoza, and *Sereno, JJ,* concur.

Nachura, J., on leave.

del Castillo J., on offecial leave.

EN BANC

[G.R. Nos. 184461-62. May 31, 2011]

LT. COL. ROGELIO BOAC, LT. COL. FELIPE ANOTADO and LT. FRANCIS MIRABELLE SAMSON, *petitioners, vs.* **ERLINDA T. CADAPAN and CONCEPCION E. EMPEÑO,** *respondents.*

[G.R. No. 184495. May 31, 2011]

ERLINDA T. CADAPAN and CONCEPCION E. EMPEÑO, *petitioners, vs.* **GEN. HERMOGENES ESPERON, P/DIR.GEN. AVELINO RAZON, (RET.) GEN. ROMEO TOLENTINO, (RET.) GEN. JOVITO PALPARAN, LT. COL. ROGELIO BOAC, LT. COL. FELIPE ANOTADO, *ET AL.*,** *respondents.*

[G.R. No. 187109. May 31, 2011]

ERLINDA T. CADAPAN and CONCEPCION E. EMPEÑO, *petitioners, vs.* **GLORIA MACAPAGAL-ARROYO, GEN. HERMOGENES ESPERON, P/DIR.GEN. AVELINO RAZON, (RET.) GEN. ROMEO TOLENTINO, (RET.) GEN. JOVITO PALPARAN, LT. COL. ROGELIO BOAC, LT. COL. FELIPE ANOTADO, DONALD CAIGAS, A.K.A. ALAN OR ALVIN, ARNEL ENRIQUEZ and LT. FRANCIS MIRABELLE SAMSON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULE ON THE WRIT OF *AMPARO*; PETITION FOR WRIT OF *AMPARO*, WHO MAY FILE; ORDER OF PRIORITY IS MANDATORY; RATIONALE.— Section 2 of the *Rule on the Writ of Amparo* provides: The petition may be filed by the aggrieved party or by any qualified person or entity in the following order: (a) Any member of the immediate family, namely: the spouse, children and parents

of the aggrieved party; (b) Any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph; or (c) **Any concerned citizen, organization, association or institution, if there is no known member of the immediate family or relative of the aggrieved party**. Indeed, the parents of Sherlyn and Karen failed to allege that there were no known members of the immediate family or relatives of Merino. The exclusive and successive order mandated by the above-quoted provision must be followed. The order of priority is not without reason—"to prevent the indiscriminate and groundless filing of petitions for *amparo* which may even prejudice the right to life, liberty or security of the aggrieved party." The Court notes that the parents of Sherlyn and Karen also filed the petition for *habeas corpus* on Merino's behalf. No objection was raised therein for, in a *habeas corpus* proceeding, *any* person may apply for the writ on behalf of the aggrieved party. It is thus only with respect to the *amparo* petition that the parents of Sherlyn and Karen are precluded from filing the application on Merino's behalf as they are not authorized parties under the Rule.

2. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENTIAL IMMUNITY FROM SUIT; UPHELD.— [T]he Court finds the appellate court's dismissal of the petitions against then President Arroyo well-taken, owing to her immunity from suit at the time the *habeas corpus* and *amparo* petitions were filed. Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. x x x

3. ID.; PUBLIC INTERNATIONAL LAW; DOCTRINE OF COMMAND RESPONSIBILITY; EXPOUNDED.— *Rubrico*

v. Macapagal Arroyo expounded on the concept of command responsibility as follows: The evolution of the command responsibility doctrine finds its context in the development of laws of war and armed combats. According to Fr. Bernas, "command responsibility," in its simplest terms, means the "responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict." In this sense, command responsibility is properly a form of criminal complicity. The Hague Conventions of 1907 adopted the doctrine of command responsibility, foreshadowing the present-day precept of holding a superior accountable for the atrocities committed by his subordinates should he be remiss in his duty of control over them. As then formulated, command responsibility is "**an omission mode of individual criminal liability**," whereby the superior is made responsible for **crimes committed** by his subordinates for failing to prevent or punish the perpetrators (as opposed to crimes he ordered). It bears stressing that command responsibility is properly a form of criminal complicity, and thus a substantive rule that points to criminal or administrative liability.

4. REMEDIAL LAW; RULE ON THE WRIT OF *AMPARO*; *AMPARO* PROCEEDING; EXPLAINED.— An *amparo* proceeding is not criminal in nature nor does it ascertain the criminal liability of individuals or entities involved. Neither does it partake of a civil or administrative suit. Rather, it is a *remedial* measure designed to direct specified courses of action to government agencies to safeguard the constitutional right to life, liberty and security of aggrieved individuals. Thus *Razon Jr. v. Tagitis* enlightens: [An *amparo* proceeding] does nor determine guilt nor pinpoint criminal culpability for the disappearance [threats thereof or extrajudicial killings]; **it determines responsibility, or at least accountability**, for the enforced disappearance…for purposes of imposing the appropriate remedies to address the disappearance…

5. ID.; ID.; ID.; RESPONSIBILITY AND ACCOUNTABILITY; DEFINED.— *Tagitis* defines what constitutes "responsibility" and "accountability," *viz*: x x x. **Responsibility** refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies

this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. **Accountability**, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance. In all these cases, the issuance of the Writ of *Amparo* is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored.

6. ID.; ID.; ID.; ID.; LIMITED APPLICATION OF COMMAND RESPONSIBILITY IN *AMPARO* CASES; TO IDENTIFY THOSE ACCOUNTABLE INDIVIDUALS THAT HAVE THE POWER TO EFFECTIVELY IMPLEMENT WHATEVER PROCESSES AN *AMPARO* COURT WOULD ISSUE; DISCUSSED.— *Rubrico* x x x recognizes a preliminary yet limited application of command responsibility in *amparo* cases to instances of determining the *responsible* or *accountable* individuals or entities that are duty-bound to abate any transgression on the life, liberty or security of the aggrieved party. If command responsibility were to be invoked and applied to these proceedings, it should, at most, be only **to determine the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be appropriate under the premises to protect rights covered by the writ of *amparo*.** As intimated earlier, however, the determination should not be pursued to fix criminal liability on respondents preparatory to criminal prosecution, or as a prelude to administrative disciplinary proceedings under existing administrative issuances, if there be any. In other words, command responsibility may be loosely applied in *amparo* cases in order **to identify** those accountable individuals that have the power to effectively implement whatever processes an *amparo* court would issue. In such application, the *amparo* court does not impute criminal responsibility but merely pinpoint the superiors it considers to be in the best position

to protect the rights of the aggrieved party. Such identification of the responsible and accountable superiors may well be a preliminary determination of criminal liability which, of course, is still subject to further investigation by the appropriate government agency.

7. POLITICAL LAW; PUBLIC INTERNATIONAL LAW; REPUBLIC ACT NO. 9851; COMMAND RESPONSIBILITY INCLUDED AS A FORM OF CRIMINAL COMPLICITY IN CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND OTHER CRIMES.— [T]he legislature came up with Republic Act No. 9851 (RA 9851) to include command responsibility as a form of criminal complicity in crimes against international humanitarian law, genocide and other crimes. RA 9851 is thus the substantive law that definitively imputes criminal liability to those superiors who, despite their position, still fail to take all necessary and reasonable measures within their power to prevent or repress the commission of illegal acts or to submit these matters to the competent authorities for investigation and prosecution.

8. REMEDIAL LAW; RULE ON THE WRIT OF *AMPARO*; AN *AMPARO* PROCEEDING IS SUMMARY IN NATURE; A MOTION FOR EXECUTION FOR AN *AMPARO* DECISION IS NOT PROPER.— Contrary to the ruling of the appellate court, there is no need to file a motion for execution for an *amparo* or *habeas corpus* decision. Since the right to life, liberty and security of a person is at stake, the proceedings should not be delayed and execution of any decision thereon must be expedited as soon as possible since any form of delay, even for a day, may jeopardize the very rights that these writs seek to immediately protect. The Solicitor General's argument that the Rules of Court supplement the Rule on the Writ of *Amparo* is misplaced. The Rules of Court only find suppletory application in an *amparo* proceeding if the Rules strengthen, rather than weaken, the procedural efficacy of the writ. As it is, the Rule dispenses with dilatory motions in view of the urgency in securing the life, liberty or security of the aggrieved party. Suffice it to state that a motion for execution is inconsistent with the extraordinary and expeditious remedy being offered by an *amparo* proceeding. In fine, the appellate court erred in ruling that its directive to *immediately* release Sherlyn, Karen and Merino was not automatically executory.

> For that would defeat the very purpose of having summary proceedings in *amparo* petitions. Summary proceedings, it bears emphasis, are immediately executory without prejudice to further appeals that may be taken therefrom.

APPEARANCES OF COUNSEL

Fernandez & Associates and *National Union of People's Lawyers* for Erlinda Cadapan, *et al*.

D E C I S I O N

CARPIO MORALES, *J.*:

At 2:00 a.m. of June 26, 2006, armed men abducted Sherlyn Cadapan (Sherlyn), Karen Empeño (Karen) and Manuel Merino (Merino) from a house in San Miguel, Hagonoy, Bulacan. The three were herded onto a jeep bearing license plate RTF 597 that sped towards an undisclosed location.

Having thereafter heard nothing from Sherlyn, Karen and Merino, their respective families scoured nearby police precincts and military camps in the hope of finding them but the same yielded nothing.

On July 17, 2006, spouses Asher and Erlinda Cadapan and Concepcion Empeño filed a petition for *habeas corpus*[1] before the Court, docketed as **G.R. No. 173228**, impleading then Generals Romeo Tolentino and Jovito Palparan (Gen. Palparan), Lt. Col. Rogelio Boac (Lt. Col. Boac), Arnel Enriquez and Lt. Francis Mirabelle Samson (Lt. Mirabelle) as respondents. By Resolution of July 19, 2006,[2] the Court issued a writ of *habeas corpus*, returnable to the Presiding Justice of the Court of Appeals.

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[1] Entitled IN THE MATTER OF THE PETITION FOR *HABEAS CORPUS* OF SHERLYN T. CADAPAN, KAREN E. EMPEÑO AND MANUEL MERINO, represented by SPS. ERLINDA T. AND ASHER P. CADAPAN, and CONCEPCION E. EMPEÑO.

[2] Per Memorandum dated January 5, 2011 by Atty. Enriqueta Vidal; *Vide*: *rollo* (G.R. No. 184461-62) p. 685.

The *habeas corpus* petition was docketed at the appellate court as **CA-G.R. SP No. 95303**.

By Return of the Writ dated July 21, 2006,[3] the respondents in the *habeas corpus* petition denied that Sherlyn, Karen and Merino are in the custody of the military. To the Return were attached affidavits from the respondents, except Enriquez, who all attested that they do not know Sherlyn, Karen and Merino; that they had inquired from their subordinates about the reported abduction and disappearance of the three but their inquiry yielded nothing; and that the military does not own nor possess a stainless steel jeep with plate number RTF 597. Also appended to the Return was a certification from the Land Transportation Office (LTO) that plate number RTF 597 had not yet been manufactured as of July 26, 2006.

Trial thereupon ensued at the appellate court.

Witness **Wilfredo Ramos**, owner of the house where the three were abducted, recounted that on June 26, 2006, while he was inside his house in Hagonoy, he witnessed armed men wearing bonnets abduct Sherlyn and Karen from his house and also abduct Merino on their way out; and that tied and blindfolded, the three were boarded on a jeep and taken towards Iba in Hagonoy.[4]

Witness **Alberto Ramirez** (Ramirez) recalled that on June 28, 2006, while he was sleeping in his house, he was awakened by Merino who, in the company of a group of unidentified armed men, repaired to his house; that onboard a stainless jeep bearing plate number RTF 597, he (Ramirez) was taken to a place in Mercado, Hagonoy and was asked by one Enriquez if he knew "Sierra," "Tanya," "Vincent" and "Lisa"; and that Enriquez described the appearance of two ladies which matched those of Sherlyn and Karen, whom he was familiar with as the two had previously slept in his house.[5]

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[3] *Rollo* (G.R. Nos. 184461-62), pp. 130-137.

[4] Per findings of facts of the Court of Appeals; *Vide*: *rollo* (G.R. Nos. 184461-62), p. 79.

[5] *Id.* at 80.

Another witness, **Oscar Leuterio**, who was himself previously abducted by armed men and detained for five months, testified that when he was detained in Fort Magsaysay in Nueva Ecija, he saw two women fitting the descriptions of Sherlyn and Karen, and also saw Merino, his *kumpare*.[6]

Lt. Col. Boac, the then commander of Task Force Malolos, a special operations team tasked to neutralize the intelligence network of communists and other armed groups, declared that he conducted an inquiry on the abduction of Sherlyn, Karen and Merino but his subordinates denied knowledge thereof.[7]

While he denied having received any order from Gen. Palparan to investigate the disappearance of Sherlyn, Karen and Merino, his assistance in locating the missing persons was sought by the mayor of Hagonoy.

Major Dominador Dingle, the then division adjutant of the Philippine Army's 7th Infantry Division in Fort Magsaysay, denied that a certain Arnel Enriquez is a member of his infantry as in fact his name did not appear in the roster of troops.[8]

Roberto Se, a supervisor of the Equipment, Plate Number and Supply Units of the LTO, denied that his office manufactured and issued a plate number bearing number RTF 597.[9]

On rebuttal, Lt. Mirabelle, Lt. Col. Boac and Gen. Palparan took the witness stand as hostile witnesses.

Lt. Mirabelle testified that she did not receive any report on the abduction of Sherlyn, Karen and Merino nor any order to investigate the matter. And she denied knowing anything about the abduction of Ramirez nor who were *Ka* Tanya or *Ka* Lisa.[10]

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[6] *Id.* at 84.

[7] *Rollo* (G.R. No. 184495), p. 231-234; Return of the Writ, p. 15.

[8] Per findings of fact of the CA; *Vide*: *rollo* (G.R. Nos. 184461-62), p. 81 citing Transcript of Stenographic Notes (TSN), August 15, 2006, pp. 22-23.

[9] *Rollo* (G.R. No. 184495), p. 40.

[10] Per findings of the CA; *rollo* (G.R. Nos. 184461-62) pp. 81-82.

Gen. Palparan testified that during a debate in a televised program, he mentioned the names of *Ka* Lisa and *Ka* Tanya as the ones involved in revolutionary tax activities; and that he ordered Lt. Col. Boac to conduct an investigation on the disappearance of Sherlyn, Karen and Merino.[11] When pressed to elaborate, he stated: *"I said that I got the report that it stated that it was Ka Tanya and Ka Lisa that, I mean, that incident happened in Hagonoy, Bulacan was the abduction of Ka Lisa and Ka Tanya, Your Honor, and another one. That was the report coming from the people in the area."*[12]

By Decision of March 29, 2007,[13] the Court of Appeals dismissed the *habeas corpus* petition in this wise:

> As Sherlyn Cadapan, Karen Empeño and Manuel Merino are indeed missing, **the present petition for *habeas corpus* is not the appropriate remedy since the main office or function of the *habeas corpus* is to inquire into the legality of one's detention which presupposes that respondents have actual custody of the persons subject of the petition.** The reason therefor is that the courts have limited powers, means and resources to conduct an investigation. x x x.
>
> It being the situation, the proper remedy is not a *habeas corpus* proceeding but criminal proceedings by initiating criminal suit for abduction or kidnapping as a crime punishable by law. In the case of Martinez v. Mendoza, *supra*, the Supreme Court restated the doctrine that *habeas corpus* may not be used as a means of obtaining evidence on the whereabouts of a person, or as a means of finding out who has specifically abducted or caused the disappearance of a certain person. (emphasis and underscoring supplied)

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[11] As earlier stated, Lt. Col. Boac denied having received any order from Gen. Palparan to this effect.

[12] *Id.* at 83.

[13] *Rollo* (G.R. No. 184495), pp. 188-209. Penned by Associate Justice Jose Catral Mendoza (now a member of the Court) with Associate Justices Monina Arevalo Zenarosa and Sesinando E. Villon, concurring.

Thus the appellate court disposed:

> WHEREFORE, the petition for *habeas corpus* is hereby DISMISSED, there being no strong evidence that the missing persons are in the custody of the respondents.
>
> The Court, however, further resolves to **refer the case** to the Commission on Human Rights, the National Bureau of Investigation and the Philippine National Police for separate investigations and appropriate actions as may be warranted by their findings and to **furnish the Court with their separate reports** on the outcome of their investigations and the actions taken thereon.
>
> Let copies of this decision be furnished the Commission on Human Rights, the National Bureau of Investigation and the Philippine National Police for their appropriate actions.
>
> SO ORDERED. (emphasis and underscoring supplied)

Petitioners in CA-G.R. SP No. 95303 moved for a reconsideration of the appellate court's decision. They also moved to present newly discovered evidence consisting of the testimonies of Adoracion Paulino, Sherlyn's mother-in-law who was allegedly threatened by soldiers; and Raymond Manalo who allegedly met Sherlyn, Karen and Merino in the course of his detention at a military camp.

During the pendency of the motion for reconsideration in CA-G.R. SP No. 95303, Erlinda Cadapan and Concepcion Empeño filed before this Court a Petition for Writ of *Amparo*[14] With Prayers for Inspection of Place and Production of Documents dated October 24, 2007, docketed as **G.R. No. 179994.** The petition impleaded the same respondents in the *habeas corpus* petition, with the addition of then President Gloria Macapagal-Arroyo, then Armed Forces of the Phil. (AFP) Chief of Staff Hermogenes Esperon Jr., then Phil. National Police (PNP) Chief Gen. Avelino Razon (Gen. Razon), Lt. Col. Felipe Anotado (Lt. Col. Anotado) and Donald Caigas.

Then President Arroyo was eventually dropped as respondent in light of her immunity from suit while in office.

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[14] *Rollo* (G.R. No. 184461-62), pp. 163-171.

Petitioners in G.R. No. 179994 also prayed that they be allowed to inspect the detention areas of the following places:

1. 7th Infantry Division at Fort Magsaysay, Laur, Nueva Ecija
2. 24th Infantry Batallion at Limay, Bataan
3. Army Detachment inside Valmocina Farm, Pinaod, San Ildefonso, Bulacan
4. Camp Tecson, San Miguel, Bulacan
5. The Resthouse of Donald Caigas *alias* Allan or Alvin of the 24th Infantry Batallion at Barangay Banog, Bolinao, Pangasinan
6. 56th Infantry Batallion Headquarters at Iba, Hagonoy, Bulacan
7. Army Detachment at Barangay Mercado, Hagonoy, Bulacan
8. Beach House [at] Iba, Zambales used as a safehouse with a retired military personnel as a caretaker;

By Resolution of October 25, 2007, the Court issued in G.R. No. 179994 a writ of *amparo* returnable to the Special Former Eleventh Division of the appellate court, and ordered the consolidation of the *amparo* petition with the pending *habeas corpus* petition.

Docketed as **CA-G.R. SP No. 002**, respondents in the *amparo* case, through the Solicitor General, filed their Return of the Writ on November 6, 2007.[15] In the Return, Gen. Palparan, Lt. Col. Boac and Lt. Mirabelle reiterated their earlier narrations in the *habeas corpus* case.

Gen. Hermogenes Esperon Jr. stated in the Return that he immediately caused to investigate and verify the identities of the missing persons and was aware of the earlier decision of the appellate court ordering the police, the Commission on Human Rights and the National Bureau of Investigation to take further action on the matter.[16]

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[15] *Rollo* (G.R. No. 184461-62), pp. 172-206.

[16] *Ibid.*

Lt. Col. Felipe Anotado, the then battalion commander of the 24th Infantry Battalion based in Balanga City, Bataan, denied any involvement in the abduction. While the 24th Infantry Battalion detachment was reported to be a detention site of the missing persons, Lt. Col. Anotado claimed that he found no untoward incident when he visited said detachment. He also claimed that there was no report of the death of Merino per his inquiry with the local police.[17]

Police Director General Avelino Razon narrated that he ordered the compilation of pertinent records, papers and other documents of the PNP on the abduction of the three, and that the police exhausted all possible actions available under the circumstances.[18]

In addition to the witnesses already presented in the *habeas corpus* case, petitioners called on Adoracion Paulino and Raymond Manalo to testify during the trial.

Adoracion Paulino recalled that her daughter-in-law Sherlyn showed up at home on April 11, 2007, accompanied by two men and three women whom she believed were soldiers. She averred that she did not report the incident to the police nor inform Sherlyn's mother about the visit.[19]

Raymond Manalo (Manalo) claimed that he met the three abducted persons when he was illegally detained by military men in Camp Tecson in San Miguel, Bulacan. His group was later taken to a camp in Limay, Bataan. He recalled that Lt. Col. Anotado was the one who interrogated him while in detention.[20]

In his *Sinumpaang Salaysay*,[21] Manalo recounted:

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[17] *Ibid.*

[18] *Ibid.*

[19] Per findings of the CA; *Vide*: *rollo* (G.R. Nos. 184461-62) p. 90 citing TSN, November 21, 2007, p. 33.

[20] *Id.* at 89-90.

[21] *Id.* at 99-102.

x x x x x x x x x

59. *Saan ka dinala mula sa Sapang?*

Pagkalipas ng humigit kumulang 3 buwan sa Sapang, dinala ako sa Camp Tecson sa ilalim ng 24th IB.

x x x x x x x x x

*Sa loob ng barracks ko nakilala si **Sherlyn Cadapan**, isang estudyante ng UP.*

Ipinapalinis din sa akin ang loob ng barracks. Sa isang kwarto sa loob ng barracks, may nakita akong babae na nakakadena[.] Noong una, pinagbawalan akong makipag-usap sa kanya. Sa ikatlo o ikaapat na araw, nakausap ko yung babaeng nagngangalang Sherlyn. Binigyan ko siya ng pagkain. Sinabi niya sa akin na dinukot si[ya] sa Hagonoy, Bulacan at matindi ang tortyur na dinaranas niya. Sabi niya gusto niyang umuwi at makasama ang kanyang magulang. Umiiyak siya. Sabi niya sa akin ang buong pangalan niya ay Sherlyn Cadapan, mula sa Laguna. Sa araw tinatanggal ang kanyang kadena at inuutusan si Sherlyn na maglaba.

x x x x x x x x x

61. *Sino ang mga nakilala mo sa Camp Tecson*?

Dito sa Camp Tecson naming nakilala si 'Allan Alvin' (maya-maya nalaman naming na siya pala si Donald Caigas), ng 24th IB, na tinatawag na 'master' o 'commander' ng kanyang mga tauhan.

*Pagkalipas ng 2 araw matapos dalhin si Reynaldo sa Camp Tecson dumating sina **Karen Empeño** at **Manuel Merino** na mga bihag din. Inilagay si Karen at Manuel sa kwarto ni 'Allan[.]' Kami naman ni Reynaldo ay nasa katabing kwarto, kasama si **Sherlyn**.*

x x x x x x x x x

62. x x x x x x x x x

*Kaming mga lalake (ako, si Reynaldo at si Manuel) ay ginawang utusan, habang sina **Sherlyn** at **Karen** ay ginawang labandera.*

*Si **Sherlyn** ang pinahirapan nina Mickey, Donald at Billy. Sabi ni **Sherlyn** sa akin na siya'y ginahasa.*

x x x x x x x x x

63. x x x x x x x x x

x x x x x x x x x

*Kaming lima (ako, si Reynaldo, si **Sherlyn**, si **Karen** at si [**Merino**]) ang dinala sa Limay. Sinakay ako, si Reynaldo, si **Sherlyn** at si [**Merino**] sa isang stainless na jeep. Si **Karen** ay isinakay sa itim na sasakyan ni Donald Caigas.* x x x

x x x x x x x x x

66. *Saan pa kayo dinala mula sa Limay, Bataan*?

Mula sa Limay, kaming 5 (ako, si Reynaldo, si Sherlyn, Si Karen at si Manuel) ay dinala sa isang safehouse sa Zambales, tabi ng dagat. x x x (underscoring supplied; italics and emphasis in the original)

On rebuttal, Lt. Col. Anotado and Col. Eduardo Boyles Davalan were called to the witness stand.

Lt. Col. Anotado denied seeing or meeting Manalo. He posited that Manalo recognized him because he was very active in conducting lectures in Bataan and even appeared on television regarding an incident involving the 24th Infantry Batallion. He contended that it was impossible for Manalo, Sherlyn, Karen and Merino to be detained in the Limay detachment which had no detention area.

Col. Eduardo Boyles Davalan, the then chief of staff of the First Scout Ranger Regiment in Camp Tecson, testified that the camp is not a detention facility, nor does it conduct military operations as it only serves as a training facility for scout rangers. He averred that his regiment does not have any command relation with either the 7th Infantry Division or the 24th Infantry Battalion.[22]

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[22] *Rollo* (G.R. No. 184461-62), pp. 251-252.

By Decision of September 17, 2008,[23] the appellate court **granted** the Motion for Reconsideration in CA-G.R. SP No. 95303 (the *habeas corpus* case) and **ordered the immediate release** of Sherlyn, Karen and Merino in CA-G.R. SP No. 00002 (the *amparo* case). Thus it disposed:

> WHEREFORE, in CA-G.R. SP NO. 95303 (*Habeas Corpus* case), the Motion for Reconsideration is GRANTED.
>
> Accordingly, in both CA-G.R. SP NO. 95303 (*Habeas Corpus* case) and in CA-G.R. SP NO. 00002 (*Amparo* case), the respondents are thereby ordered to immediately RELEASE, or cause the release, from detention the persons of Sher[lyn] Cadapan, Karen Empeño and Manuel Merino.
>
> Respondent Director General Avelino Razon is hereby ordered to resume [the] PNP's unfinished investigation so that the truth will be fully ascertained and appropriate charges filed against those truly responsible.
>
> SO ORDERED.

In reconsidering its earlier Decision in the *habeas corpus* case, the appellate court relied heavily on the testimony of Manalo in this wise:

> **With the additional testimony of Raymond Manalo, the petitioners have been able to convincingly prove the fact of their detention by some elements in the military. His testimony is a first hand account that military and civilian personnel under the 7th Infantry Division were responsible for the abduction of Sherlyn Cadapan, Karen Empeño and Manuel Merino**. He also confirmed the claim of Oscar Leuterio that the latter was detained in Fort Magsaysay. It was there where he (Leuterio) saw Manuel Merino.
>
> His testimony that Leuterio saw Manuel Merino in Fort Magsaysay may be hearsay but not with respect to his meeting with, and talking to, the three *desaparecidos*. His testimony on those points was no

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[23] *Rollo* (G.R. No. 184461-62), pp. 77-109. Penned by Associate Justice Jose Catral Mendoza (now a member of the Court) with Associate Justices Monina Arevalo Zenarosa and Sesinando E. Villon, concurring.

hearsay. Raymond Manalo saw the three with his very own eyes as they were detained and tortured together. In fact, he claimed to be a witness to the burning of Manuel Merino. In the absence of confirmatory proof, however, the Court will presume that he is still alive.

The testimony of Raymond Manalo can no longer be ignored and brushed aside. His narration and those of the earlier witnesses, taken together, constitute more than substantial evidence warranting an order that the three be released from detention if they are not being held for a lawful cause. They may be moved from place to place but still they are considered under detention and custody of the respondents.

His testimony was clear, consistent and convincing. x x x.

x x x x x x x x x

The additional testimonies of Lt. Col. Felipe Anotado and Col. Eduardo Boyles Davalan were of no help either. Again, their averments were the same negative ones which cannot prevail over those of Raymond Manalo. Indeed, Camp Tecson has been utilized as a training camp for army scout rangers. Even Raymond Manalo noticed it but the camp's use for purposes other than training cannot be discounted.

x x x x x x x x x

In view of the foregoing, **there is now a clear and credible evidence that the three missing persons, [Sherlyn, Karen and Merino], are being detained in military camps and bases** under the 7th Infantry Division. Being not held for a lawful cause, they should be immediately *released* from detention. (italic in the original; emphasis and underscoring supplied)

Meanwhile, in the *amparo* case, the appellate court deemed it a superfluity to issue any inspection order or production order in light of the release order. As it earlier ruled in the *habeas corpus* case, it found that the three detainees' right to life, liberty and security was being violated, hence, the need to immediately release them, or cause their release. The appellate court went on to direct the PNP to proceed further with its investigation since there were enough leads as indicated in the records to ascertain the truth and file the appropriate charges against those responsible for the abduction and detention of the three.

Lt. Col. Rogelio Boac, *et al*. challenged before this Court, via petition for review, the September 17, 2008 Decision of the appellate court. This was docketed as **G.R. Nos. 184461-62**, the first above-captioned case- subject of the present Decision.

Erlinda Cadapan and Concepcion Empeño, on the other hand, filed their own petition for review also challenging the same September 17, 2008 Decision of the appellate court only insofar as the *amparo* aspect is concerned. Their petition, docketed as G.R. No. 179994, was redocketed as **G.R. No. 184495**, the second above-captioned case.

By Resolution of June 15, 2010, the Court ordered the consolidation of G.R. No. 184495 with G.R. Nos. 1844461-62.[24]

Meanwhile, Erlinda Cadapan and Concepcion Empeño filed before the appellate court a Motion to Cite Respondents in Contempt of Court for failure of the respondents in the *amparo* and *habeas corpus* cases to comply with the directive of the appellate court to immediately release the three missing persons. By Resolution of March 5, 2009,[25] the appellate court denied the motion, ratiocinating thus:

> While the Court, in the dispositive portion, ordered the respondents "to immediately RELEASE, or cause the release, from detention the persons of Sherlyn Cadapan, Karen Empeño and Manuel Merino," the decision is not *ipso facto* executory. The use of the term "immediately" does not mean that that it is automatically executory. There is nothing in the Rule on the Writ of *Amparo* which states that a decision rendered is immediately executory. x x x.
>
> Neither did the decision become final and executory considering that both parties questioned the Decision/Resolution before the Supreme Court. x x x.
>
> Besides, the Court has no basis. The petitioners did not file a motion for execution pending appeal under Section 2 of Rule 39. There being no motion, the Court could not have issued, and did not issue, a writ of execution. x x x. (underscoring supplied)

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[24] *Rollo* (G.R. No. 184461-62), p. 533.

[25] *Rollo* (G.R. No. 187109), pp. 12-15.

Via a petition for *certiorari* filed on March 30, 2009 before this Court, Erlinda Cadapan and Concepcion Empeño challenged the appellate court's March 5, 2009 Resolution denying their motion to cite respondents in contempt. The petition was docketed as **G.R. No. 187109**, the last above-captioned case subject of the present Decision.

Only Lt. Col. Anotado and Lt. Mirabelle remained of the original respondents in the *amparo* and *habeas corpus* cases as the other respondents had retired from government service.[26] The AFP has denied that Arnel Enriquez was a member of the Philippine Army.[27] The whereabouts of Donald Caigas remain unknown.[28]

In **G.R. Nos. 184461-62**, petitioners posit as follows:

I

…THE COURT OF APPEALS GROSSLY MISAPPRECIATED THE VALUE OF THE TESTIMONY OF RAYMOND MANALO.

II

THE PETITION[S] FOR *HABEAS CORPUS* AND WRIT OF *AMPARO* SHOULD BE DISMISSED BECAUSE RESPONDENTS FAILED TO PROVE BY THE REQUIRED QUANTUM OF EVIDENCE THAT PETITIONERS HAVE SHERLYN CADAPAN, KAREN EMPEÑO AND MANUEL MERINO ARE IN THEIR CUSTODY.

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[26] Per Certification from the Philippine Army dated August 13, 2009, respondents Generals Hermogenes Esperon Jr., Romeo Tolentino, Jovito Palparan and Lt. Col. Rogelio Boac have retired from the service. Likewise, the Court takes judicial notice of the fact that PNP Director General Avelino Razon has retired from the service as well. *Vide*: *Rollo* (G.R. No. 184461-62), p. 417.

[27] Per Certification dated August 13, 2009 issued by Col. Eduardo Andes, Adjutant General of the Philippine Army. See also *rollo* (G.R. Nos. 184461-62), p. 683.

[28] Notices sent by the Court to the stated address of Donald Caigas have been returned. No other address has been furnished to the Court.

III

PETITIONERS' DENIALS PER SE SHOULD NOT HAVE BEEN TAKEN AGAINST THEM BECAUSE THEY DID NOT REALLY HAVE ANY INVOLVEMENT IN THE ALLEGED ABDUCTION; MOREOVER, THE SUPPOSED INCONSISTENCIES IN THEIR TESTIMONIES ARE ON POINTS IRRELEVANT TO THE PETITION.

IV

THE DISPOSITIVE PORTION OF THE ASSAILED DECISION IS VAGUE AND INCONGRUENT WITH THE FINDINGS OF THE COURT OF APPEALS.

V

THE COURT OF APPEALS IGNORED AND FAILED TO RULE UPON THE FATAL PROCEDURAL INFIRMITIES IN THE PETITION FOR WRIT OF *AMPARO*.[29]

In **G.R. No. 184495**, petitioners posit as follows:

5. The Court of Appeals erred in not granting the Interim Relief for Inspection of Places;

6. The Court of Appeals erred in not granting the Interim Relief for Production of Documents;

7. The Court of Appeals erred in not finding that the Police Director Gen. Avelino Razon did not make extraordinary diligence in investigating the enforced disappearance of the aggrieved parties…

8. The Court of Appeals erred in not finding that this was not the command coming from the highest echelon of powers of the Armed Forces of the Philippines, Philippine Army and the Seventh Infantry Division of the Philippine Army to enforcibly disappear [*sic*] the aggrieved parties…

9. The Court of Appeals erred in dropping President Gloria Macapagal Arroyo as party respondent in this case;

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[29] *Rollo* (G.R. Nos. 184461-62), pp. 25-26.

10. The Court of Appeals erred in not finding that President Gloria Macapagal Arroyo had command responsibility in the enforced disappearance and continued detention of the three aggrieved parties…

11. The Court of Appeals erred in not finding that the Armed Forces Chief of Staff then Hermogenes Esperon and the Present Chief of Staff as having command responsibility in the enforced disappearance and continued detention of the three aggrieved parties…[30]

In **G.R. No. 187109**, petitioners raise the following issues:

[1] Whether… the decision in the Court of Appeals has become final and executory[.]

[2] Whether…there is a need to file a motion for execution in a *Habeas Corpus* decision or in an *Amparo* decision[.]

[3] Whether…an appeal can stay the decision of a *Habeas Corpus* [case] [or] an *Amparo* case[.][31]

Essentially, the consolidated petitions present three primary issues, *viz*: a) whether the testimony of Raymond Manalo is credible; b) whether the chief of the AFP, the commanding general of the Philippine Army, as well as the heads of the concerned units had command responsibility over the abduction and detention of Sherlyn, Karen and Merino; and c) whether there is a need to file a motion for execution to cause the release of the aggrieved parties.

G.R. Nos. 184461-62

Petitioners Lt. Col. Boac, *et al*. contend that the appellate court erred in giving full credence to the testimony of Manalo who could not even accurately describe the structures of Camp Tecson where he claimed to have been detained along with Sherlyn, Karen and Merino. They underscore that Camp Tecson

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[30] *Rollo* (G.R. No. 184495), pp. 7-8.

[31] *Rollo* (G.R. No. 187109), p. 6.

is not under the jurisdiction of the 24th Infantry Batallion and that Manalo's testimony is incredible and full of inconsistencies.[32]

In *Secretary of National Defense v. Manalo*,[33] an original petition for Prohibition, Injunction and Temporary Restraining Order which was treated as a petition under the *Amparo* Rule, said Rule having taken effect during the pendency of the petition, the Court ruled on the truthfulness and veracity of the personal account of Manalo which included his encounter with Sherlyn, Kara and Merino while on detention. Thus it held:

> **We affirm the factual findings of the appellate court, largely based on respondent Raymond Manalo's affidavit and testimony**, *viz*:
>
> x x x x x x x x x
>
> **We reject the claim of petitioners that respondent Raymond Manalo's statements were not corroborated by other independent and credible pieces of evidence**. Raymond's affidavit and testimony were corroborated by the affidavit of respondent Reynaldo Manalo. The testimony and medical reports prepared by forensic specialist Dr. Molino, and the pictures of the scars left by the physical injuries inflicted on respondents, also corroborate respondents' accounts of the torture they endured while in detention. Respondent Raymond Manalo's familiarity with the facilities in Fort Magsaysay such as the "DTU," as shown in his testimony and confirmed by Lt. Col. Jimenez to be the "Division Training Unit," firms up respondents' story that they were detained for some time in said military facility. (citations omitted; emphasis and underscoring supplied)

On Manalo's having allegedly encountered Sherlyn, Karen and Merino while on detention, the Court in the immediately cited case synthesized his tale as follows:

> The next day, Raymond's chains were removed and he was ordered to clean outside the barracks. It was then he learned that he was in a detachment of the Rangers. There were many soldiers, hundreds of them were training. He was also ordered to clean inside the barracks.

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[32] *Rollo* (G.R. No. 184461-62), pp. 27-37.

[33] G.R. No. 180906, October 7, 2008, 568 SCRA 1.

In one of the rooms therein, he met Sherlyn Cadapan from Laguna. She told him that she was a student of the University of the Philippines and was abducted in Hagonoy, Bulacan. She confided that she had been subjected to severe torture and raped. She was crying and longing to go home and be with her parents. During the day, her chains were removed and she was made to do the laundry.

After a week, Reynaldo was also brought to Camp Tecson. **Two days from his arrival, two other captives, Karen Empeño and Manuel Merino, arrived**. Karen and Manuel were put in the room with "Allan" whose name they later came to know as Donald Caigas, called "master" or "commander" by his men in the 24th Infantry Battalion. Raymond and Reynaldo were put in the adjoining room. At times, Raymond and Reynaldo were threatened, and Reynaldo was beaten up. In the daytime, their chains were removed, but were put back on at night. They were threatened that if they escaped, their families would all be killed.

On or about October 6, 2006, Hilario arrived in Camp Tecson. He told the detainees that they should be thankful they were still alive and should continue along their "renewed life." Before the hearing of November 6 or 8, 2006, respondents were brought to their parents to instruct them not to attend the hearing. However, their parents had already left for Manila. Respondents were brought back to Camp Tecson. They stayed in that camp from September 2006 to November 2006, and Raymond was instructed to continue using the name "Oscar" and holding himself out as a military trainee. He got acquainted with soldiers of the 24th Infantry Battalion whose names and descriptions he stated in his affidavit.

On November 22, 2006, respondents, along with Sherlyn, Karen, and Manuel, were transferred to a camp of the 24th Infantry Battalion in Limay, Bataan. There were many huts in the camp. They stayed in that camp until May 8, 2007. Some soldiers of the battalion stayed with them. While there, battalion soldiers whom Raymond knew as "Mar" and "Billy" beat him up and hit him in the stomach with their guns. Sherlyn and Karen also suffered enormous torture in the camp. They were all made to clean, cook, and help in raising livestock.

Raymond recalled that when "Operation *Lubog*" was launched, Caigas and some other soldiers brought him and Manuel with them to take and kill all sympathizers of the NPA. They were brought to Barangay Bayan-bayanan, Bataan where he witnessed the killing of

an old man doing *kaingin*. The soldiers said he was killed because he had a son who was a member of the NPA and he coddled NPA members in his house. Another time, in another "Operation *Lubog*," Raymond was brought to Barangay Orion in a house where NPA men stayed. When they arrived, only the old man of the house who was sick was there. They spared him and killed only his son right before Raymond's eyes.

From Limay, Raymond, Reynaldo, Sherlyn, Karen, and Manuel were transferred to Zambales, in a safehouse near the sea. Caigas and some of his men stayed with them. A retired army soldier was in charge of the house. Like in Limay, the five detainees were made to do errands and chores. They stayed in Zambales from May 8 or 9, 2007 until June 2007.

In June 2007, Caigas brought the five back to the camp in Limay. Raymond, Reynaldo, and Manuel were tasked to bring food to detainees brought to the camp. Raymond narrated what he witnessed and experienced in the camp, *viz*:

x x x.[34] (emphasis and underscoring supplied)

The Court takes judicial notice of its Decision in the just cited *Secretary of National Defense v. Manalo*[35] which assessed the account of Manalo to be a candid and forthright narrative of his and his brother Reynaldo's abduction by the military in 2006; and of the corroborative testimonies, in the same case, of Manalo's brother Reynaldo and a forensic specialist, as well as Manalo's graphic description of the detention area. There is thus no compelling reason for the Court, in the present case, to disturb its appreciation in Manalo's testimony. The outright denial of petitioners Lt. Col. Boac, *et al.* thus crumbles.

Petitioners go on to point out that the assailed Decision of the appellate court is "vague and incongruent with [its] findings" for, so they contend, while the appellate court referred to the

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

[35] In *Baguio v. Teofila L. Vda. De Jalagat, et al.* [149 Phil. 436, 440 (1971)], the Court ruled that… "courts have also taken judicial notice of previous cases to determine…whether or not a previous ruling is applicable to the case under consideration."

perpetrators as "misguided and self-righteous civilian and military elements of the 7th Infantry Division," it failed to identify who these perpetrators are. Moreover, petitioners assert that Donald Caigas and Arnel Enriquez are not members of the AFP. They furthermore point out that their co-petitioners Generals Esperon, Tolentino and Palparan have already retired from the service and thus have no more control of any military camp or base in the country.[36]

There is nothing vague and/or incongruent about the categorical order of the appellate court for petitioners to release Sherlyn, Karen and Merino. In its discourse, the appellate court merely referred to "a few misguided self-righteous people who resort to the extrajudicial process of neutralizing those who disagree with the country's democratic system of government." Nowhere did it specifically refer to the members of the 7th Infantry Division as the "misguided self-righteous" ones.

Petitioners finally point out that the parents of Sherlyn and Karen do not have the requisite standing to file the *amparo* petition on behalf of Merino. They call attention to the fact that in the *amparo* petition, the parents of Sherlyn and Karen merely indicated that they were "concerned with Manuel Merino" as basis for filing the petition on his behalf.[37]

Section 2 of the *Rule on the Writ of Amparo*[38] provides:

> The petition may be filed by the aggrieved party or by any qualified person or entity in the following order:
>
> (a) Any member of the immediate family, namely: the spouse, children and parents of the aggrieved party;
>
> (b) Any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph; or

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[36] *Rollo* (G.R. No. 184461-62), pp. 60-64.

[37] *Rollo* (G.R. No. 184461-62), p. 164.

[38] A.M. No. 07-9-12-SC which took effect on October 24, 2007.

(c) **Any concerned citizen, organization, association or institution, if there is no known member of the immediate family or relative of the aggrieved party**.

Indeed, the parents of Sherlyn and Karen failed to allege that there were no known members of the immediate family or relatives of Merino. The exclusive and successive order mandated by the above-quoted provision must be followed. The order of priority is not without reason—"to prevent the indiscriminate and groundless filing of petitions for *amparo* which may even prejudice the right to life, liberty or security of the aggrieved party."[39]

The Court notes that the parents of Sherlyn and Karen also filed the petition for *habeas corpus* on Merino's behalf. No objection was raised therein for, in a *habeas corpus* proceeding, *any* person may apply for the writ on behalf of the aggrieved party.[40]

It is thus only with respect to the *amparo* petition that the parents of Sherlyn and Karen are precluded from filing the application on Merino's behalf as they are not authorized parties under the Rule.

G.R. No. 184495

Preliminarily, the Court finds the appellate court's dismissal of the petitions against then President Arroyo well-taken, owing to her immunity from suit at the time the *habeas corpus* and *amparo* petitions were filed.[41]

Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal

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[39] Annotation to the Writ of *Amparo*, p. 51. Visit also http://sc.judiciary.gov.ph/Annotation_amparo.pdf.

[40] Section 3 of Rule 102 of the Rules of Court provides that "Application for the writ [of *habeas corpus*] shall be by petition signed and verified either by the party for whose relief it is intended, or by some person on his behalf, and shall set forth x x x."

[41] *David v. Macapagal-Arroyo*, G.R. No. 171396, 489 SCRA 160 (2006).

case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. x x x [42]

Parenthetically, the petitions are bereft of any allegation that then President Arroyo permitted, condoned or performed any wrongdoing against the three missing persons.

On the issue of whether a military commander may be held liable for the acts of his subordinates in an *amparo* proceeding, a brief discussion of the concept of **command responsibility** and its application insofar as *amparo* cases already decided by the Court is in order.

Rubrico v. Macapagal Arroyo[43] expounded on the concept of command responsibility as follows:

The evolution of the command responsibility doctrine finds its context in the development of laws of war and armed combats. According to Fr. Bernas, "command responsibility," in its simplest terms, means the "responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict." In this sense, command responsibility is properly a form of criminal complicity. The Hague Conventions of 1907 adopted the doctrine of command responsibility, foreshadowing the present-day precept of holding a superior accountable for the atrocities committed by his subordinates should he be remiss in his duty of control over them. As then formulated, command responsibility is "**an omission mode of individual criminal liability**," whereby the superior is

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[42] *Id.* at 224-225.

[43] G.R. No. 183871, 613 SCRA 233 (2010).

made responsible for **crimes committed** by his subordinates for failing to prevent or punish the perpetrators (as opposed to crimes he ordered). (citations omitted; emphasis in the original; underscoring supplied)[44]

It bears stressing that command responsibility is properly a form of criminal complicity,[45] and thus a substantive rule that points to criminal or administrative liability.

An *amparo* proceeding is not criminal in nature nor does it ascertain the criminal liability of individuals or entities involved. Neither does it partake of a civil or administrative suit.[46] Rather, it is a *remedial* measure designed to direct specified courses of action to government agencies to safeguard the constitutional right to life, liberty and security of aggrieved individuals.[47]

Thus *Razon Jr. v. Tagitis*[48] enlightens:

[An *amparo* proceeding] does nor determine guilt nor pinpoint criminal culpability for the disappearance [threats thereof or extrajudicial killings]; **it determines responsibility, or at least accountability**, for the enforced disappearance… for purposes of imposing the appropriate remedies to address the disappearance…[49] (emphasis and underscoring supplied)

Further, *Tagitis* defines what constitutes "responsibility" and "accountability," *viz*:

x x x. **Responsibility** refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure

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[44] *Id.* at 251.

[45] *Rubrico v. Macapagal Arroyo*, *supra* at 251, citing Bernas, Command Responsibility, February 5, 2007 <http://sc.judiciary.gov.oh/publications/summit/Summit-20Papers/Bernas-20-20Responsibility.pdf>

[46] Annotation to the Writ of *Amparo,* p. 65.

[47] Section 1 of the Rule on the Writ of *Amparo*.

[48] G.R. No. 182498, 606 SCRA 598 (2009).

[49] *Id.* at 253.

of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. **Accountability**, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance. In all these cases, the issuance of the Writ of *Amparo* is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored.[50] (emphasis in the original; underscoring supplied)

Rubrico categorically denies the application of command responsibility in *amparo* cases to determine *criminal liability*.[51] The Court maintains its adherence to this pronouncement as far as *amparo* cases are concerned.

Rubrico, however, recognizes a preliminary yet limited application of command responsibility in *amparo* cases to instances of determining the *responsible* or *accountable* individuals or entities that are duty-bound to abate any transgression on the life, liberty or security of the aggrieved party.

If command responsibility were to be invoked and applied to these proceedings, it should, at most, be only **to determine the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be appropriate under the premises to protect rights covered by the writ of *amparo*.** As intimated earlier, however, the

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[50] *Supra* note 48 at 620-621.

[51] In *Rubrico*, the Court ruled that "x x x. Still, it would be inappropriate to apply to these [*amparo*] proceedings the doctrine of command responsibility…as a form of criminal complicity through omission, for individual respondents' criminal liability, if there be any, is beyond the reach of *amparo*. x x x." *Vide* also *Roxas v. Macapagal Arroyo*, G.R. No. 189155, September 7, 2010.

determination should not be pursued to fix criminal liability on respondents preparatory to criminal prosecution, or as a prelude to administrative disciplinary proceedings under existing administrative issuances, if there be any.[52] (emphasis and underscoring supplied)

In other words, command responsibility may be loosely applied in *amparo* cases in order **to identify** those accountable individuals that have the power to effectively implement whatever processes an *amparo* court would issue.[53] In such application, the *amparo* court does not impute criminal responsibility but merely pinpoint the superiors it considers to be in the best position to protect the rights of the aggrieved party.

Such identification of the responsible and accountable superiors may well be a preliminary determination of criminal liability which, of course, is still subject to further investigation by the appropriate government agency.

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[52] *Id.* at 254.

[53] In *Rubrico, J.* Morales, in her Separate Opinion, initially expounded on this limited application of command responsibility in *amparo* cases, to wit: That proceedings under the Rule on the Writ of *Amparo* do not determine criminal, civil or administrative liability should not abate the applicability of the doctrine of command responsibility. Taking *Secretary of National Defense v. Manalo* and *Razon v. Tagitis* in proper context, they do not preclude the application of the doctrine of command responsibility to *Amparo* cases.

Manalo was actually emphatic on the importance of the right to security of person and its contemporary signification as a guarantee of protection of one's rights by the government. It further stated that protection includes conducting effective investigations, organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances, or threats thereof, and/or their families, and bringing offenders to the bar of justice.

Tagitis, on the other hand, cannot be more categorical on the application, at least in principle, of the doctrine of command responsibility:

Given their mandates, the PNP and PNP-CIDG officials and members were the ones who were remiss in their duties when the government completely failed to exercise the extraordinary diligence that the *Amparo* Rule requires. **We hold these organizations accountable through their incumbent Chiefs who**, under this Decision, **shall carry the personal responsibility of seeing to it that extraordinary diligence**, in the manner the *Amparo* Rule requires, **is applied in addressing the enforced disappearance** of *Tagitis*. (emphasis and underscoring in the original)

Relatedly, the legislature came up with Republic Act No. 9851[54] (RA 9851) to include command responsibility as a form of criminal complicity in crimes against international humanitarian law, genocide and other crimes.[55] RA 9851 is thus the substantive law that definitively imputes criminal liability to those superiors who, despite their position, still fail to take all necessary and reasonable measures within their power to prevent or repress the commission of illegal acts or to submit these matters to the competent authorities for investigation and prosecution.

The Court finds that the appellate court erred when it did not specifically name the respondents that it found to be responsible for the abduction and continued detention of Sherlyn, Karen and Merino. For, from the records, it appears that the responsible and accountable individuals are Lt. Col. Anotado, Lt. Mirabelle, Gen. Palparan, Lt. Col. Boac, Arnel Enriquez and Donald Caigas. They should thus be made to comply with the September 17, 2008 Decision of the appellate court to IMMEDIATELY RELEASE Sherlyn, Karen and Merino.

The petitions against Generals Esperon, Razon and Tolentino should be dismissed for lack of merit as there is no showing

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[54] An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, and for Related Purposes. Approved on July 27, 2009.

[55] Section 10 of RA 9851 states that: *Responsibility of Superiors.* - In addition to other grounds of criminal responsibility for crimes defined and penalized under this Act, a superior shall be criminally responsible as a principal for such crimes committed by subordinates under his/her effective command and control, or effective authority and control as the case may be, as a result of his/her failure to properly exercise control over such subordinates, where:

(a) That superior either knew or, owing to the circumstances at the time, should have known that the subordinates were committing or about to commit such crimes;

(b) That superior failed to take all necessary and reasonable measures within his/her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

that they were even remotely accountable and responsible for the abduction and continued detention of Sherlyn, Karen and Merino.

G.R. No. 187109

Contrary to the ruling of the appellate court, there is no need to file a motion for execution for an *amparo* or *habeas corpus* decision. Since the right to life, liberty and security of a person is at stake, the proceedings should not be delayed and execution of any decision thereon must be expedited as soon as possible since any form of delay, even for a day, may jeopardize the very rights that these writs seek to immediately protect.

The Solicitor General's argument that the Rules of Court supplement the Rule on the Writ of *Amparo* is misplaced. The Rules of Court only find suppletory application in an *amparo* proceeding if the Rules strengthen, rather than weaken, the procedural efficacy of the writ. As it is, the Rule dispenses with dilatory motions in view of the urgency in securing the life, liberty or security of the aggrieved party. Suffice it to state that a motion for execution is inconsistent with the extraordinary and expeditious remedy being offered by an *amparo* proceeding.

In fine, the appellate court erred in ruling that its directive to *immediately* release Sherlyn, Karen and Merino was not automatically executory. For that would defeat the very purpose of having summary proceedings[56] in *amparo* petitions. Summary proceedings, it bears emphasis, are immediately executory without prejudice to further appeals that may be taken therefrom.[57]

WHEREFORE, in light of the foregoing discussions, the Court renders the following judgment:

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[56] Section 13 of the Rule on the Writ of *Amparo* provides that: "[t]he hearing on the petition shall be summary. x x x."

[57] In Section 21 of the Revised Rule on Summary Procedure, it is provided that: "x x x. 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."

1. The Petitions in **G.R. Nos. 184461-62** and **G.R. No. 184495** are *DISMISSED*. The Decision of the Court of Appeals dated September 17, 2008 is AFFIRMED with modification in that respondents in G.R. No. 184495, namely Lt. Col. Felipe Anotado, Lt. Francis Mirabelle Samson, Gen. Jovito Palparan, Lt. Col. Rogelio Boac, Arnel Enriquez and Donald Caigas are ordered to immediately release Sherlyn Cadapan, Karen Empeño and Manuel Merino from detention.

The petitions against Generals Esperon, Razon and Tolentino are *DISMISSED*.

2. The petition in **G.R. No. 187109** is *GRANTED*. The named respondents are directed to forthwith comply with the September 17, 2008 Decision of the appellate court. Owing to the retirement and/or reassignment to other places of assignment of some of the respondents herein and in **G.R. No. 184495**, the incumbent commanding general of the 7th Infantry Division and the incumbent battalion commander of the 24th Infantry Battalion, both of the Philippine Army, are enjoined to fully ensure the release of Sherlyn Cadapan, Karen Empeño and Manuel Merino from detention.

Respondents Lt. Col. Felipe Anotado, Lt. Francis Mirabelle Samson, Gen. Jovito Palparan, Lt. Col. Rogelio Boac, Arnel Enriquez and Donald Caigas shall remain *personally* impleaded in the petitions to answer for any responsibilities and/or accountabilities they may have incurred during their incumbencies.

Let copies of this Decision and the records of these cases be furnished the Department of Justice (DOJ), the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP) for further investigation to determine the respective criminal and administrative liabilities of respondents.

All the present petitions are *REMANDED* to the Court of Appeals for appropriate action, directed at monitoring of the DOJ, PNP and AFP investigations and the validation of their results.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Villarama, Jr., Perez, and *Sereno, JJ.,* concur.

Del Castillo, J., on official leave.

Abad and *Mendoza, JJ.,* no part.

EN BANC

[G.R. No. 188818. May 31, 2011]

TOMAS R. OSMEÑA, in his personal capacity and in his capacity as City Mayor of Cebu City, *petitioner, vs.* **THE COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; RELAXATION OF PROCEDURAL RULES TO GIVE EFFECT TO A PARTY'S RIGHT TO APPEAL, PROPER IN CASE AT BAR; PRESENT PETITION WAS FILED WITHIN THE REGLEMENTARY PERIOD.— Several times in the past, we emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, we have recognized exceptions to the Rules but *only for the most compelling reasons* where stubborn obedience to the Rules would defeat rather than serve the ends of justice. Every plea for a liberal construction of the Rules must at least be accompanied by an explanation of why the party-litigant failed

to comply with the Rules and by a justification for the requested liberal construction. Where strong considerations of substantive justice are manifest in the petition, this Court may relax the strict application of the rules of procedure in the exercise of its legal jurisdiction. Osmeña cites the mandatory medical check-ups he had to undergo in Houston, Texas after his cancer surgery in April 2009 as reason for the delay in filing his petition for *certiorari*. Due to his weakened state of health, he claims that he could not very well be expected to be bothered by the affairs of his office and had to focus only on his medical treatment. He could not require his office to attend to the case as he was being charged in his personal capacity. We find Osmeña's reasons sufficient to justify a relaxation of the Rules. Although the service of the June 8, 2009 Resolution of the COA was validly made on June 29, 2009 through the notice sent to the Office of the Mayor of Cebu City, we consider July 15, 2009 – the date he reported back to office – as the effective date when he was actually notified of the resolution, and the reckoning date of the period to appeal. If we were to rule otherwise, we would be denying Osmeña of his right to appeal the Decision of the COA, despite the merits of his case. x x x Thus, the reckoning date to count the remaining 12 days to file his Rule 64 petition should be counted from July 15, 2009, the date Osmeña had actual knowledge of the denial of his motion for reconsideration of the Decision of the COA and given the opportunity to competently file an appeal thereto before the Court. The present petition, filed on July 27, 2009, was filed within the reglementary period.

2. POLITICAL LAW; PRESIDENTIAL DECREE NO. 1445 (ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES); ACCOUNTABILITY AND RESPONSIBILITY FOR GOVERNMENT FUNDS AND PROPERTY; PUBLIC OFFICIAL'S PERSONAL LIABILITY ARISES WHEN THE EXPENDITURE OF GOVERNMENT FUNDS IS MADE IN VIOLATION OF LAW; TERM "UNNECESSARY," WHEN USED IN REFERENCE TO EXPENDITURE OF FUNDS OR USES OF PROPERTY, IS RELATIVE; DISCUSSED.— Section 103 of PD 1445 declares that "[e]xpenditures of

government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor." Notably, the public official's personal liability arises only if the expenditure of government funds was made in violation of law. In this case, the damages were paid to WTCI and DCDC pursuant to final judgments rendered against the City for its unreasonable delay in paying its obligations. The COA, however, declared that the judgments, in the first place, would not be rendered against the City had it not been for the change and extra work orders that Osmeña made which (a) it considered as unnecessary, (b) were without the *Sanggunian's* approval, and (c) were not covered by a supplemental agreement. The term "unnecessary," when used in reference to expenditure of funds or uses of property, is relative. In *Dr. Teresita L. Salva, etc. v. Guillermo N. Carague, etc., et al.*, we ruled that "[c]ircumstances of time and place, behavioural and ecological factors, as well as political, social and economic conditions, would influence any such determination. x x x [T]ransactions under audit are to be judged on the basis of not only the standards of legality but also those of regularity, necessity, reasonableness and moderation." The 10-page letter of City Administrator Juan Saul F. Montecillo to the *Sanggunian* explained in detail the reasons for each change and extra work order; most of which were made to address security and safety concerns that may arise not only during the holding of the *Palaro*, but also in other events and activities that may later be held in the sports complex. Comparing this with the COA's general and unsubstantiated declarations that the expenses were "not essential" and not "dictated by the demands of good government," we find that the expenses incurred for change and extra work orders were necessary and justified.

3. ID.; PRESIDENTIAL DECREE NO. 1594 (PRESCRIBING POLICIES, GUIDELINES, RULES AND REGULATIONS FOR GOVERNMENT INFRASTRUCTURE CONTRACTS); SUPPLEMENTAL AGREEMENT TO COVER CHANGE ORDERS OR EXTRA WORK ORDERS IS NOT MANDATORY; CASE AT BAR.— Section III, C1 of the Implementing Rules and Regulations of Presidential Decree

No. 1594, x x x states that: 5. **Change Orders or Extra Work Orders may be issued on a contract upon the approval of competent authorities** provided that the cumulative amount of such Change Orders or Extra Work Orders does not exceed the limits of the former's authority to approve original contracts. 6. **A separate Supplemental Agreement *may* be entered into for all Change Orders and Extra Work Orders if the aggregate amount exceeds 25% of the escalated original contract price.** All change orders/extra work orders beyond 100% of the escalated original contract cost shall be subject to public bidding except where the works involved are inseparable from the original scope of the project in which case negotiation with the incumbent contractor may be allowed, subject to approval by the appropriate authorities. Reviewing the facts of the case, we find that the prevailing circumstances at the time the change and extra work orders were executed and completed indicate that the City of Cebu tacitly approved these orders, rendering a supplemental agreement or authorization from the *Sanggunian* unnecessary. x x x The RTC Decision in fact mentioned that the Project Post Completion Report and Acceptance was approved by an authorized representative of the City of Cebu on September 21, 1994. "[A]s the projects had been completed, accepted and used by the [City of Cebu]," the RTC ruled that there is "no necessity of [executing] a supplemental agreement." Indeed, as we declared in *Mario R. Melchor v. COA*, a supplemental agreement to cover change or extra work orders is not always mandatory, since the law adopts the permissive word "may." Despite its initial refusal, the *Sanggunian* was eventually compelled to enact the appropriation ordinance in order to satisfy the RTC judgments. Belated as it may be, the enactment of the appropriation ordinance, nonetheless, constitutes as sufficient compliance with the requirements of the law. It serves as a confirmatory act signifying the *Sanggunian's* ratification of all the change and extra work orders issued by Osmeña.

APPEARANCES OF COUNSEL

Benjamin R Militar for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is the Petition for *Certiorari*[1] filed by Tomas R. Osmeña, former mayor of the City of Cebu, under Rule 64 of the Rules of Court. The petition seeks the reversal of the May 6, 2008 Decision[2] and the June 8, 2009 Resolution[3] of the respondent Commission on Audit (*COA*), which disallowed the damages, attorney's fees and litigation expenses awarded in favor of two construction companies in the collection cases filed against the City of Cebu, and made these charges the personal liability of Osmeña for his failure to comply with the legal requirements for the disbursement of public funds.

BACKGROUND FACTS

The City of Cebu was to play host to the 1994 *Palarong Pambansa* (*Palaro*). In preparation for the games, the City engaged the services of WT Construction, Inc. (*WTCI*) and Dakay Construction and Development Company (*DCDC*) to construct and renovate the Cebu City Sports Complex. Osmeña, then city mayor, was authorized by the *Sangguniang Panlungsod* (*Sanggunian*) of Cebu to represent the City and to execute the construction contracts.

While the construction was being undertaken, Osmeña issued a total of **20 Change/Extra Work Orders** to WTCI, amounting to ₱35,418,142.42 (about 83% of the original contract price), and to DCDC, amounting to ₱15,744,525.24 (about 31% of the original contract price). **These Change/Extra Work Orders were not covered by any Supplemental Agreement, nor was there a prior authorization from the *Sanggunian*.** Nevertheless, the work proceeded on account of the "extreme urgency and need to have a suitable venue for the *Palaro*."[4] The *Palaro*

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

[2] *Id.* at 40-46.

[3] *Id.* at 64-68.

[4] *Rollo*, p. 12.

was successfully held at the Cebu City Sports Complex during the first six months of 1994.

Thereafter, WTCI and DCDC demanded payment for the extra work they performed in the construction and renovation of the sports complex. A *Sanggunian* member, Councilor Augustus Young, sponsored a resolution authorizing Osmeña to execute the supplemental agreements with WTCI and DCDC to cover the extra work performed, but the other *Sanggunian* members refused to pass the resolution. Thus, the extra work completed by WTCI and DCDC was not covered by the necessary appropriation to effect payment, prompting them to file two separate collection cases before the Regional Trial Court (*RTC*) of Cebu City (Civil Case Nos. CEB-17004[5] and CEB-17155[6]). The RTC found the claims meritorious, and ordered the City to pay for the extra work performed. **The RTC likewise awarded damages, litigation expenses and attorney's fees in the amount of ₱2,514,255.40 to WTCI**[7] **and ₱102,015.00 to DCDC.**[8] The decisions in favor of WTCI and DCDC were affirmed on appeal, subject to certain modifications as to the amounts due, and have become final. To satisfy the judgment debts, the *Sanggunian* finally passed the required appropriation ordinances.

During post-audit, the City Auditor issued **two notices disallowing the payment of litigation expenses, damages, and attorney's fees to WTCI and DCDC**.[9] The City Auditor held Osmeña, the members of the *Sanggunian*, and the City Administrator liable for the ₱2,514,255.40 and ₱102,015.00 awarded to WTCI and DCDC, respectively, as damages, attorney's fees, and interest charges. These amounts, the City Auditor concluded, were **unnecessary expenses** for which the public

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[5] *Id.* at 99-128.

[6] *Id.* at 129-135

[7] *Id.* at 136-140.

[8] *Id.* at 141-142.

[9] Notice of Disallowance Nos. 2002-0003-101(95) and 2002-0003-101 (96).

officers should be held liable in their personal capacities pursuant to the law.

Osmeña and the members of the *Sanggunian* sought reconsideration of the disallowance with the COA Regional Office, which, through a 2nd Indorsement dated April 30, 2003,[10] modified the City Auditor's Decision by absolving the members of the *sanggunian* from any liability. It declared that **the payment of the amounts awarded as damages and attorney's fees should solely be Osmeña's liability, as it was him who ordered the change or extra work orders without the supplemental agreement required by law, or the prior authorization from the *Sanggunian***. The *Sanggunian* members cannot be held liable for refusing to enact the necessary ordinance appropriating funds for the judgment award because they are supposed to exercise their own judgment and discretion in the performance of their functions; they cannot be mere "rubber stamps" of the city mayor.

The COA Regional Office's Decision was sustained by the COA's National Director for Legal and Adjudication (Local Sector) in a Decision dated January 16, 2004.[11] Osmeña filed an appeal against this Decision.

On May 6, 2008, the COA issued the assailed Decision which affirmed the notices of disallowance.[12] Osmeña received a copy of the Decision on May 23, 2008. Eighteen days after or on June 10, 2008, Osmeña filed a motion for reconsideration of the May 6, 2008 COA Decision.

The COA denied Osmeña's motion *via* a Resolution dated June 8, 2009.[13] The Office of the Mayor of Cebu City received the June 8, 2009 Resolution of the COA on June 29, 2009. A day before, however, Osmeña left for the United States of America

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[10] *Rollo*, pp. 143-150.

[11] *Id.* at 151-156.

[12] *Supra* note 2.

[13] *Supra* note 3.

for his check-up after his cancer surgery in April 2009 and returned to his office only on July 15, 2009. Thus, it was only on July 27, 2009 that Osmeña filed the present petition for *certiorari* under Rule 64 to assail the COA's Decision of May 6, 2008 and Resolution of June 8, 2009.

THE PETITION

Rule 64 of the Rules of Court governs the procedure for the review of judgments and final orders or resolutions of the Commission on Elections and the COA. Section 3 of the same Rule provides for a 30-day period, counted from the notice of the judgment or final order or resolution sought to be reviewed, to file the petition for *certiorari*. The Rule further states that the filing of a motion for reconsideration of the said judgment or final order or resolution interrupts the 30-day period.

Osmeña filed his motion for reconsideration, of the COA's May 6, 2008 Decision, 18 days from his receipt thereof, leaving him with 12 days to file a Rule 64 petition against the COA ruling. He argues that the remaining period should be counted not from the receipt of the COA's June 8, 2009 Resolution by the Office of the Mayor of Cebu City on June 29, 2009, but from the time he officially reported back to his office on July 15, 2009, after his trip abroad. Since he is being made liable in his *personal capacity*, he reasons that the remaining period should be counted from his *actual knowledge* of the denial of his motion for reconsideration. Corollary, he needed time to hire a private counsel who would review his case and prepare the petition.

Osmeña pleads that his petition be given due course for the resolution of the important issues he raised. The damages and interest charges were awarded on account of the delay in the payment of the extra work done by WTCI and DCDC, which delay Osmeña attributes to the refusal of the *Sanggunian* to appropriate the necessary amounts. Although Osmeña acknowledges the legal necessity for a supplemental agreement for any extra work exceeding 25% of the original contract price, he justifies the immediate execution of the extra work he ordered

(notwithstanding the lack of the supplemental agreement) on the basis of the extreme urgency to have the construction and repairs on the sports complex completed in time for the holding of the *Palaro*. He claims that the contractors themselves did not want to embarrass the City and, thus, proceeded to perform the extra work even without the supplemental agreement.

Osmeña also points out that the City was already adjudged liable for the principal sum due for the extra work orders and had already benefitted from the extra work orders by accepting and using the sports complex for the *Palaro*. For these reasons, he claims that all consequences of the liability imposed, including the payment of damages and interest charges, should also be shouldered by the City and not by him.

THE COURT'S RULING

Relaxation of procedural rules to give effect to a party's right to appeal

Section 3, Rule 64 of the Rules of Court states:

> SEC. 3. *Time to file petition*.—**The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed.** The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial. [Emphasis ours.]

Several times in the past, we emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, we have recognized exceptions to the Rules but *only for the most compelling reasons* where stubborn obedience to the Rules would defeat rather than serve the ends of justice. Every plea for a liberal construction of the Rules must at least be accompanied by an explanation of why the party-litigant

failed to comply with the Rules and by a justification for the requested liberal construction.[14] Where strong considerations of substantive justice are manifest in the petition, this Court may relax the strict application of the rules of procedure in the exercise of its legal jurisdiction.[15]

Osmeña cites the mandatory medical check-ups he had to undergo in Houston, Texas after his cancer surgery in April 2009 as reason for the delay in filing his petition for *certiorari*. Due to his weakened state of health, he claims that he could not very well be expected to be bothered by the affairs of his office and had to focus only on his medical treatment. He could not require his office to attend to the case as he was being charged in his personal capacity.

We find Osmeña's reasons sufficient to justify a relaxation of the Rules. Although the service of the June 8, 2009 Resolution of the COA was validly made on June 29, 2009 through the notice sent to the Office of the Mayor of Cebu City,[16] we consider July 15, 2009 – the date he reported back to office – as the effective date when he was actually notified of the resolution, and the reckoning date of the period to appeal. If we were to rule otherwise, we would be denying Osmeña of his right to appeal the Decision of the COA, despite the merits of his case.

Moreover, a *certiorari* petition filed under Rule 64 of the Rules of Court must be verified, and a verification requires the

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[14] *Pates v. Commission on Elections*, G.R. No. 184915, June 30, 2009, 591 SCRA 481.

[15] *Philippine Ports Authority v. Sargasso Construction & Development Corp.*, G.R. No. 146478, July 30, 2004, 435 SCRA 512.

[16] Section 6, Rule 13 of the Rules of Court states:

SEC. 6. *Personal service*.— Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

petitioner to state under oath before an authorized officer that he has read the petition and that the allegations therein are true and correct of his personal knowledge. Given that Osmeña was out of the country to attend to his medical needs, he could not comply with the requirements to perfect his appeal of the Decision of the COA.

While the Court has accepted verifications executed by a petitioner's counsel who personally knows the truth of the facts alleged in the pleading, this was an alternative not available to Osmeña, as he had yet to secure his own counsel. Osmeña could not avail of the services of the City Attorney, as the latter is authorized to represent city officials only in their official capacity.[17] The COA pins liability for the amount of damages paid to WTCI and DCDC on Osmeña in his personal capacity, pursuant to Section 103 of Presidential Decree No. 1445 (*PD 1445*).[18]

Thus, the reckoning date to count the remaining 12 days to file his Rule 64 petition should be counted from July 15, 2009, the date Osmeña had actual knowledge of the denial of his motion for reconsideration of the Decision of the COA and given the opportunity to competently file an appeal thereto before the Court. The present petition, filed on July 27, 2009, was filed within the reglementary period.

Personal liability for expenditures of government fund when made in violation of law

The Court's decision to adopt a liberal application of the rules stems not only from humanitarian considerations discussed earlier, but also on our finding of merit in the petition.

Section 103 of PD 1445 declares that "[e]xpenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official

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[17] See LOCAL GOVERNMENT CODE, Section 481(3), (i).

[18] Ordaining and Instituting a Government Auditing Code of the Philippines.

or employee found to be directly responsible therefor." Notably, the public official's personal liability arises only if the expenditure of government funds was made in violation of law. In this case, the damages were paid to WTCI and DCDC pursuant to final judgments rendered against the City for its unreasonable delay in paying its obligations. The COA, however, declared that the judgments, in the first place, would not be rendered against the City had it not been for the change and extra work orders that Osmeña made which (a) it considered as unnecessary, (b) were without the *Sanggunian's* approval, and (c) were not covered by a supplemental agreement.

The term "unnecessary," when used in reference to expenditure of funds or uses of property, is relative. In *Dr. Teresita L. Salva, etc. v. Guillermo N. Carague, etc., et al.*,[19] we ruled that "[c]ircumstances of time and place, behavioural and ecological factors, as well as political, social and economic conditions, would influence any such determination. x x x [T]ransactions under audit are to be judged on the basis of not only the standards of legality but also those of regularity, necessity, reasonableness and moderation." The 10-page letter of City Administrator Juan Saul F. Montecillo to the *Sanggunian* explained in detail the reasons for each change and extra work order; most of which were made to address security and safety concerns that may arise not only during the holding of the *Palaro*, but also in other events and activities that may later be held in the sports complex. Comparing this with the COA's general and unsubstantiated declarations that the expenses were "not essential"[20] and not "dictated by the demands of good government,"[21] we find that the expenses incurred for change and extra work orders were necessary and justified.

The COA considers the change and extra work orders illegal, as these failed to comply with Section III, C1 of the Implementing

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[19] G.R. No. 157875, December 19, 2006, 511 SCRA 258, 266.

[20] *Rollo*, p. 153.

[21] *Id.* at 148.

Rules and Regulations of Presidential Decree No. 1594,[22] which states that:

> 5. **Change Orders or Extra Work Orders may be issued on a contract upon the approval of competent authorities** provided that the cumulative amount of such Change Orders or Extra Work Orders does not exceed the limits of the former's authority to approve original contracts.
>
> 6. **A separate Supplemental Agreement *may* be entered into for all Change Orders and Extra Work Orders if the aggregate amount exceeds 25% of the escalated original contract price.** All change orders/extra work orders beyond 100% of the escalated original contract cost shall be subject to public bidding except where the works involved are inseparable from the original scope of the project in which case negotiation with the incumbent contractor may be allowed, subject to approval by the appropriate authorities. [Emphases ours.]

Reviewing the facts of the case, we find that the prevailing circumstances at the time the change and extra work orders were executed and completed indicate that the City of Cebu tacitly approved these orders, rendering a supplemental agreement or authorization from the *Sanggunian* unnecessary.

The Pre-Qualification, Bids and Awards Committee (*PBAC*), upon the recommendation of the Technical Committee and after a careful deliberation, approved the change and extra work orders. It bears pointing out that two members of the PBAC were members of the *Sanggunian* as well – Rodolfo Cabrera (Chairman, Committee on Finance) and Ronald Cuenco (Minority Floor Leader). A COA representative was also present during the deliberations of the PBAC. None of these officials voiced any objection to the lack of a prior authorization from the *Sanggunian* or a supplemental agreement. The RTC Decision

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[22] Prescribing Policies, Guidelines, Rules and Regulations For Government Infrastructure Contracts, effective June 11, 1978.

in fact mentioned that the Project Post Completion Report and Acceptance was approved by an authorized representative of the City of Cebu on September 21, 1994.[23] "[A]s the projects had been completed, accepted and used by the [City of Cebu]," the RTC ruled that there is "no necessity of [executing] a supplemental agreement."[24] Indeed, as we declared in *Mario R. Melchor v. COA*,[25] a supplemental agreement to cover change or extra work orders is not always mandatory, since the law adopts the permissive word "may." Despite its initial refusal, the *Sanggunian* was eventually compelled to enact the appropriation ordinance in order to satisfy the RTC judgments. Belated as it may be, the enactment of the appropriation ordinance, nonetheless, constitutes as sufficient compliance with the requirements of the law. It serves as a confirmatory act signifying the *Sanggunian's* ratification of all the change and extra work orders issued by Osmeña. In *National Power Corporation (NPC) v. Hon. Rose Marie Alonzo-Legasto, etc., et al.*,[26] the Court considered the compromise agreement between the NPC and the construction company as a ratification of the extra work performed, without prior approval from the NPC's Board of Directors.

As in *Melchor*,[27] we find it "unjust to order the petitioner to shoulder the expenditure when the government had already received and accepted benefits from the utilization of the [sports complex]," especially considering that the City incurred no substantial loss in paying for the additional work and the damages awarded. Apparently, the City placed in a time deposit the entire funds allotted for the construction and renovation of the sports

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[23] *Rollo*, pp. 141-142; Decision of July 19, 1995 in Civil Case No. CEB-17155.

[24] *Id.* at 137-138; Decision of March 17, 1995 in Civil Case No. CEB-17004.

[25] G.R. No. 95398, August 16, 1991, 200 SCRA 704, 712.

[26] G.R. No. 148318, November 22, 2004, 443 SCRA 342.

[27] *Supra* note 25, at 713.

complex. The interest that the deposits earned amounted to ₱12,835,683.15, more than enough to cover the damages awarded to WTCI (₱2,514,255.40) and the DCDC (₱102,015.00). There was "no showing that [the] petitioner was ill-motivated, or that [the petitioner] had personally profited or sought to profit from the transactions, or that the disbursements have been made for personal or selfish ends."[28] All in all, the circumstances showed that Osmeña issued the change and extra work orders for the City's successful hosting of the *Palaro*, and not for any other "nefarious endeavour."[29]

WHEREFORE, in light of the foregoing, we hereby *GRANT the* petitioner's Petition for *Certiorari* filed under Rule 64 of the Rules of Court. The respondent's Decision of May 6, 2008 and Resolution of June 8, 2009 are *SET ASIDE*.

SO ORDERED.

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

del Castillo, J., on official leave.

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[28] See *Salva v. Caragues* (*supra* note 19, at 266), where the Court absolved the petitioner from personal liability for the additional expenses incurred for the construction of a school building.

[29] *Ibid.*

EN BANC

[G.R. No. 191218. May 31, 2011]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) and WINSTON F. GARCIA, in his capacity as President and General Manager of the GSIS, *petitioners, vs.* **ARWIN T. MAYORDOMO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; IN ADMINISTRATIVE PROCEEDINGS, THE QUANTUM OF PROOF NECESSARY FOR A FINDING OF GUILT IS SUBSTANTIAL EVIDENCE; SUBSTANTIAL PROOF, NOT CLEAR AND CONVINCING EVIDENCE OR PROOF BEYOND REASONABLE DOUBT, IS SUFFICIENT AS BASIS FOR THE IMPOSITION OF ANY DISCIPLINARY ACTION UPON THE EMPLOYEE.— In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Well-entrenched is the rule that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer, has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of trust and confidence demanded by his position.

2. ID.; ID.; ID.; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES; NORMS OF CONDUCT; ANY CONDUCT CONTRARY THERETO WOULD QUALIFY AS CONDUCT UNBECOMING OF A GOVERNMENT EMPLOYEE.— The Code of Conduct and Ethical Standards for Public Officials and Employees enunciates the state policy to promote a high standard of ethics in public service, and enjoins public officials and employees to discharge their duties with utmost

responsibility, integrity and competence. Section 4 of the Code lays down the norms of conduct which every public official and employee shall observe in the discharge and execution of their official duties, specifically providing that they shall at all times respect the rights of others, and refrain from doing acts contrary to law, good morals, good customs, public policy, public order, and public interest. Thus, any conduct contrary to these standards would qualify as conduct unbecoming of a government employee.

3. ID.; ID.; ID.; IN ADMINISTRATIVE CASES, THE INJURY SOUGHT TO BE REMEDIED IS NOT MERELY THE LOSS OF PUBLIC MONEY OR PROPERTY; ACTS THAT GO AGAINST THE ESTABLISHED RULES OF CONDUCT FOR GOVERNMENT PERSONNEL BRING HARM TO THE CIVIL SERVICE, WHETHER THEY RESULT IN LOSS OR NOT.— [P]roof of the alleged damage caused by Mayordomo's act to the GSIS system and its use by the general public, is not necessary. The inaccessibility, unnecessary interruption, and downtime to the GSIS network as may be experienced by outside users, is obvious. Proof that the public was inconvenienced in using the GSIS website is not necessary in order to conclude that the unauthorized changing of IP address can produce pernicious effects to the orderly administration of government services. It is well-settled that in administrative cases, the injury sought to be remedied is not merely the loss of public money or property. Acts that go against the established rules of conduct for government personnel, [in this case, that of resorting to unauthorized and radical solutions, without clearance from appropriate parties] bring harm to the civil service, whether they result in loss or not. This rule is in line with the purpose of administrative proceedings, which is mainly to protect the public service, based on the time-honored principle that a public office is a public trust.

4. ID.; ID.; ID.; MISCONDUCT; DEFINED.— A long line of cases has defined misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer."

5. ID.; ID.; ID.; GRAVE MISCONDUCT; ELUCIDATED; GRAVE MISCONDUCT NECESSARILY INCLUDES THE LESSER OFFENSE OF SIMPLE MISCONDUCT.— Jurisprudence

has likewise firmly established that the "misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence." To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment. Corruption as an element of grave misconduct consists in the act of an official or employee who unlawfully or wrongfully uses her station or character to procure some benefit for herself or for another, at the expense of the rights of others. Nonetheless, "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."

6. ID.; ID.; ID.; MISCONDUCT; NOT COMMITTED IN CASE AT BAR; TO CONSTITUTE MISCONDUCT, THE ACT OR ACTS MUST HAVE A DIRECT RELATION TO AND BE CONNECTED WITH THE PERFORMANCE OF OFFICIAL DUTIES.— The Court has come to a determination that the administrative offense committed by the respondent is not "misconduct." To constitute misconduct, the act or acts must have a direct relation to and be connected with the performance of official duties. The duties of Mayordomo as a member of the GSIS FMAD surely do not involve the modification of IP addresses. The act was considered unauthorized, precisely because dealing with the GSIS network's IP addresses is strictly reserved for ITSG personnel who are expectedly knowledgeable in this field.

7. ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; NEED NOT BE RELATED OR CONNECTED WITH THE PUBLIC OFFICER'S OFFICIAL FUNCTIONS; EXAMPLES.— Accordingly, the complained acts of respondent Mayordomo constitute the administrative offense of Conduct Prejudicial to the Best Interest of the Service, which need not be related to or connected with the public officer's official functions. As long as the questioned conduct tarnishes the image and integrity of his/her public office, the corresponding penalty may be meted on the erring public officer or employee. Under the Civil Service

law and rules, there is no concrete description of what specific acts constitute the grave offense of Conduct Prejudicial to the Best Interest of the Service. Jurisprudence, however, is instructive on this point. The Court has considered the following acts or omissions, *inter alia*, as *Conduct Prejudicial to the Best Interest of the Service*: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to safe keep public records and property, making false entries in public documents and falsification of court orders. The Court also considered the following acts as conduct prejudicial to the best interest of the service, to wit: a Judge's act of brandishing a gun and threatening the complainants during a traffic altercation; a court interpreter's participation in the execution of a document conveying complainant's property which resulted in a quarrel in the latter's family.

8. ID.; ID.; ID.; ID.; A GRAVE OFFENSE; PENALTY IN CASE AT BAR.— Conduct Prejudicial to the Best Interest of the Service is classified as a grave offense under Section 22(t) of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, with a corresponding penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense. As this is Mayordomo's first case, he should be meted the penalty of six (6) months and one (1) day.

APPEARANCES OF COUNSEL

GSIS Law Office for petitioners.
Gimenez Law Offices for respondent.

D E C I S I O N

MENDOZA, *J.*:

In this petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, the Government Service Insurance System *(GSIS)* and its then President and General Manager, Winston F. Garcia *(Garcia)*, assail and seek to modify the July 31, 2009

Decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 105414,[2] as reiterated in its February 5, 2010 Resolution[3] denying the motion for reconsideration thereof for lack of merit.

The Facts:

Respondent Arwin T. Mayordomo *(Mayordomo)* was employed as Accounts Management Specialist of the GSIS Fund Management Accounting Department *(FMAD)*, responsible for the preparation of financial statements, from October 2, 2000 until his dismissal on August 31, 2007.[4]

Sometime in September 2004, Ignacio L. Liscano *(Liscano)*, then GSIS Information Technology Officer (ITO) III called the attention of Joseph Sta. Romana *(Sta. Romana)*, another ITO, about a network conflict in his personal computer. Sta. Romana conducted a network scan to identify the source of the problem. During the scan, he discovered that another personal computer within the GSIS computer network was also using the internet protocol (IP) address[5] of Liscano's computer. This other computer was eventually identified as the one assigned to Mayordomo with username "ATMAYORDOMO."

Sta. Romana immediately restored the correct IP address assigned to Mayordomo's personal computer. Until this restoration, Liscano was deprived of access to the GSIS computer network and prevented from performing his work as ITO.

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[1] *Rollo*, pp. 35-47. Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Sesinando E. Villon and Priscilla J. Baltazar-Padilla of the Former Special Fifteenth Division, Manila.

[2] *Entitled Arwin T. Mayordomo v. Government Service Insurance System.*

[3] *Rollo*, pp. 49-52.

[4] CA Decision, *id.* at 36.

[5] *Id.* at 97. An identifier for a computer or device on a TCP/IP network. Networks using the TCP/IP protocol route messages based on the IP address of the destination. The format of an IP address is a 32-bit numeric address written as four numbers separated by periods. Each number can be zero to 255. For example, 1.160.10.240. (webopedia computer dictionary, www.webopedia.com)

Mayordomo was verbally reminded that he had no authority to change his IP address and warned that doing so would result in network problems.[6]

On February 9, 2005, in the course of another network scan, Sta. Romana again encountered the username "ATMAYORDOMO." This time, an IP address, belonging to the range of the GSIS Remote Access Server (RAS),[7] was simulated and used. Knowing that the RAS would provide an exclusive external trafficking route to the GSIS computer system and realizing that Mayordomo could have gained access to the entire GSIS network including its restricted resources, Sta. Romana lost no time in reporting the matter to Rolando O. Tiu *(Tiu)*, Vice-President of the Resources Administration Office. Before the IT network personnel could take any action, however, Mayordomo restored his assigned IP address.

The next day, the username "ATMAYORDOMO" appeared again in the scan, this time using two (2) IP addresses of the RAS (143.44.6.1 and 143.44.6.2). With notice to Tiu, Mayordomo's personal computer was pulled out to have the glitches caused by the unauthorized use of the said IP addresses fixed.

According to GSIS, "[t]he unauthorized changing of IP address gave freedom to respondent to exploit the GSIS network system and gain access to other restricted network resources, including the internet. It also resulted to IP address network conflict which caused unnecessary work to and pressure on ITSG personnel who had to fix the same. Further, as a consequence, Mayordomo's simulation of the RAS IP addresses caused disruption within the GSIS mainframe on-line system affecting both the main and branch offices of the GSIS. His actions likewise prevented authorized outside users from accessing the GSIS network through the RAS IP addresses he simulated."[8]

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[6] *Id.* at 9.

[7] *Id.* at 10. "A server that is dedicated to handling users who are not on a Local Area Network or LAN but need remote access to it."

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

In his Memorandum[9] dated February 11, 2005, Tiu reported Mayordomo's acts to Esperanza R. Fallorina and Maria Corazon G. Magdurulan,[10] with emphasis on the danger of changing IP addresses as a "channel for virus proliferation that could result to loss of critical files for all those infected and render said users unproductive." Tiu also reported that Mayordomo changed his IP address to gain access to the internet as shown by downloaded programs in his computer that were not allowed or unnecessary for his work.

In his written explanation[11] of the same date, Mayordomo admitted the acts imputed to him and offered no excuse therefor. He nonetheless explained his side and claimed that the IP address assigned to him could not access the network due to a conflict with another IP address. Despite several verbal notices to the Information Technology Services Group *(ITSG)*, he was simply told that the conflict would eventually disappear. The network conflict, however, persisted and resulted in the disruption of his work constraining him to use another IP address to use an officemate's laser printer which was only accessible thru the Local Area Network (LAN). In his desperate need to print a set of financial reports which were considered a "rush job," Mayordomo decided not to request formal assistance in accordance with the proper procedure. He apologized and promised not to change his IP address again, acknowledging the hazards of such careless use of the system.

On February 21, 2005, Human Resource Office Vice-President J. Fernando U. Campana issued a memorandum[12] strictly enjoining Mayordomo "not to repeat such actuations, and to follow standard office procedures or exercise prudent judgment and obtain the necessary clearance before engaging in any extraordinary

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[9] *Id.* at 61.

[10] Vice-President of the GABM-Central Office and OIC Manager of FMAD, respectively.

[11] *Rollo*, p. 62.

[12] *Id.* at 81.

measure." In the same memorandum, it was noted that Mayordomo did not heed the earlier warning by the ITSG on the effects brought about by the changing of his IP address to the entire network system. Further, despite absence of intent to harm the system, his act of changing his IP address to facilitate the printing of rush accounting reports was "unsanctioned/illegal" because he lacked the authority to access the network. Thereafter, Mayordomo's personal computer was returned to him.

On May 3, 2006, or more than a year later, Mayordomo received a Show-Cause Memorandum from the Investigation Department in connection with his previous acts of changing his IP address.[13] In reply, Mayordomo admitted that he changed his IP address because the one given to him by the ITSG was in conflict with some other IP addresses. The ITSG was not able to address this problem, prompting him to change his IP address to be able to perform his work.

In June 2006, President and General Manager Garcia issued a formal administrative charge[14] against Mayordomo, for Grave Misconduct and/or Conduct Prejudicial to the Best Interest of the Service. In his July 3, 2006 Answer,[15] Mayordomo admitted that he changed his IP address but he denied having violated any policy or guideline on the subject because no policy, regulation or rule pertaining to changing of IP address existed at the time of its commission. It was only on November 10, 2005 when the GSIS adopted a policy against unauthorized changing of IP addresses. Hence, he could not be held liable in view of the constitutional prohibition against *ex post facto laws*.

On August 6, 2006, Mayordomo submitted his Supplemental Answer with Manifestation,[16] attaching affidavits of his co-workers stating that he indeed reported the problem with his IP address but this was never fixed by the ITSG. He also averred that he

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[13] CA Decision, *id.* at 38.

[14] Docketed as ADM Case No. 06-101. *Id.* at 53-54.

[15] *Id.* at 67-83.

[16] *Id.* at 84-91.

had previously used a username and password of an officemate with the blessing and explicit approval of the latter. He then waived a formal investigation and agreed to submit the case for decision on the basis of the evidence on record.

On March 7, 2007, the GSIS rendered its Decision[17] finding Mayordomo guilty of Grave Misconduct and imposing upon him the penalty of dismissal, with forfeiture of benefits, loss of eligibility and disqualification from government service. In said Decision, the GSIS discussed the significance of an IP address, *viz*:

"An IP address is an identifier for a computer or device on a TCP/IP network. Networks using the TCP/IP protocol route messages based on the IP address of the destination. The format of an IP address is a 32-bit numeric address written as four numbers separated by periods. Each number can be zero to 255. For example, 1.160.10.240 could be an IP address. Within an isolated network, one can assign IP address at random as long as each one is unique."

It is clear from the above that no two (2) PC's can have the same IP address. And in the event where two (2) PC's end up having the same IP address, both PC's would not be able to access the network xxx When the respondent changed his PC's IP address to that of Mr. Liscano's PC, both the respondent and Mr. Liscano were not able to access the GSIS network. To the respondent's bad luck, the IP address he used was assigned to the PC of an ITSG personnel, thus, the same was immediately investigated and his actions discovered.

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On the other hand, the "RAS" is a server that is dedicated to handling users who are not on a Local Area Network (LAN) but need remote access to it." And owing to its function, no restrictions are imposed on the IP address of the RAS. Thus, in the instances when the respondent simulated the IP address of the RAS, he not only jeopardized the accessibility of the GSIS network to outside users, he also gained access to the entire GSIS network and its other resources, including the internet, which would have otherwise been prohibited to him.

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[17] *Id.* at 92-102.

Simply put, the respondent breached the barriers that were put in place to protect the network and its other resources from unauthorized incursions when he simulated the RAS IP address.

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Mayordomo moved for reconsideration of the decision against him arguing against the unfairness and severity of his dismissal.[18] He argued that his act of changing his IP address was in no way a flagrant disregard of an established rule, not only because no policy penalizing the act existed at that time he committed it, but because his reason for doing so even redounded to the benefit of the GSIS. Simply put, absent were the elements of corruption and the clear intent to violate a law on his part and only the motivation to accomplish his task reigned upon his judgment.

In its Resolution dated July 18, 2007,[19] GSIS denied the motion for lack of merit. It explained that the nonexistence of a policy prohibiting the unauthorized changing of IP addresses might relieve Mayordomo from an "administrative offense of violation of reasonable office rules and regulations, his actions and its effects on the GSIS network system fall within the ambit of grave misconduct xxx [T]he assignment of, alteration or changing of IP addresses is vested solely on the ITSG. Respondent not being a member of the ITSG clearly had no authority to alter his IP address, whatever may have been his justification for doing so."

On September 14, 2007, Mayordomo filed an appeal[20] with the Civil Service Commission *(CSC)* which dismissed it in Resolution 080713,[21] for failure to comply with the indispensable requirements under Section 46 of the Uniform Rules on

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[18] *Id.* at 104-108.

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

[20] *Id.* at 169-176.

[21] *Id.* at 113-116.

Administrative Cases in the Civil Service.[22] On reconsideration, however, the CSC ruled on the merits of the case and affirmed the findings of the GSIS, thus:

> WHEREFORE, the Motion for Reconsideration of Arwin T. Mayordomo, Accounts Management Specialist, Fund Management Accounting Department, Government Service Insurance System (GSIS), is hereby DENIED for lack of merit. Accordingly, Civil Service Commission (CSC) Resolution No. 08-0713 dated April 21, 2008 STANDS.[23]

The CSC rejected Mayordomo's defense of good faith in view of the previous verbal warnings he received. By changing the IP address of his personal computer for the second time, after notice of its hazardous effects to the system, Mayordomo committed an act that was inherently wrong. According to the CSC:

> A perusal of the Motion for Reconsideration shows that Mayordomo did not present new evidence which would materially affect the subject Resolution. xxx Movant has the repetitive averments that there was no existing company policy that prohibited GSIS employees from changing their IP addresses, and as such, there was no clear-cut penalty for the said offense; that by changing his IP address, he was in good faith and meant no harm to the GSIS; that his acts do not constitute Grave Misconduct.
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> To these, the Commission emphasizes that in the first place, the act which Mayordomo committed was one that is inherently wrong. Moreover, the express warning and prohibition given by the GSIS officials when he was first caught changing his IP address is and constitutes the rule that obviously made the act he committed, prohibited.
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[22] To perfect an appeal, the appellant shall submit the following: a) Notice of appeal which shall specifically state the date of the decision appealed from and the date of receipt thereof; b) Three (3) copies of appeal memorandum containing the grounds relied upon for the appeal, together with the certified true copy of the decision, resolution or order appealed from, and certified copies of the documents or evidence.

[23] Resolution 081524, *rollo*, pp. 119-125.

Further, since the same act/s undoubtedly caused undue prejudice to the government, in the sense that it exposed the GSIS system to immense risk, movant is correctly found likewise guilty of Conduct Prejudicial to the Best Interest of the Service. But since this second offense has a lighter penalty, such is subsumed under the more grievous offense of Grave Misconduct, which is punishable with the supreme administrative penalty of dismissal.[24]

Undaunted, Mayordomo elevated the case to the CA by way of a petition for review under Rule 43 of the Rules of Court. Mayordomo argued that the above CSC Resolutions were issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. He reiterated his arguments before the GSIS and the CSC, as follows: that he did not commit so grave an offense to warrant his dismissal from service; that the GSIS miserably failed to present evidence showing illwill or bad faith on his part; that his act of changing his IP address was not punishable because no existing company policy was in effect at that time and, in fact, it was only nine months after his act was complained of, when the GSIS issued a policy/guideline on the matter; that the Memorandum issued earlier by the Vice-President of the Human Resource Office sufficiently served as his penalty for his careless acts; and that granting that he should be penalized anew, his length of service and work performance should be considered for him to merit a lighter penalty than that of dismissal.

On July 31, 2009, the CA partly granted the petition.[25] According to the appellate court, while Mayordomo failed to exercise prudence in resorting to changing his IP address, it could not be said that this act was characterized by a wrongful use of station or character to procure personal benefit contrary to duty and rights of others. GSIS failed to prove that Mayordomo acted out of a sinister motive in resorting to such acts or in order to gain a personal benefit therefrom. The records would only show that Mayordomo did so when he was faced with the conflict of his own IP address with others and the urgency of

[24] *Id.* at 124.

[25] *Id.* at 35-47.

his office tasks. In meting out this penalty for Simple and not Grave Misconduct, the CA took into consideration Mayordomo's length of service in the government and his fairly clean record prior to the incident. The dispositive portion of the CA Decision thus reads:

> WHEREFORE, the petition is **PARTLY GRANTED**. Resolution No. 080713 and Resolution No. 081524 of the Civil Service Commission are **AFFIRMED with MODIFICATION**. Finding petitioner Arwin T. Mayordomo guilty of simple misconduct this Court hereby imposes upon him the penalty of suspension of one (1) month and one (1) day.
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> SO ORDERED.[26]

On reconsideration, the CA rejected Mayordomo's prayer for payment of backwages corresponding to the period of his preventive suspension. In its Resolution dated February 5, 2010, the CA emphasized that Mayordomo was not completely exonerated from liability for the act complained of. The offense was merely downgraded from grave misconduct to simple misconduct. Therefore, Mayordomo's dismissal is "deemed a preventive suspension pending his appeal…." Thus, he was not entitled to the payment of backwages and other benefits during the said period.

Hence, this recourse by the petitioners ascribing serious errors on the part of the CA in modifying the penalty imposed on Mayordomo:

I.

THE HONORABLE COURT OF APPEALS COMMITTED ERROR IN DOWNGRADING THE OFFENSE TO SIMPLE MISCONDUCT AS IT FAILED TO CONSIDER THE FACT THAT RESPONDENT ALTERED HIS ASSIGNED IP ADDRESS NOT ONLY ONCE BUT FOUR (4) TIMES, DESPITE WARNING.

II.

THE HONORABLE COURT OF APPEALS ERRED IN NOT ACCORDING RESPECT AND CREDIT TO THE FINDINGS OF

[26] *Id.* at 46.

THE PETITIONERS AND THE CSC, WHICH WERE SUPPORTED BY MORE THAN THE REQUIRED SUBSTANTIAL EVIDENCE.

The petitioners contend that Mayordomo, from the outset, had full knowledge of the nature, purpose, and importance of an IP address and the dire consequences of changing the same. In committing "computer identity and capacity theft,"[27] Mayordomo is guilty of Grave Misconduct, and even Dishonesty, as shown by substantial evidence. Hence, the CA erred in giving credence to his assertion that his act of changing his IP address was not attended by corruption and sinister motive, considering that he freely chose to traverse a tortuous path of changing his IP address, to simply print a document for his alleged rush work. While the latter task is simply akin to the goal of "reaching Tibet from Nepal,"[28] Mayordomo took the most difficult route, that of changing his IP address, and worse, into the most powerful IP address in GSIS. For petitioners, Mayordomo's dubious motive is shown by his desire to "get to the top, with all the privileges, advantages and practically limitless vista of taking that topmost perch."[29]

For his part, Mayordomo reasons out that during the time when the GSIS FMAD was in the peak of activities, he was constrained to alter his IP address because of the failure of the ITSG to fix a conflict which effectively disrupted his work. He claims to have no reason to cause harm to the system and to the GSIS in general, because in the first place, he was not informed of the hazards of changing IP addresses. It was only by November 10, 2005, or nine months after the incident, when the GSIS issued a policy/ guideline[30] on the matter.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant

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[27] Memorandum of Petitioners, *id.* at 296.

[28] *Id.* at 294.

[29] *Id.*

[30] *Id.* at 77.

evidence as a reasonable mind may accept as adequate to support a conclusion. Well-entrenched is the rule that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer, has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of trust and confidence demanded by his position.[31]

In this case, the attending facts and the evidence presented, point to no other conclusion than the administrative liability of Mayordomo. The Code of Conduct and Ethical Standards for Public Officials and Employees[32] enunciates the state policy to promote a high standard of ethics in public service, and enjoins public officials and employees to discharge their duties with utmost responsibility, integrity and competence. Section 4 of the Code lays down the norms of conduct which every public official and employee shall observe in the discharge and execution of their official duties, specifically providing that they shall at all times respect the rights of others, and refrain from doing acts contrary to law, good morals, good customs, public policy, public order, and public interest. Thus, any conduct contrary to these standards would qualify as conduct unbecoming of a government employee.[33]

Here, Mayordomo's act of having repeatedly changed his IP address without authority, despite previous warnings, shows that he did not exercise prudence in dealing with officework and his officemates. After the first warning he received from

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[31] Citing *Filoteo v. Calago,* A.M. No. P-04-1815, October 18, 2007, 536 SCRA 507, 515 and Section 5, Rule 133 of the Rules of Court in *Retired Employee, Municipal Trial Court, Sibonga, Cebu v. Merlyn G. Manubag, Clerk of Court II, Municipal Trial Court, Sibonga, Cebu,* A.M. No. P-10-2833, December 14, 2010.

[32] Republic Act No. 6713.

[33] *Ma. Chedna Romero v. Pacifico B. Villarosa, Jr., Sheriff IV, Regional Trial Court, Branch 17, Palompon, Leyte,* A.M. No. P-11-2913, April 12, 2011.

the ITSG, Mayordomo should have realized that his unauthorized act brought inconvenience, not only to a fellow employee, Liscano, but to the entire GSIS, which was actually deprived of service from a paid employee. As if he did not understand the repercussions of his act, he again toyed with his IP address and deliberately ignored the importance of necessary clearance before engaging in any extraordinary measure. Worse, he chose the RAS and gained access to the entire GSIS network, putting the system in a vulnerable state of security. When Mayordomo was alerted by the hazardous effects of using an IP address other than his, he should have realized that, *a fortiori*, using a RAS IP address would expose the GSIS system into a more perilous situation.

Indeed, prudence and good sense could have saved Mayordomo from his current tribulation, but he was unfortunately stubborn to imbibe advice of caution. His claim that he was obliged to change his IP address due to the inaction of the ITSG in resolving the problem with his own IP address, cannot exonerate him from responsibility. Obviously, choosing the RAS IP address to replace his own was way too drastic from sensible conduct expected of a government employee. Surely, there were other available means to improve his situation of alleged hampered performance of duties for failure to access the system due to IP conflict. Certainly, gaining access to the exclusive external trafficking route to the GSIS computer system was not one of them.

The Court neither loses sight of the undisputed fact that Vice-President J. Fernando U. Campana's Memorandum stated that the ITSG discovered unauthorized and unnecessary downloaded programs in Mayordomo's personal computer when it was pulled out. Hence, despite his insistence that exigency was his sole reason in altering his IP address, sheer common sense and evidence to the contrary belie this.

Mayordomo likewise fails to convince the Court to adhere to his position that the lack of official policy and guidelines at the time of commission makes the act of unauthorized alteration of IP addresses exempt from punishment. While official policy

and guidelines apprise covered employees of offenses carrying specific penalties, the Court may not close its eyes from the fact that actual notice of the dangers of changing his IP address was made known to Mayordomo, right after the first incident. The CSC was correct in holding that subsequent to the first warning, Mayordomo was fully aware that changing his IP address without acquiescence from the ITSG, was inherently wrong.

In the same vein, proof of the alleged damage caused by Mayordomo's act to the GSIS system and its use by the general public, is not necessary. The inaccessibility, unnecessary interruption, and downtime to the GSIS network as may be experienced by outside users, is obvious. Proof that the public was inconvenienced in using the GSIS website is not necessary in order to conclude that the unauthorized changing of IP address can produce pernicious effects to the orderly administration of government services. It is well-settled that in administrative cases, the injury sought to be remedied is not merely the loss of public money or property. Acts that go against the established rules of conduct for government personnel, [in this case, that of resorting to unauthorized and radical solutions, without clearance from appropriate parties] bring harm to the civil service, whether they result in loss or not.[34] This rule is in line with the purpose of administrative proceedings, which is mainly to protect the public service, based on the time-honored principle that a public office is a public trust.[35]

Albeit different in degree, both the CSC and the CA agree that Mayordomo is guilty of misconduct in office. A long line of cases has defined misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer."[36] Jurisprudence

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[34] *Id*.

[35] *Dr. Castor C. De Jesus v. Rafael D. Guerrero III, Cesario R. Pagdilao and Fortunata B. Aquino*, G.R. No. 171491, September 4, 2009, 598 SCRA 341,350.

[36] *Salvador O. Echano, Jr. v. Liberty Toledo*, G.R. No. 173930, September 15, 2010, 630 SCRA 532, citing *Bureau of Internal Revenue v. Organo*, 468 Phil. 111, 118 (2004).

has likewise firmly established that the "misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence."[37]

To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment.[38] Corruption as an element of grave misconduct consists in the act of an official or employee who unlawfully or wrongfully uses her station or character to procure some benefit for herself or for another, at the expense of the rights of others. Nonetheless, "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."[39]

Based on the foregoing rule, the CA designated Mayordomo's offense as Simple Misconduct, on the ground that the elements particular to Grave Misconduct were not adequately proven by the GSIS on which the burden of proof lay. There being no clear and convincing evidence to show that Mayordomo changed his IP address for personal or selfish needs, the CA found that his act could not be said to have been tainted with "corruption."

The Court is inclined to disagree with the CA not only in downgrading the offense from Grave Misconduct to Simple Misconduct, but on the nature of the offense charged itself. The Court indeed finds Mayordomo administratively liable, but modifies the designation of the offense and the penalty imposed by the CA.

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[37] *Civil Service Commission v. Lucas*, 361 Phil. 486 (1999).

[38] *Clementino Imperial v. Mariano F. Sanitago, Jr., Sheriff IV, RTC Branch 139, Makati City*, A.M. No. P-O1-1449, February 24, 2003, 446 Phil. 104 (2003).

[39] *Erlinda F. Santos v. Ma. Carest A. Rasalan*, G.R. No. 155749, February 8, 2007, 515 SCRA 97, 104, citing *Civil Service Commission v. Ledesma*, 508 Phil. 569 (2005).

The Court has come to a determination that the administrative offense committed by the respondent is not "misconduct." To constitute misconduct, the act or acts must have a direct relation to and be connected with the performance of official duties.[40] The duties of Mayordomo as a member of the GSIS FMAD surely do not involve the modification of IP addresses. The act was considered unauthorized, precisely because dealing with the GSIS network's IP addresses is strictly reserved for ITSG personnel who are expectedly knowledgeable in this field. In *Manuel v. Calimag, Jr.*,[41] the Court emphatically ruled:

> In order to be considered as "misconduct," the act must have a **"direct relation to and be connected with the performance of his official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office.** Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x More specifically, in *Buenaventura v. Benedicto*, an administrative proceeding against a judge of the court of first instance, the present Chief Justice defines misconduct as referring 'to a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.'" [Emphasis ours, citations excluded]

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[40] *Teodulo V. Lagro v. The Court of Appeals, The Civil Service Commission, The National Power Corporation and Alan Olandesca*, G.R. No. 177244, November 20, 2007, 537 SCRA 721, 730.

[41] 367 Phil. 162 (1999), cited in *Teodulo Lagro v. The Court of Appeals, The Civil Service Commission, The National Power Corporation and Alan Olandesca*, G.R. No. 177244, November 20, 2007, 537 SCRA 721, 730.

In *Cabalitan v. Department of Agrarian Reform*,[42] the Court sustained the ruling of the CSC that the offense committed by the employee in selling fake Unified Vehicular Volume Program exemption cards to his officemates during office hours was not grave misconduct, but conduct prejudicial to the best interest of the service. In *Mariano v. Roxas*,[43] the Court held that the offense committed by a CA employee in forging some receipts to avoid her private contractual obligations, was not misconduct but conduct prejudicial to the best interest of the service because her acts had no direct relation to or connection with the performance of her official duties.

Accordingly, the complained acts of respondent Mayordomo constitute the administrative offense of Conduct Prejudicial to the Best Interest of the Service, which need not be related to or connected with the public officer's official functions. As long as the questioned conduct tarnishes the image and integrity of his/her public office, the corresponding penalty may be meted on the erring public officer or employee.[44] Under the Civil Service law and rules, there is no concrete description of what specific acts constitute the grave offense of Conduct Prejudicial to the Best Interest of the Service. Jurisprudence, however, is instructive on this point. The Court has considered the following acts or omissions, *inter alia*, as *Conduct Prejudicial to the Best Interest of the Service*: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to safe keep public records and property, making false entries in public documents and falsification of court orders.[45]

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[42] G.R. No. 162805, January 23, 2006, 479 SCRA 452, 456 & 461, cited in *Teodulo Lagro v. The Court of Appeals*, G.R. No. 177244, November 20, 2007, 537 SCRA 721.

[43] 434 Phil. 742 (2002), cited in *Teodulo Lagro v. The Court of Appeals*, G.R. No. 177244, November 20, 2007, 537 SCRA 721.

[44] *Teodulo V. Lagro v. The Court of Appeals, The Civil Service Commission, The National Power Corporation and Alan Olandesca*, *supra* note 40.

[45] *Philippine Retirement Authority v. Thelma Rupa*, 415 Phil. 713 (2001), citing *In re Report of the Financial Audit Conducted on the Accounts of*

The Court also considered the following acts as conduct prejudicial to the best interest of the service, to wit: a Judge's act of brandishing a gun and threatening the complainants during a traffic altercation; a court interpreter's participation in the execution of a document conveying complainant's property which resulted in a quarrel in the latter's family.[46]

Conduct Prejudicial to the Best Interest of the Service is classified as a grave offense under Section 22(t) of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, with a corresponding penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense.

As this is Mayordomo's first case, he should be meted the penalty of six (6) months and one (1) day.

As a final word, the Court makes clear that when an officer or employee is disciplined, the object sought is not the punishment of that officer or employee, but the improvement of the public service and the preservation of the public's faith and confidence in the government.[47] The respondent is reminded that "the Constitution stresses that a public office is a public trust and public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. These constitutionally-enshrined principles, oft-repeated in our

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Zenaida Garcia, 362 Phil. 480 (1999), *Unknown Municipal Councilor of Sto. Domingo, Nueva Ecija v. Alomia, Jr.*, A.M. No. P-91-660, August 7, 1992, 212 SCRA 330 and *Judge Thelma Ponferrada v. Edna Relator*, 260 Phil. 578 (1990).

[46] *Alday, et al. v. Judge Escolastico U. Cruz, Jr.*, RTJ-00-1530, 406 Phil. 786 (2001) and *Gloria Dino v. Francisco Dumukmat*, 412 Phil.748 (2007), cited in *Teodulo V. Lagro v. The Court of Appeals*, G.R. No. 177244, November 20, 2007, 537 SCRA 721.

[47] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, citing *Bautista v. Negado, etc., and NWSA*, 108 Phil. 283, 289 (1960).

case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service."[48]

WHEREFORE, the July 31, 2009 Decision of the Court of Appeals in CA-G.R. SP No. 105414 affirming with modification Resolution No. 080713 and Resolution No. 081524 of the Civil Service Commission, finding the respondent guilty of simple misconduct is *REVERSED* and *SET ASIDE*. Respondent Arwin T. Mayordomo is declared *GUILTY* of Conduct Prejudicial to the Best Interest of the Service and is suspended from service for six (6) months and one (1) day.

SO ORDERED.

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

Nachura and *del Castillo, JJ.,* on leave.

THIRD DIVISION

[A.M. No. P-10-2794. June 1, 2011]
(Formerly A.M. OCA I.P.I. No. 08-2937-P)

DANELLA G. SONIDO, *complainant, vs.* **JOSEFINA G. ILOCSO, Clerk III, Regional Trial Court, Branch 80, Morong, Rizal,** *respondent.*

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[48] *Id.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; KNOWINGLY DELAYING THE RELEASE OF THE WARRANT OF ARREST CONSTITUTES CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; CASE AT BAR.— The delay in the release of the warrant of arrest in Criminal Case No. 08-7977 did not happen because Ilocso simply forgot about it or her workload was so heavy that it took her several months to prepare and release it. The delay, to our mind, was by design and was not an innocent lapse or mistake. Ilocso waited for the proper time to give Sonido a copy of the warrant and to send copies to the implementing police authorities. The proper time obviously was when the accused could no longer be arrested because she had already left the country. Ilocso's promises, her excuses, the delay from the filing of the information to the release of the warrant of arrest, the time of the release to Sonido of a copy of the warrant, and the timing of the departure of the accused for Taiwan — all lead us to conclude that the release of the warrant was delayed to favor the accused. x x x For knowingly delaying the release of the warrant of arrest in Criminal Case No. 08-7977, Ilocso had placed the court in a very negative light. It prejudiced the Court's standing in the community as it projected an image of a Court that is unable to enforce its processes on time. For this reason, we find her liable not only for simple neglect of duty, but for the more serious offense of conduct prejudicial to the best interest of the service. x x x To be sure, the prejudice she caused and her liability for her conduct can in no way be extinguished or mitigated by the issuance of a second warrant of arrest, or by the complainant's subsequent voluntary desistance from pursuing the case. The harm had already been done on the aggrieved party and on the judiciary when these developments transpired.

2. ID.; ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE IS CLASSIFIED AS A GRAVE OFFENSE; PENALTY.— The Civil Service Commission classifies conduct prejudicial to the best interest of the service as a **grave offense** punishable by suspension without pay from six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for

the second offense. In light of the brazen way Ilocso hoodwinked Sonido and given the prejudice she caused to the institution she serves, we deem a suspension for one (1) year without pay an appropriate penalty.

D E C I S I O N

BRION, *J.*:

We resolve the present administrative matter which arose from the affidavit-complaint filed, on September 5, 2008,[1] by Danella G. Sonido (*Sonido*), charging Clerk III Josefina G. Ilocso, Regional Trial Court, Branch 80, Morong, Rizal (Branch 80), with *Obstruction of Justice and Grave Misconduct*.

The Factual Background

Sonido is the mother of Nathalie Mae G. Sonido who filed with the Rizal Prosecution Office a complaint against one Kristel Ann S. Asebo for violation of Republic Act (*R.A.*) No. 9262, the *Anti-Violence Against Women and Their Children Act of 2004*, *in* Criminal Case No. 08-7977.

In a resolution dated December 19, 2006,[2] the Rizal Prosecution Office recommended the filing of an information against Kristel for violation of Section 5, par. 1, R.A. No. 9262. The information states:

That on or about the 27th day of February, 2006, in the Municipality of Teresa, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the former sweetheart of the complainant[,] Nathalie Mae G. Sonido, did then and there, willfully, unlawfully and feloniously show the videos of the complainant to other persons showing the sensitive parts of her body, thereby causing mental or emotional anguish, public ridicule or humiliation to one Nathalie Mae G. Sonido.[3]

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[1] *Rollo*, pp. 1-2.

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

[3] *Id.* at 22.

Sonido received a copy of the resolution on January 28, 2008.[4] The following day, January 29, 2008,[5] she went to the Metropolitan Trial Court in Morong, Rizal, to inquire about the status of the case. She was told that the case had been raffled to Branch 80. When she asked whom she should talk to about the case at Branch 80, she was advised to see Ilocso or *Ka Pining*, which she did. Ilocso then told Sonido that she would prepare the warrant of arrest. She advised Sonido to return the following day to get a copy of the warrant. Sonido returned the next day and several more times thereafter, but Ilocso consistently failed to give her a copy of the warrant and instead gave excuses for her repeated failures.

Exasperated about the delay in the issuance of the warrant of arrest, Sonido confronted Ilocso about it. Ilocso allegedly assured Sonido that copies of the warrant had already been mailed to the proper authorities for implementation. Sonido claimed, however, that it was only on June 26, 2008 that Ilocso gave her a copy of the warrant with the remark, "*sige ipahuli mo na yan.*" Thankful that she was finally able to get a copy of the warrant, Sonido even gave Ilocso ₱100.00. She immediately gave the warrant to SPO3 Minerva SG Marcelino, a police investigator, for execution.

The following day, June 27, 2008, Sonido alleged that she learned from PO1 Alsander R. Ecalnir (a member of the Teresa, Rizal Police and a resident of Morong) that the warrant had not been implemented as Kristel left the country in May 2008 to work as a caregiver in Taiwan. Sonido was dejected by this turn of events; her efforts to have Kristel arrested had all been in vain. She also doubts if Ilocso had really sent copies of the warrant of arrest to the police authorities, as Kristel was apparently able to secure police and National Bureau of Investigation (*NBI*) clearances for her travel to Taiwan. She believes that Ilocso gave her a copy of the warrant of arrest when Kristel had already left the country.

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[4] *Id.* at 1.

[5] *Ibid.*

Sonido inquired from the police of Morong and Teresa, Rizal if they had received copies of the warrant of arrest; they both answered in the negative.[6] She even called up the NBI to inquire on the matter, and she got the same answer.

In her Comment[7] submitted on October 27, 2008, Ilocso denied Sonido's accusations, dismissing them as mere suspicions. She alleged that her failure to release the warrant of arrest resulted from mere memory lapse and was an honest mistake on her part. She maintained that she had no intention of causing Sonido any harm.

Ilocso also attributed the delay or omission in the preparation and release of the warrant of arrest to her heavy workload as clerk in charge of criminal cases in a court where almost 700 cases were pending. She further explained that from January 21, 2008 to February 8, 2008, the Supreme Court conducted a judicial audit at Branch 80, and she was personally tasked to make available to the audit team all the folders of the criminal cases for inventory. Additionally, she assisted in the preparation of the court's semestral inventory report for July to December 2007, and the monthly case reports for March and April 2008.

Ilocso claimed that because of her heavy workload which caused her to suffer from fatigue and stress, she almost forgot Sonido's request for a copy of the warrant of arrest. She emphasized that she did not have the slightest intention of delaying the early disposition of the criminal case. She extended her apologies to the Court and to Sonido.

On the recommendation of the Office of the Court Administrator, the Court resolved to (1) re-docket the complaint as a regular administrative matter; and (2) require the parties to

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[6] *Id.* at 10. Certification dated June 30, 2008, prepared by Warrant Officer Ronald Ivan Concepcion, Morong Police Station; and Certification dated June 30, 2008, prepared by Warrant/Subpoena Officer Ricky T. Pangilinan, Teresa Police Station.

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

manifest whether they were willing to submit the case for decision on the basis of the records.[8]

Sonido submitted the case for decision in a Manifestation filed on August 10, 2010.[9] Ilocso asked for time to submit additional evidence,[10] which the Court granted.[11]

On September 2, 2010, Ilocso filed a supplemental comment.[12] She reiterated substantially the same arguments which she had raised earlier. Again, she blamed her busy schedule for her inability to have the warrant of arrest released. She even denied receiving ₱100.00 from Sonido, saying that she did not accept the money as she was shamed by the delay in the release of the warrant.

To explain the Morong Police Station certification[13] that it had not received a copy of the warrant as of June 30, 2008, Ilocso claimed that she had not yet endorsed the warrant to the Morong police when she gave Sonido a copy. The same was true with the other government authorities Sonido dealt with. She said that she and her co-employees had difficulty in locating the case record as its folder was very thin.

Finally, she informed the Court that the parties in the criminal case, who went through mediation under the auspices of the Philippine Mediation Center, executed a compromise agreement on December 2, 2009.[14] Nathalie, the complainant in the criminal case, executed an affidavit of desistance[15] and asked for the dismissal of the case, which the court granted.[16]

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[8] *Id.* at 48; Resolution dated June 16, 2010.

[9] *Id.* at 49.

[10] *Id.* at 50.

[11] *Id.* at 52; Resolution dated October 6, 2010.

[12] *Id.* at 54-57.

[13] *Supra* note 6.

[14] *Rollo*, p. 65.

[15] *Id.* at 67.

[16] *Id.* at 66.

Ilocso prayed for the dismissal of the present administrative matter as "the delay in the release of the warrant of arrest was not deliberate and [she] failed, in good faith, to promptly locate it."[17]

The Court's Ruling

We find that respondent Ilocso has been gravely remiss in the performance of her duties in Criminal Case No. 08-7977, resulting not only in the delay in the service of a copy of the warrant to Sonido (notwithstanding her repeated assurances in that regard), but in the failure to arrest the accused because copies of the warrant of arrest were not sent to the police authorities. Because of the failure to timely serve the warrant, the accused escaped arrest and was able to leave the country and place herself beyond the reach of the warrant.

Kristel, the accused in the criminal case, left the country for a job in Taiwan in May 2008. Sonido, the mother of the complainant in the criminal case, Nathalie, was given a copy of the warrant only on June 26, 2008, after having been given a run around by Ilocso. Looking back at what happened, Sonido's ordeal started when she went to Ilocso to ask for a copy of the warrant after she (Sonido) received, on January 28, 2008, a copy of the resolution finding probable cause in the criminal case against Kristel. Ilocso told Sonido to return the next day, but when she did, she still failed to get a copy of the warrant. Sonido returned several more times with the same results. Ilocso instead gave her all kinds of excuses, *e.g.*, that she had not yet prepared the warrant but she was already working on it; that nobody was there to sign the warrant; or that she lost the folder and could not locate it.

The OCA found Ilocso guilty of simple neglect of duty and recommended that she be suspended for one month without pay.[18]

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[17] *Supra* note 12, at 57.

[18] *Rollo*, pp. 46-47.

We disagree with this finding as Ilocso's infraction is more serious than simple neglect of duty. The delay in the release of the warrant of arrest in Criminal Case No. 08-7977 did not happen because Ilocso simply forgot about it or her workload was so heavy that it took her several months to prepare and release it.

The delay, to our mind, was by design and was not an innocent lapse or mistake. Ilocso waited for the proper time to give Sonido a copy of the warrant and to send copies to the implementing police authorities. The proper time obviously was when the accused could no longer be arrested because she had already left the country. Ilocso's promises, her excuses, the delay from the filing of the information to the release of the warrant of arrest, the time of the release to Sonido of a copy of the warrant, and the timing of the departure of the accused for Taiwan — all lead us to conclude that the release of the warrant was delayed to favor the accused.

Ilocso could not have missed the urgency of Sonido's request for a copy of the warrant of arrest. She kept on coming back for it until she could not stand the long wait anymore. She confronted Ilocso about it. How could Ilocso have forgotten, as she claimed, Sonido's request when she herself admitted that Sonido saw her no less than five times[19] to ask for a copy of the warrant? Ilocso only gave Sonido a copy of the warrant when it was already too late as it could no longer be served on the accused. These circumstances, to our mind, only show that there was a design to allow the accused to evade the service of a warrant of arrest. It took Ilocso almost five (5) months, from the time of Sonido's initial inquiry, to prepare and release the warrant to the proper authorities.

For knowingly delaying the release of the warrant of arrest in Criminal Case No. 08-7977, Ilocso had placed the court in a very negative light. It prejudiced the Court's standing in the community as it projected an image of a Court that is unable to

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[19] *Id.* at 55.

enforce its processes on time. For this reason, we find her liable not only for simple neglect of duty, but for the more serious offense of conduct prejudicial to the best interest of the service.

In *Liberty M. Toledo v. Liza E. Perez, etc.*,[20] we held that while the Rules do not provide a definition or enumeration of the acts that constitute conduct prejudicial to the best interest of the service, they refer to acts or omissions that violate the norm of public accountability and diminish – or tend to diminish – the people's faith in the judiciary.

Without doubt, Ilocso's very much delayed action on Sonido's request for a copy of the warrant of arrest in the criminal case and in the delivery of the warrant to the police authorities cast doubts on the capability of the court to administer justice fairly and expeditiously. Any misconduct similar to Ilocso's act is likely to reflect adversely on the administration of justice.[21] Thus, Ilocso should be made to answer for her infraction in a way that will serve as a lesson to everyone in the judiciary to be forthright in his dealings with the public, and to act speedily on matters within his area of responsibility, regardless of who is involved. To be sure, the prejudice she caused and her liability for her conduct can in no way be extinguished or mitigated by the issuance of a second warrant of arrest, or by the complainant's subsequent voluntary desistance from pursuing the case. The harm had already been done on the aggrieved party and on the judiciary when these developments transpired.

The Civil Service Commission classifies conduct prejudicial to the best interest of the service as a **grave offense** punishable by suspension without pay from six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense.[22] In light of the brazen way

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[20] A.M. Nos. P-03-1677 and P-07-2317, July 15, 2009, 593 SCRA 5, 11, citing *Ito v. De Vera*, A.M. No. P-01-1478, December 13, 2006, 511 SCRA 1, 11-12.

[21] *Paduganan-Peñaranda v. Songcuya*, A.M. No. P-01-1510, September 18, 2003, 411 SCRA 230.

[22] UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule IV, Section 52(A) 20.

Ilocso hoodwinked Sonido and given the prejudice she caused to the institution she serves, we deem a suspension for one (1) year without pay an appropriate penalty.

WHEREFORE, premises considered, Josefina G. Ilocso, Clerk III, Regional Trial Court, Branch 80, Morong, Rizal, is declared *LIABLE* for Conduct Prejudicial to the Best Interest of the Service. She shall suffer the penalty of *SUSPENSION* for one (1) year without pay, and is *WARNED* that a similar offense in the future shall be dealt with more severely.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-11-2931. June 1, 2011]
(Formerly A.M. OCA IPI No. 08-2852-P)

JOHN A. MENDEZ, ANGELITO CABALLERO and IVY CABALLERO, *complainants, vs.* **NERISSA A. BALBUENA**, **Court Interpreter, Municipal Trial Court in Cities, Branch 7, Cebu City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; HARASSMENT OF NEIGHBORS AND DISPLAY OF OVERBEARING CHARACTER ARE DEPLORABLE ACTS AMOUNTING TO OPPRESSION AND CONDUCT UNBECOMING A COURT EMPLOYEE.— We find the respondent's acts deplorable. It is clear from her actions that she harassed and threatened her neighbors and even used the police to perpetrate these acts.

Employees of the judiciary should be very circumspect in how they conduct themselves inside and outside the office, particularly when they use agents of the law in their actions. By her actions, she directly implied that she was using her court position to unilaterally enforce what she wanted — *i.e.*, to harass complainant Mendez. By so doing, she brought the image of the judiciary to disrepute, as this is not the way of the law and of those who enforce the law. It matters not that her acts were not work-related. Employees of the judiciary should be living examples of uprightness, not only in the performance of official duties, but also in their personal and private dealings with other people, so as to preserve at all times the good name and standing of the courts in the community. x x x The respondent's ugly display of an oppressive and overbearing character failed to meet the exacting standards required of employees of the judiciary and deserves administrative sanctions from the Court. The respondent's continued harassment of complainants to force them to leave the premises so she could occupy the whole place cannot and should not be countenanced. Clearly, respondent is guilty of oppression and of conduct unbecoming a court employee — acts that amount to simple misconduct.

2. ID.; ID.; ID.; DELIBERATE REFUSAL TO COMPLY WITH THE COURT'S RESOLUTION CONSTITUTES GROSS INSUBORDINATION AND OUTRIGHT DISRESPECT FOR THE COURT.— The Court abhors as well the respondent's utter disregard of the Court's Resolution requiring her to comment on the verified complaints. It should be borne in mind that a Court resolution requiring comment on an administrative complaint against officials and employees of the judiciary should not be construed as a mere request from the Court, nor should it be complied with partially, inadequately or selectively. The Court shall not and will not tolerate the indifference of a respondent to an administrative complaint and to resolutions requiring action on these complaints. The respondent's deliberate refusal to comply with the Resolutions of the Court constitutes gross insubordination, even outright disrespect for the Court.

D E C I S I O N

BRION, *J.*:

We resolve the present administrative case against Nerissa A. Balbuena (respondent), Court Interpreter, Municipal Trial Court in Cities (*MTCC*), Branch 7, Cebu City, filed by John A. Mendez, Angelito Caballero and the latter's daughter Ivy Caballero, for Oppression and Conduct Unbecoming a Public Officer.

In a Verified Complaint-Affidavit dated November 3, 2006,[1] Mendez narrated that in the early morning of May 4, 2006, the respondent, who lived next door to his rented room in the house of Angelito, called him up by phone, complaining that two (2) of the respondent's boarders were almost sideswiped by the motorcycle of his co-workers. The respondent demanded an apology from them. Mendez's co-workers did what the respondent demanded and apologized to one of the boarders. Not content with the apology given by Mendez's co-workers, the respondent turned her ire on Mendez and asked whether he has a license to operate his mineral water refilling station. He answered that its owner has a license to operate and sell.

To avoid any further argument with the respondent, Mendez decided to pack his clothes and other belongings, and to transfer temporarily to his mother's house. However, before he could leave his place, the respondent called by phone, hurled invectives at him and called him a "shameless" person. The respondent told him to immediately leave the premises, threatening that she would secure police assistance to bodily carry him from his rented room to the street. The respondent kept shouting while pounding hard on the wall that separates their rooms.

Mendez further claimed that in the early morning of May 5, 2006, Ivy went to see him at his mother's house to report that the respondent, accompanied by three (3) police officers, barged into his place, ransacked his room, and threw all his clothes out into the street. The respondent also cut-off his telephone line.

[1] *Rollo*, pp. 4-6.

Mendez's allegations were corroborated by Angelito, who was Mendez's landlord, and the latter's daughter, Ivy. In a sworn Joint Affidavit dated November 3, 2006,[2] Angelito and Ivy confirmed that the respondent, who lives in one part of their house, pounded very hard on the wall that separates their respective dwellings and hurled invectives against Mendez. They claimed that in the morning of May 5, 2006, the respondent barged into their dwelling, with three (3) policemen in tow, and without any search warrant, ransacked their belongings and threw them into the canal. The respondent also threw out the clothes of Mendez.

The complainants went to the Office of the *Barangay* Captain in *Barangay* Sambag 2, Cebu City, and filed a case for "Malicious Mischief, Dirtying and Throwing the Clothes to the Canal, and Conduct Unbecoming" against the respondent, docketed as *Barangay* Case No. 2006-089.[3] No settlement/conciliation was reached between the parties and the case was certified for filing in court.

In a 1st Indorsement dated January 2, 2007, the Office of the Court Administrator (*OCA*), referred the complaint to the respondent for her comment within ten (10) days from receipt. On February 10, 2007, she asked that she be given an extension ending on February 14, 2007. The request was granted.

The respondent failed to comment within the extended period. The OCA, in a tracer-letter dated May 30, 2007[4] reiterated its directive for the filing of comment within five (5) days from notice; otherwise it "[would] submit [the] matter to the Court without [the] comment." The respondent received a copy of the tracer-letter on June 15, 2007 through one "A. Cometa." Verification with the MTC Personnel Division of the OCA showed that the MTCC of Cebu, Branch 7 has an employee named Annabelle Cometa.

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[2] *Id.* at 7-8.

[3] *Id.* at 10.

[4] *Id.* at 14.

After waiting for two months without any compliance from the respondent, the Court issued a Resolution dated August 4, 2008 directing her to "[show cause] why she should not be administratively charged with refusing to submit her comment despite the two (2) directives from the OCA, and to [submit] the required comment within five (5) days from receipt of notice, with notice that should she fail to comply, the Court shall take the necessary action against her and decide the administrative complaint on the basis of the record at hand." Still, nothing was heard from her.

Because of the respondent's failure to comment despite warning that the case shall be submitted to the Court even without her comment, we deemed the case submitted for resolution[5] after considering the respondent's right to submit controverting evidence waived. This case now therefore submitted for decision based solely on the evidence submitted under the complaint.

We find the respondent's acts deplorable. It is clear from her actions that she harassed and threatened her neighbors and even used the police to perpetrate these acts.

Employees of the judiciary should be very circumspect in how they conduct themselves inside and outside the office,[6] particularly when they use agents of the law in their actions. By her actions, she directly implied that she was using her court position to unilaterally enforce what she wanted — *i.e.,* to harass complainant Mendez. By so doing, she brought the image of the judiciary to disrepute, as this is not the way of the law and of those who enforce the law. It matters not that her acts were not work-related.[7] Employees of the judiciary should be living examples of uprightness, not only in the performance of official duties, but also in their personal and private dealings with other people, so as to preserve at all times the good name and standing

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[5] *Bisnar v. Nicandro*, A.M. No. P-00-1427, February 14, 2007, 515 SCRA 608.

[6] *Lorenzo v. Lopez*, A.M. No. 2006-02-SC, October 15, 2007, 536 SCRA 11.

[7] *Ibid*.

of the courts in the community.[8] Any scandalous behavior or any act that may erode the people's esteem for the judiciary is unbecoming of an employee.[9] Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees.[10] At all times, court employees should avoid situations which tend to arouse suspicions that they are utilizing their official position for personal gain or advantage, to the prejudice of the public.[11]

The Code of Judicial Ethics mandates that court personnel must not only be, but also be perceived to be, free from any impropriety with respect to both their official duties and their behavior anywhere else. The image of the judiciary is mirrored in the conduct of its personnel whether inside or outside the court. Thus, court personnel must exhibit a high sense of integrity not only in the performance of their official duties but also in their personal affairs.[12] The respondent's ugly display of an oppressive and overbearing character failed to meet the exacting standards required of employees of the judiciary and deserves administrative sanctions from the Court. The respondent's continued harassment of complainants to force them to leave the premises so she could occupy the whole place cannot and should not be countenanced. Clearly, respondent is guilty of oppression and of conduct unbecoming a court employee — acts that amount to simple misconduct.[13]

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[8] *Santelices v. Samar*, A.M. No. 00-1394, January 15, 2002, 373 SCRA 78; and *Pablejan v. Calleja*, A.M. No. P-06-2102, January 24, 2006, 479 SCRA 562.

[9] *Ibid.; Quedan & Rural Credit Guarantee Corporation v. Caubalejo*, A.M. No. P-05-2066, September 12, 2005, 469 SCRA 524.

[10] *Opeña v. Luna*, A.M. No. P-02-1549, December 16, 2005, 478 SCRA 153.

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

[12] *Toledo v. Perez*, A.M. Nos. P-03-1677 & P-07-2317, July 15, 2009, 593 SCRA 5.

[13] *Re: Fighting Incident Between Two (2) Shuttle Bus Drivers, Messrs. Edilberto L. Idulsa & Ross C. Romero*, A.M. No. 2008-24-SC, July 14, 2009, 592 SCRA 582.

The Court abhors as well the respondent's utter disregard of the Court's Resolution requiring her to comment on the verified complaints. It should be borne in mind that a Court resolution requiring comment on an administrative complaint against officials and employees of the judiciary should not be construed as a mere request from the Court, nor should it be complied with partially, inadequately or selectively.[14] The Court shall not and will not tolerate the indifference of a respondent to an administrative complaint and to resolutions requiring action on these complaints. The respondent's deliberate refusal to comply with the Resolutions of the Court constitutes gross insubordination,[15] even outright disrespect for the Court.[16]

Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, the following penalties are prescribed for the offenses committed by the respondent:

1. Oppression
   1st offense - Suspension (6 mos. 1 day to 1 year)
   2nd offense - Dismissal
2. Simple Misconduct
   1st Offense - Suspension (1 mo. 1 day to 6 mos.)
   2nd offense - Dismissal
3. Gross Insubordination
   1st offense - Suspension 6 mos. 1 day to 1 year
   2nd offense - Dismissal

The same Rule provides that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed shall be that corresponding to the most serious charge or count and the rest shall be aggravating circumstances.[17] Where

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[14] *Florendo v. Cadano,* A.M. No. P-05-1983, October 20, 2005, 473 SCRA 448.

[15] *Bisnar v. Nicandro, supra* note 5.

[16] *Tabao v. Espina,* A.M. Nos. RTJ-96-1347 & RTJ-96-1348, June 14, 1996, 257 SCRA 298.

[17] Section 55.

aggravating and no mitigating circumstances are present, the penalty that shall be imposed at the maximum.[18]

WHEREFORE, respondent Nerissa A. Balbuena, Court Interpreter, Municipal Trial Court in Cities, Branch 7, Cebu City, is found *GUILTY* of Oppression and Conduct Unbecoming a Public Officer, Misconduct and Gross Insubordination. She is hereby suspended without pay for a period of one (1) year, effective upon receipt of the Court's decision.

The respondent is further *WARNED* that a commission of the same or similar acts in the future shall be dealt with more severely.

Let a copy of this Resolution be attached to the respondent's 201 file.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. RTJ-10-2246. June 1, 2011]
(Formerly A.M. OCA I.P.I. No. 09-3219-RTJ)

ATTY. RANDY P. BARENG, *complainant, vs.* **JUDGE ZENAIDA R. DAGUNA, Regional Trial Court, Branch 19, Manila,** *respondent.*

[18] Section 54.

SYLLABUS

JUDICIAL ETHICS; JUDGES; GROSS INEFFICIENCY AND UNDUE DELAY IN RENDERING AN ORDER AND IN TRANSMITTING THE RECORDS OF A CASE; FINE, IMPOSED.— We agree with the OCA's finding that Judge Daguna is liable for gross inefficiency for failing to adopt a system of record management in her court. Judge Daguna violated Rule 3 of the Code of Judicial Conduct[.] x x x On July 31, 2007, Judge Daguna also resolved Atty. Bareng's motion for reconsideration which was filed on January 31, 2007, or way beyond the required period. There was also a delay in sending the records of the appealed case to the CA. Rule 3.05, Canon 3 of the Code of Judicial Conduct provides that "A judge shall dispose of the court's business promptly and decide cases within the required periods." x x x In addition to gross inefficiency, we find Judge Daguna guilty of delay in rendering an order, as well as delay in transmitting the records of a case. Based on Rule 140 of the Rules of Court, the penalty for a less serious charge is either suspension or a fine. Considering Judge Daguna's retirement, we consider a total fine of ₱15,000.00 to be the appropriate penalty. This fine shall be deducted from the ₱50,000.00 withheld from her retirement benefits.

R E S O L U T I O N

BRION, *J.*:

Before us is the Complaint-Affidavit[1] filed by Atty. Randy P. Bareng, on July 8, 2009, against Presiding Judge Zenaida Daguna of the Regional Trial Court (*RTC*), Branch 19, Manila. Atty. Bareng accused Judge Daguna of *gross misconduct and manifest abuse of functions of her office*.

The Antecedents

Atty. Bareng is the counsel of Romulo Awingan, one of the accused in Criminal Case Nos. 05-237561 and 05-237562, for

[1] *Rollo*, pp. 1-7.

double murder, entitled "*People of the Philippines v. Licerio Antiporda, Jr., Lloyd Antiporda, Romulo Awingan and Richard Mecate*." These two murder cases were consolidated before the RTC, Manila, Branch 29 presided by Judge Cielito M. Grulla.[2] On October 26, 2005, Judge Grulla issued an Order[3] granting the public prosecutor's motion to withdraw the informations filed based on the findings of the Secretary of Justice.[4]

The private complainant filed a *Motion for Reconsideration, Inhibition and Transfer Cases to Regular Court*. Judge Grulla voluntarily inhibited herself from the case, and did not resolve the motion for reconsideration and the motion to transfer the cases. The consolidated cases were subsequently re-raffled to the RTC, Manila, Branch 19, presided by Judge Daguna.

In her December 9, 2005 Resolution,[5] Judge Daguna granted the private complainant's motion for reconsideration and set aside Judge Grulla's October 26, 2005 Order. Accused Awingan, through Atty. Bareng, filed a motion for reconsideration. Judge Daguna denied the motion in her Order of February 3, 2006.[6] Awingan, thereafter, filed a petition for *certiorari* and prohibition before the Court of Appeals (*CA*), alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge Daguna.

During the pendency of the CA petition, Judge Daguna issued warrants of arrest against all the accused.

The CA granted Awingan's petition for *certiorari* and prohibition in its November 10, 2006 Decision.[7] The CA found that Judge Daguna acted with grave abuse of discretion because

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[2] *Id.* at 103.

[3] *Id.* at 16.

[4] *Id.* at 15.

[5] *Id.* at 103.

[6] *Ibid*.

[7] *Id.* at 8-36; Penned by Associate Justice Lucas P. Bersamin, and concurred in by Associate Justices Martin S. Villarama, Jr. and Monina Arevalo-Zenarosa.

she "arbitrarily and whimsically disregarded the guidelines for acting on the People's *motion to withdraw informations* and practiced unreasonable and inexplicable selectivity by not considering *all* the records available to her in order to make her independent assessment and evaluation of the merits of the cases before her."[8] The CA nullified her two resolutions, ordered her to grant the motion to withdraw the informations filed, and prohibited her from further proceeding with Criminal Case Nos. 05-237561-62.

Since the warrants of arrest against all the accused were still in force, Atty. Bareng filed before the RTC a Manifestation and Motion, on November 15, 2006,[9] to inform the RTC of the CA Decision and to ask for its immediate implementation. He attached a certified copy of the CA Decision.

Judge Daguna denied the motion for lack of merit in her December 4, 2006 Order.[10] She pointed out that the Rules of Court provides that only final and executory judgments may be executed. She noted that the required entry of judgment, to show that the decision was executory, was not submitted with the motion, and that the record of the case showed that the private complainant filed a motion for reconsideration before the CA. Judge Daguna also ordered Atty. Bareng "to SHOW CAUSE within ten (10) days from receipt why he should not be held in contempt of court or otherwise dealt with administratively for deliberately attempting to mislead the Court."[11]

Atty. Bareng moved for the reconsideration of the Order,[12] but Judge Daguna turned the motion down in her Order of January 3, 2007.[13] She found Atty. Bareng guilty of contempt

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[8] *Id.* at 33.

[9] *Id.* at 37-41.

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

[11] *Id.* at 44.

[12] *Id.* at 45-52.

[13] *Id.* at 53-56.

of court and penalized him with a fine of ₱1,000.00, and warned him against the repetition of the same offense.

Atty. Bareng moved for the reconsideration of this Order[14] and subsequently filed a supplement to this motion on March 5, 2007.[15] When the RTC failed to immediately resolve the motion, Atty. Bareng filed his first motion to resolve, dated January 2, 2008.[16] On February 4, 2008, he filed his manifestation and second motion to resolve.[17]

In the Order[18] issued, Judge Daguna stated that she resolved Atty. Bareng's motion for reconsideration on July 31, 2007, but her Order might not have been released; hence, she directed that the Order be reprinted and the parties be furnished with copies. Since Judge Daguna denied his motion for reconsideration for lack of merit,[19] Atty. Bareng filed his notice of appeal[20] on May 20, 2008, after receiving his copy of the order on May 6, 2008.[21]

On July 8, 2009, Atty. Bareng filed with the Office of the Court Administrator (OCA) his complaint-affidavit,[22] charging Judge Daguna with gross misconduct and manifest abuse of functions of her office, based on the following allegations:

1. That Judge Daguna, in her December 4, 2006 Order, insinuated that there was "pecuniary estimation" attached to the manifestation and motion filed by Atty. Bareng; this, according to Atty. Bareng, was unfair and tainted with malice;

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[14] *Id.* at 57-64.

[15] *Id.* at 65-67.

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

[17] *Id.* at 70-72.

[18] *Id.* at 100; dated March 14, 2008.

[19] *Rollo*, p. 97.

[20] *Id.* at 98.

[21] *Ibid.*

[22] *Supra* note 1.

2. That despite Atty. Bareng's explanation, Judge Daguna found him guilty of contempt of court;

3. That he filed a motion for reconsideration and supplement to the motion for reconsideration;

4. That after the lapse of almost one year, he filed his first motion to resolve;

5. That after more than one month, he filed a manifestation and second motion to resolve;

6. That Judge Daguna claimed that she had resolved the motion for reconsideration as early as July 31, 2007 but apparently the order had not been released; and

7. That he filed a notice of appeal on May 20, 2008 but Judge Daguna had not acted on the appeal despite his motion to resolve and/or elevate appeal dated June 19, 2009.

In her July 31, 2009 Comment,[23] Judge Daguna denied that the delays attributed to her were her fault. She blamed her staff for the delay. Thus:

> 7. As regards paragraph 19 to 22, it was a good thing that the good lawyer, herein complainant, filed a "Motion To Resolve" thereby getting the attention of the Court on the purely inadvertent failure on the part of the court staff to mail the Order dated July 31, 2007. At any rate, the same has been settled by reprinting the same and had it released by mail to the parties. The situation in the office then has to be taken into consideration as a backgrounder of the inadvertence, with this office being understaffed as the Clerk in-charge of the criminal cases had gone AWOL, and the Process Server, who pitches in during the absence of the clerks for the typing of notices and mailing was detailed to the Office of the Clerk of Court. So it was one of the court stenographers who assumed the clerical duties of typing the notices and mailing during his free time as stenographer. The Order dated July 31, 2007 (Annex "6") was duly attached to the record

[23] *Rollo*, pp. 78-81.

> but the staff could not explain why the copies thereof and the notices were missing for which reason the Court hastily issued the Order dated March 14, 2008 (Annex "7") after investigating the staff over the lapse averted to. Meanwhile, the respondent had started to be ailing and was slowed down by her ailment but it was never a lapse committed by the respondent but admittedly a lapse on the part of the court staff[.]

She also explained the delay in forwarding the records to the CA, as follows:

> 8. The "Notice of Appeal" interposed by Atty. Randy P. Bareng to the Order of this Court convicting him for contempt of Court and subjecting him to a fine of ₱1,000.00 has been duly acted upon by the Court by readily issuing an Order dated May 21, 2008 (Annex "8") giving due course thereto with a directive addressed to the staff to forward the documents appurtenant to the contempt proceedings. However[,] to her great dismay, she learned of this another lapse committed by the staff after she received a copy of this administrative complaint that the said Order has not been released on time and has not even been mailed to the parties. Worse, it appears from the record that the appurtenant documents were only forwarded to the Court of Appeals on June 23, 2009 as shown in the Transmittal Letter (Annex "9") after the herein complainant filed a "Motion To Resolve And /Or Elevate Appeal". The Branch Clerk explained that it was pure oversight on his part considering that everything seemed regular on the record as the proceedings in these cases are suspended due to the incidents pending for resolution in the appellate courts. But he failed to remember that there was an order that was to be complied with relative to the contempt proceedings particularly the transmittal of the documents on appeal. He honestly thought it has already been taken care of. The Clerk in-charge for criminal cases in turn said that he did not bother to have the Order (dated May 21, 2008) mailed to the parties as he thought that there was no need for it since the directive of the Court was only to forward the appurtenant record/documents to the Court of Appeals. Yet he failed to forward the same on time as the thought was sidelined by other equally important duties

he had to attend to and admitted that his attention was called upon receipt of the "Motion To Resolve and/or Elevate Appeal. This Clerk in-charge of criminal cases is a new employee and understandably has failed to grasp the extent of his duties as such;

9. The Branch Clerk did not bother to inform me of the "Motion to Resolve and/or Elevate Appeal" filed by Atty. Bareng allegedly to spare me of the anxieties that the matter would cause in deference to my present health condition, as it inevitably has now caused my blood pressure to shoot up.

While the administrative case was pending, Judge Daguna applied for disability retirement in late 2009. She was allowed to retire, but because of the two (2) pending administrative cases against her, the amount of ₱50,000.00 was withheld from her retirement benefits to answer for whatever adverse decision the Court may later impose on her.

The OCA's Report/Recommendation

In its submission dated February 24, 2010,[24] the OCA found no evidence to sustain the charges of gross misconduct and manifest abuse of functions of her office against Judge Daguna. The OCA, however, found Judge Daguna guilty of gross inefficiency. The OCA's report stated:

The inefficiency of the respondent Judge is apparent in the following instances: (1) She acknowledged the fact that she had first known of the filing of the Motion to Resolve from the complainant himself which also led to her knowledge of the failure to mail her 31 July 2007 Order; (2) She likewise learned first hand, when she received a copy of the present administrative complaint, that her 21 May 2008 Order giving due course to the complainant's Notice of Appeal was not released on time; (3) She attempted to escape responsibility as regards the failure of the court staff in mailing the said twin Orders by stating that they were resolved on time. It is not likewise clear why the respondent Judge did not pay much attention to the desist order of the appellate court.

It must be noted that the respondent rendered the 31 July 2007 Order beyond the 90-day reglementary period reckoned from the

[24] *Id.* at 103-109.

complainant's Motion for Reconsideration dated 31 January 2007. Granting *arguendo* that the said Order was indeed issued, the same was issued with more than 3 months of delay or a period of 6 months from the filing of the complainant's last pleading which is a flagrant violation of Rule 3.05, Canon 3 of the Code of Judicial Ethics and Section 15 (1) and (2), Article VII of the Constitution. xxx

Lastly, judges are not allowed to use their staff as shields to evade responsibility for mistakes and mishaps in the course of the performance of their duties (*Hilario v. Concepcion,* 327 SCRA 96). He should be the master of his own domain and take responsibility for the mistakes of his subjects (*Pantaleon v. Guadiz, Jr.*, 323 SCRA 147). Judges are bound to dispose of the court's business promptly and to decide cases within the required period (*Dela Cruz v. Bersamira*, 336 SCRA 253). Delay in the disposition of even one (1) case constitutes gross inefficiency which the Supreme Court will not tolerate.

The OCA recommended that the case be redocketed as a regular administrative matter and that Judge Daguna be fined ₱10,000.00, deductible from the ₱50,000.00 withheld from her retirement benefits.

The Court's Ruling

We agree with the OCA's finding that Judge Daguna is liable for gross inefficiency for failing to adopt a system of record management in her court. Judge Daguna violated Rule 3 of the Code of Judicial Conduct that provides:

Rule 3.08 – A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions or other judges and court personnel.

Rule 3.09 – A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.

On July 31, 2007,[25] Judge Daguna also resolved Atty. Bareng's motion for reconsideration which was filed on January 31, 2007,

[25] *Id.* at 105.

or way beyond the required period. There was also a delay in sending the records of the appealed case to the CA. Rule 3.05, Canon 3 of the Code of Judicial Conduct provides that "A judge shall dispose of the court's business promptly and decide cases within the required periods."

Rule 140 of the Rules of Court provides:

SECTION 9. Less Serious Charges. — Less serious charges include:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;

x x x x x x x x x

SECTION 11. Sanctions. —

x x x x x x x x x

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

In addition to gross inefficiency, we find Judge Daguna guilty of delay in rendering an order, as well as delay in transmitting the records of a case. Based on Rule 140 of the Rules of Court, the penalty for a less serious charge is either suspension or a fine. Considering Judge Daguna's retirement, we consider a total fine of ₱15,000.00 to be the appropriate penalty. This fine shall be deducted from the ₱50,000.00 withheld from her retirement benefits.

WHEREFORE, premises considered, Judge Zenaida R. Daguna, Presiding Judge of the Regional Trial Court, Branch 19, Manila, is hereby declared *GUILTY* of gross inefficiency, and of undue delay in rendering an order and in transmitting the records of a case. She is hereby *FINED* Fifteen Thousand Pesos (₱15,000.00), to be deducted from the Fifty Thousand Pesos (₱50,000.00) withheld from her retirement benefits.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. SCC-11-16-P. June 1, 2011]
(Formerly A.M. OCA I.P.I No. 10-33-SCC [P])

SULTAN PANDAGARANAO A. ILUPA, *complainant, vs.* **MACALINOG S. ABDULLAH, Clerk of Court II, Shari'a Circuit Court, Marawi City,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT OF SHARI'A CIRCUIT COURT; HAS MINISTERIAL DUTY TO ISSUE CERTIFICATE OF DIVORCE.— We agree with the OCA and Judge Disalo that the complaint is **devoid of merit**. The issuance of a certificate of divorce is within the respondent's duties, as defined by law. Articles 81 and 83 of the Muslim Code of the Philippines provide: Article 81. *District Registrar*. - The Clerk of Court of the Shari'a District Court shall, in addition to his regular functions, act as District Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within the territorial jurisdiction of said court. **The Clerk of Court of the Shari'a Circuit Court shall act as Circuit Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within his jurisdiction.** Article 83. *Duties of Circuit Registrar*. - Every Circuit Registrar shall: x x x d) Issue certified transcripts or copies of any certificate or document registered upon payment of the required fees[.] We quote with

> approval the following excerpt from the OCA's Report: Evidently, respondent Clerk of Court merely performed his ministerial duty in accordance with the foregoing provisions. The alleged erroneous entries on the Certificate of Divorce cannot be attributed to respondent Clerk of Court considering that it is only his duty to receive, file and register the certificate of divorce presented to him for registration.

R E S O L U T I O N

BRION, *J.*:

The present administrative matter stemmed from the November 29, 2009 letter-complaint[1] of Sultan Pandagaranao A. Ilupa (*complainant*) charging Clerk of Court II Macalinog S. Abdullah (*respondent*) of the Shari'a Circuit Court (SCC) in Marawi City with *abuse of authority* in relation with the issuance of a certificate of divorce.

The Facts

The facts are summarized from the report of the Office of the Court Administrator (OCA) dated July 9, 2010.[2]

The charge

The complainant alleges in support of the charge that the respondent exhibited ignorance of his duties as clerk of court when he issued a certificate of divorce, (OCRG Form No. 102) relying mainly on an illegal "*Kapasadan*" or Agreement. He claims that the agreement was executed under duress and intimidation; the certificate of divorce itself is defective and unreliable as there were erroneous entries in the document and unfilled blanks. He claims that the respondent took away his beautiful wife by force or had a personal interest in her.

The complainant believes that the respondent should not have issued the divorce certificate because divorce is not recognized

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[1] *Rollo*, pp. 28-29.

[2] *Id*. at 90-93.

in the country and the "*Kapasadan*" or separation agreement had already been revoked by Philippine civil law. In a supplemental letter,[3] the complainant alleges that he signed the "*Kapasadan*" because the Principal of the Mindanao State University, a certain Mackno, and Police Officer Hadji Amin threatened to kill him. For this reason, he wrote a letter to the SCC judge of Marawi City, assailing the agreement; he even personally handed a copy of the letter to the respondent who took no action on the matter.

To save his marriage with Nella Rocaya Mikunug — originally solemnized on May 19, 1959, based on the Maranao culture, and later renewed through a civil wedding before a Marawi City judge — the complainant filed a petition for restitution of marital rights[4] with the SCC, Marawi City. To his dismay, the judge dismissed the petition without any notice or summons to him. He suspects that the dismissal was due to the respondent's "*hukos-pukos*" or manipulation.

The respondent's comment

In his comment dated March 19, 2010,[5] the respondent prays that the complaint be denied for lack of merit. He mainly argues that his issuance of a certificate of divorce is not illegal, capricious or whimsical as he acted within the bounds of his authority. He explains that as court registrar, it is his ministerial duty to accept and register marriage contracts, conversions to Islam and divorce certificates. When he performs this duty, he assumes no responsibility with respect to the entries made by the applicants or owners of the documents to be registered.

The respondent argues that contrary to the complainant's claim, there was a divorce agreement, in the Maranao dialect, attached to the divorce certificate. The complainant even signed both pages of the agreement. Although the agreement was not labeled as such, its essence indicates that the couple agreed to

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

[4] *Id.* at 30-34.

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

have a divorce and it was so understood also by their children and the witnesses who signed the agreement.

The respondent denies that he took the complainant's wife by force or that he was interested in her; he claims that no evidence was ever adduced to prove these allegations. With the divorce agreement, Mrs. Ilupa applied for a certificate of divorce which he issued under Divorce Registry No. 2009-027 on November 5, 2009. He points out that in issuing the certificate of divorce, he observed the same procedure applied to all applicants or registrants.

On the complainant's claim that there is no divorce in the Philippines, the respondent points out that this is true only as far as the civil law is concerned, but not under the Muslim Law which recognizes divorce. The civil marriage they subsequently entered into was just an affirmation of their marriage vows under the Muslim Law. Also, the court's dismissal of the complainant's petition for restitution of marital rights[6] affirmed the divorce between the Ilupa couple.

The administrative investigation

In compliance with the Court's Resolution dated August 25, 2010,[7] Executive Judge Gamor B. Disalo of the RTC, 12th Judicial Region, Marawi City, investigated the complaint, and submitted a Report and Recommendation dated January 19, 2010.[8]

It appears from the report that Judge Disalo heard the complaint three times, *i.e.*, on December 15, 22 and 29, 2010. The respondent appeared at the hearing on December 15, 2010 and reiterated the arguments he earlier raised in his comment. He failed to appear at the subsequent hearings.

The complainant's non-cooperation prompted Judge Disalo to close the investigation and to conclude, based on the facts

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[6] *Supra* note 4.

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

[8] Should be dated January 19, 2011.

gathered by the OCA and on the cited applicable laws, that sufficient grounds existed to dismiss the complaint.

The Court's Ruling

We agree with the OCA and Judge Disalo that the complaint is **devoid of merit**. The issuance of a certificate of divorce is within the respondent's duties, as defined by law. Articles 81 and 83 of the Muslim Code of the Philippines provide:

> Article 81. *District Registrar*. - The Clerk of Court of the Shari'a District Court shall, in addition to his regular functions, act as District Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within the territorial jurisdiction of said court. **The Clerk of Court of the Shari'a Circuit Court shall act as Circuit Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within his jurisdiction.**
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> Article 83. *Duties of Circuit Registrar*. - Every Circuit Registrar shall:
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> a) File every certificate of marriage (which shall specify the nature and amount of the dower agreed upon), divorce or revocation of divorce and conversion and such other documents presented to him for registration;
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> b) Compile said certificates monthly, prepare and send any information required of him by the District Registrar;
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> c) Register conversions involving Islam;
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> d) Issue certified transcripts or copies of any certificate or document registered upon payment of the required fees[.]

We quote with approval the following excerpt from the OCA's Report:

Evidently, respondent Clerk of Court merely performed his ministerial duty in accordance with the foregoing provisions. The alleged erroneous entries on the Certificate of Divorce cannot be attributed to respondent Clerk of Court considering that it is only

his duty to receive, file and register the certificate of divorce presented to him for registration. Further, even if there were indeed erroneous entries on the certificate of divorce, such errors cannot be corrected nor cancelled through [his] administrative complaint.

Anent the legality of the divorce of the complainant and Dr. Nella Rocaya Mikunug-Ilupa, this Office is bereft of any authority to rule on the matter. The issue is judicial in nature which cannot be assailed through this administrative proceeding.

Finally, on the allegation that the respondent Clerk of Court manipulated the dismissal of his petition for restitution of marital rights, we find the same unsubstantiated. Aside from complainant's bare allegation, there was no substantial evidence presented to prove the charge. It is a settled rule in administrative proceedings that the complainant has the burden of proving the allegations in his or her complaint with substantial evidence. In the absence of evidence to the contrary, the presumption that the respondent has regularly performed his duties will prevail (*Rafael Rondina, et al. v. Associate Justice Eloy Bello, Jr.*, A.M. No. CA-5-43, 8 July 2005).

RECOMMENDATION: Respectfully submitted, for the consideration of the Honorable Court, is the recommendation that the administrative case against Macalinog S. Abdullah, Clerk of Court II, Shari'a Circuit Court, Marawi City, be DISMISSED for lack of merit.[9]

We find this evaluation and recommendation fully in order, and accordingly approve the Report. Thus, the complaint should be dismissed for lack of merit.

WHEREFORE, premises considered, the administrative matter against Macalinog S. Abdullah, Clerk of Court II, Shari'a Circuit Court, Marawi City, for *abuse of authority* is *DISMISSED* for lack of merit.

SO ORDERED.

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

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[9] *Rollo*, pp. 92-93.

SECOND DIVISION

[G.R. No. 154704. June 1, 2011]

NELLIE *VDA. DE* FORMOSO and her children, namely, MA. THERESA FORMOSO-PESCADOR, ROGER FORMOSO, MARY JANE FORMOSO, BERNARD FORMOSO and PRIMITIVO MALCABA, *petitioners, vs.* **PHILIPPINE NATIONAL BANK, FRANCISCO ARCE, ATTY. BENJAMIN BARBERO, and ROBERTO NAVARRO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING; AUTHORITY TO SIGN FOR CO-PETITIONERS, NOT SHOWN.— Admittedly, among the seven (7) petitioners mentioned, only Malcaba signed the verification and certification of non-forum shopping in the subject petition. There was no proof that Malcaba was authorized by his co-petitioners to sign for them. There was no special power of attorney shown by the Formosos authorizing Malcaba as their attorney-in-fact in filing a petition for review on *certiorari.* Neither could the petitioners give at least a reasonable explanation as to why only he signed the verification and certification of non-forum shopping.

2. ID.; ID.; ID.; RELAXATION OF THE RULE REGARDING THE CERTIFICATION AGAINST FORUM SHOPPING, NOT WARRANTED.— Indeed, liberality and leniency were accorded in some cases. In these cases, however, those who did not sign were relatives of the lone signatory, so unlike in this case, where Malcaba is not a relative who is similarly situated with the other petitioners and who cannot speak for them. x x x [T]he Court does not see any similarity at all in the case at bench to compel itself to relax the requirement of strict compliance with the rule regarding the certification against forum shopping.

3. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ENTITLEMENT TO DAMAGES AND ATTORNEY'S FEES

IS A FACTUAL ISSUE WHICH IS BEYOND THE AMBIT OF A RULE 45 PETITION.— Primarily, Section 1, Rule 45 of the Rules of Court categorically states that the petition filed shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. In this case, the petition clearly raises a factual issue. As correctly argued by PNB, the substantive issue of whether or not the petitioners are entitled to moral and exemplary damages as well as attorney's fees is a factual issue which is beyond the province of a petition for review on *certiorari*.

APPEARANCES OF COUNSEL

Gerwin A. Rabang for petitioners.
Alexander E. Bacarro for PNB.

D E C I S I O N

MENDOZA, *J.*:

Assailed in this petition are the January 25, 2002 Resolution[1] and the August 8, 2002 Resolution[2] of the Court of Appeals *(CA)* which dismissed the petition for *certiorari* filed by the petitioners on the ground that the verification and certification of non-forum shopping was signed by only one of the petitioners in CA G.R. SP No. 67183, entitled "*Nellie P. Vda. De Formoso, et al. v. Philippine National Bank, et al.*"

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[1] *Rollo*, pp, 26-27; penned by Associate Justice Mariano C. Del Castillo (now Supreme Court Justice) and concurred in by Associate Justice Ruben T. Reyes (former Supreme Court Justice) and Associate Justice Renato C. Dacudao.

[2] *Id.* at 29.

The Factual and Procedural Antecedents

Records show that on October 14, 1989, Nellie Panelo *Vda. De* Formoso *(Nellie)* and her children namely: Ma. Theresa Formoso-Pescador, Roger Formoso, Mary Jane Formoso, Bernard Formoso, and Benjamin Formoso, executed a special power of attorney in favor of Primitivo Malcaba *(Malcaba)* authorizing him, among others, to secure all papers and documents including the owner's copies of the titles of real properties pertaining to the loan with real estate mortgage originally secured by Nellie and her late husband, Benjamin S. Formoso, from Philippine National Bank, Vigan Branch *(PNB)* on September 4, 1980.

On April 20, 1990, the Formosos sold the subject mortgaged real properties to Malcaba through a Deed of Absolute Sale. Subsequently, on March 22, 1994, Malcaba and his lawyer went to PNB to fully pay the loan obligation including interests in the amount of ₱2,461,024.74.

PNB, however, allegedly refused to accept Malcaba's tender of payment and to release the mortgage or surrender the titles of the subject mortgaged real properties.

On March 24, 1994, the petitioners filed a Complaint for Specific Performance against PNB before the Regional Trial Court of Vigan, Ilocos Sur *(RTC)* praying, among others, that PNB be ordered to accept the amount of ₱2,461,024.74 as full settlement of the loan obligation of the Formosos.

After an exchange of several pleadings, the RTC finally rendered its decision[3] on October 27, 1999 favoring the petitioners. The petitioners' prayer for exemplary or corrective damages, attorney's fees, and annual interest and daily interest, however, were denied for lack of evidence.

PNB filed a motion for reconsideration but it was denied for failure to comply with Rule 15, Section 5 of the 1997 Rules of

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[3] *Id.* at 131-144.

Civil Procedure. PNB then filed a Notice of Appeal but it was dismissed for being filed out of time.

The petitioners received their copy of the decision on November 26, 1999, and on January 25, 2001, they filed their Petition for Relief from Judgment[4] questioning the RTC decision that there was no testimonial evidence presented to warrant the award for moral and exemplary damages. They reasoned out that they could not then file a motion for reconsideration because they could not get hold of a copy of the transcripts of stenographic notes. In its August 6, 2001 Order, the RTC denied the petition for lack of merit.[5]

On September 7, 2001, the petitioners moved for reconsideration but it was denied by the RTC in its Omnibus Order of September 26, 2001.[6]

Before the Court of Appeals

On November 29, 2001, the petitioners filed a petition for *certiorari* before the CA challenging the RTC Order of August 6, 2001 and its Omnibus Order dated September 26, 2001.

In its January 25, 2002 Resolution, the CA dismissed the petition stating that:

> The verification and certification of non-forum shopping was signed by only one (Mr. Primitivo Macalba) of the many petitioners. In *Loquias v. Office of the Ombudsman*, G.R. No. 139396, August 15, 2000, it was ruled that all petitioners must be signatories to the certification of non-forum shopping unless the one who signed it is authorized by the other petitioners. In the case at bar, there was no showing that the one who signed was empowered to act for the rest. Therefore, it cannot be presumed that the one who signed knew to the best of his knowledge whether his co-petitioners had the same or similar claims or actions filed or pending. The ruling in Loquias further declared that substantial compliance will not suffice in the

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[4] *Id.* at 158.

[5] *Id.* at 18.

[6] *Id.* at 14.

matter involving strict observance of the Rules. Likewise, the certification of non-forum shopping requires personal knowledge of the party who executed the same and that petitioners must show reasonable cause for failure to personally sign the certification. Utter disregard of the Rules cannot just be rationalized by harping on the policy of liberal construction.

Aggrieved, after the denial of their motion for reconsideration, the petitioners filed this petition for review anchored on the following

GROUNDS

THE COURT OF APPEALS PATENTLY ERRED IN RULING THAT ALL THE PETITIONERS MUST SIGN THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING IN A PETITION FOR *CERTIORARI* WHEREIN ONLY QUESTIONS OF LAW ARE INVOLVED.

ALTERNATIVELY, THE COURT OF APPEALS PATENTLY ERRED IN DISMISSING THE WHOLE PETITION WHEN AT THE VERY LEAST THE PETITION INSOFAR AS PETITIONER MALCABA IS CONCERNED BEING THE SIGNATORY THEREOF SHOULD HAVE BEEN GIVEN DUE COURSE.

THE COURT OF APPEALS PATENTLY ERRED IN GIVING MORE WEIGHT ON TECHNICALITIES WHEN THE PETITION BEFORE IT WAS CLEARLY MERITORIOUS.[7]

The petitioners basically argue that they have substantially complied with the requirements provided under the 1997 Rules of Civil Procedure on Verification and Certification of Non-Forum Shopping. The petitioners are of the view that the rule on Verification and Certification of Non-Forum Shopping that all petitioners must sign should be liberally construed, since only questions of law are raised in a petition for *certiorari* and no factual issues that require personal knowledge of the petitioners.

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[7] *Id.* at 15.

The petitioners further claim that they have a meritorious petition because contrary to the ruling of the RTC, their Petition for Relief clearly showed that, based on the transcript of stenographic notes, there was enough testimonial evidence for the RTC to grant them damages and attorney's fees as prayed for.

On the other hand, PNB counters that the mandatory rule on the certification against forum shopping requires that all of the six (6) petitioners must sign, namely: Nellie *Vda. De* Formoso and her children Ma. Theresa Formoso-Pescador, Roger Formoso, Mary Jane Formoso, and Bernard Formoso, and Primitivo Malcaba. Therefore, the signature alone of Malcaba on the certification is insufficient.

PNB further argues that Malcaba was not even a party or signatory to the contract of loan entered into by his co-petitioners. Neither was there evidence that Malcaba is a relative or a co-owner of the subject properties. It likewise argues that, contrary to the stance of the petitioners, the issue raised before the CA, as to whether or not the petitioners were entitled to moral and exemplary damages as well as attorney's fees, is a factual one.

Finally, PNB asserts that the body of the complaint filed by the petitioners failed to show any allegation that Macalba alone suffered damages for which he alone was entitled to reliefs as prayed for. PNB claims that the wordings of the complaint were clear that all the petitioners were asking for moral and exemplary damages and attorney's fees.

OUR RULING

The petition lacks merit.

Certiorari is an extraordinary, prerogative remedy and is never issued as a matter of right. Accordingly, the party who seeks to avail of it must strictly observe the rules laid down by law.[8] Section 1, Rule 65 of the 1997 Rules of Civil Procedure provides:

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[8] *Eagle Ridge Golf & Country Club v. Court of Appeals & Eagle Ridge Employees Union (EREU*), G.R. No. 178989, March 18, 2010, 616 SCRA 116.

SECTION 1. *Petition for certiorari*.- When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a **sworn certification of non-forum shopping** as provided in the third paragraph of Section 3, Rule 46. [Emphasis supplied]

Under Rule 46, Section 3, paragraph 3 of the 1997 Rules of Civil Procedure, as amended, petitions for *certiorari* must be verified and accompanied by a sworn certification of non-forum shopping.

SECTION 3. *Contents and filing of petition; effect of non-compliance with requirements*. – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or his duly authorized representative, or by the proper officer of the court, tribunal, agency

or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of ₱500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. [Emphases supplied]

The acceptance of a petition for *certiorari* as well as the grant of due course thereto is, in general, addressed to the sound discretion of the court. Although the Court has absolute discretion to reject and dismiss a petition for *certiorari*, it does so only (1) when the petition fails to demonstrate grave abuse of discretion by any court, agency, or branch of the government; or (2) **when there are procedural errors, like violations of the Rules of Court or Supreme Court Circulars**.[9] [Emphasis supplied]

In the case at bench, the petitioners claim that the petition for *certiorari* that they filed before the CA substantially complied with the requirements provided for under the 1997 Rules of Civil Procedure on Verification and Certification of Non-Forum Shopping.

The Court disagrees.

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[9] *Athena Computers, Inc. and Joselito R. Jimenez v. Wesnu A. Reyes*, G.R. No. 156905, September 5, 2007, 532 SCRA 343, 350.

Sections 4 and 5 of Rule 7 of the 1997 Rules of Civil Procedure provide:

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 pleadings 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.

SEC. 5. Certification against forum shopping. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. x x x.

In this regard, the case of *Oldarico S. Traveno v. Bobongon Banana Growers Multi-Purpose Cooperative*,[10] is enlightening:

Respecting the appellate court's dismissal of petitioners' appeal due to the failure of some of them to sign the therein accompanying verification and certification against forum-shopping, the Court's guidelines for the bench and bar in *Altres v. Empleo,* which were culled "from jurisprudential pronouncements," are instructive:

For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The Court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable

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[10] G.R. No. 164205, September 3, 2009, 598 SCRA 27.

or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.

The petition for *certiorari* filed with the CA stated the following names as petitioners: Nellie Panelo *Vda. De* Formoso, Ma. Theresa Formoso-Pescador, Roger Formoso, Mary Jane Formoso, Bernard Formoso, Benjamin Formoso, and Primitivo Malcaba.

Admittedly, among the seven (7) petitioners mentioned, only Malcaba signed the verification and certification of non-forum shopping in the subject petition. There was no proof that Malcaba was authorized by his co-petitioners to sign for them. There was no special power of attorney shown by the Formosos authorizing Malcaba as their attorney-in-fact in filing a petition for review on *certiorari*. Neither could the petitioners give at least a reasonable explanation as to why only he signed the verification and certification of non-forum shopping. In *Athena Computers, Inc. and Joselito R. Jimenez v. Wesnu A. Reyes*, the Court explained that:

The verification of the petition and certification on non-forum shopping before the Court of Appeals were signed only by Jimenez. There is no showing that he was authorized to sign the same by Athena, his co-petitioner.

Section 4, Rule 7 of the Rules states that 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. Consequently, the verification should have been signed not only by Jimenez but also by Athena's duly authorized representative.

In *Docena v. Lapesura*, we ruled that the **certificate of non-forum shopping should be signed by all the petitioners or plaintiffs in a case, and that the signing by only one of them is insufficient. The attestation on non-forum shopping requires**

personal knowledge **by the party executing the same, and the lone signing petitioner cannot be presumed to have personal knowledge of the filing or non-filing by his co-petitioners of any action or claim the same as similar to the current petition.**

The certification against forum shopping in CA-G.R. SP No. 72284 is fatally defective, not having been duly signed by both petitioners and thus warrants the dismissal of the petition for *certiorari*. We have consistently held that the certification against forum shopping must be signed by the principal parties. With respect to a corporation, the certification against forum shopping may be signed for and on its behalf, by a specifically authorized lawyer who has personal knowledge of the facts required to be disclosed in such document.

While the Rules of Court may be relaxed for persuasive and weighty reasons to relieve a litigant from an injustice commensurate with his failure to comply with the prescribed procedures, nevertheless they must be faithfully followed. In the instant case, petitioners have not shown any reason which justifies relaxation of the Rules. We have held that procedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights. Like all rules, they are required to be followed except for the most persuasive of reasons when they may be relaxed. Not one of these persuasive reasons is present here.

In fine, we hold that the Court of Appeals did not err in dismissing the petition for *certiorari* in view of the procedural lapses committed by petitioners.[11] [Emphases supplied]

Furthermore, the petitioners argue that the CA should not have dismissed the whole petition but should have given it due course insofar as Malcaba is concerned because he signed the certification. The petitioners also contend that the CA should have been liberal in the application of the Rules because they have a meritorious case against PNB.

The Court, however, is not persuaded.

The petitioners were given a chance by the CA to comply with the Rules when they filed their motion for reconsideration,

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[11] *Supra* note 9.

but they refused to do so. Despite the opportunity given to them to make all of them sign the verification and certification of non-forum shopping, they still failed to comply. Thus, the CA was constrained to deny their motion and affirm the earlier resolution.[12]

Indeed, liberality and leniency were accorded in some cases.[13] In these cases, however, those who did not sign were relatives of the lone signatory, so unlike in this case, where Malcaba is not a relative who is similarly situated with the other petitioners and who cannot speak for them. In the case of *Heirs of Domingo Hernandez, Sr. v. Plaridel Mingoa, Sr.*,[14] it was written:

> In the instant case, petitioners share a common interest and defense inasmuch as they collectively claim a right not to be dispossessed of the subject lot by virtue of their and their deceased parents' construction of a family home and occupation thereof for more than 10 years. The commonality of their stance to defend their alleged right over the controverted lot thus gave petitioners xxx authority to inform the Court of Appeals in behalf of the other petitioners that they have not commenced any action or claim involving the same issues in another court or tribunal, and that there is no other pending action or claim in another court or tribunal involving the same issues.
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> Here, **all the petitioners are immediate relatives** who share a common interest in the land sought to be reconveyed and a common cause of action raising the same arguments in support thereof. There was sufficient basis, therefore, for Domingo Hernandez, Jr. to speak for and in behalf of his co-petitioners when he certified that they had not filed any action or claim in another court or tribunal involving the same issues. Thus, the Verification/Certification that Hernandez, Jr. executed constitutes substantial compliance under the Rules. [Emphasis supplied]

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[12] *Rollo*, p. 29.

[13] *Heirs of Domingo Hernandez, Sr. v. Plaridel Mingoa, Sr.*, G.R. No. 146548, December 18, 2009, 608 SCRA 394; and *Oldarico S. Traveno v. Bobongon Banana Growers Multi-Purpose Cooperative*, G.R. No. 164205, September 3, 2009,598 SCRA 27.

[14] *Id.*

The same leniency was accorded to the petitioner in the case of *Oldarico S. Traveno v. Bobongon Banana Growers Multi-Purpose Cooperative*,[15] where it was stated:

> The same leniency was applied by the Court in *Cavile v. Heirs of Cavile*, because the lone petitioner who executed the certification of non-forum shopping was **a relative** and co-owner of the other petitioners with whom he shares a common interest. x x x[16]

Considering the above circumstances, the Court does not see any similarity at all in the case at bench to compel itself to relax the requirement of strict compliance with the rule regarding the certification against forum shopping.

At any rate, the Court cannot accommodate the petitioners' request to re-examine the testimony of Malcaba in the transcript of stenographic notes of the April 25, 1999 hearing concerning his alleged testimonial proof of damages for obvious reasons.

Primarily, Section 1, Rule 45 of the Rules of Court categorically states that the petition filed shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[17]

In this case, the petition clearly raises a factual issue. As correctly argued by PNB, the substantive issue of whether or not the petitioners are entitled to moral and exemplary damages

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[15] *Supra* note 10.

[16] *Id.*

[17] *Cebu Bionic Builders Supply, Inc. vs. Development Bank of the Philippines*, G.R. No. 154366, November 17, 2010.

as well as attorney's fees is a factual issue which is beyond the province of a petition for review on *certiorari*.

Secondly, even if the Court glosses over the technical defects, the petition for relief cannot be granted. A perusal of the Petition for Relief of Judgment discloses that there is no fact constituting fraud, accident, mistake or excusable negligence which are the grounds therefor. From the petition itself, it appears that the petitioners' counsel had a copy of the transcript of stenographic notes which was in his cabinet all along and only discovered it when he was disposing old and terminated cases.[18] If he was only attentive to his records, he could have filed a motion for reconsideration or a notice of appeal in behalf of the petitioners.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 167050. June 1, 2011]

SOCIAL SECURITY COMMISSION, *petitioner, vs.* **RIZAL POULTRY and LIVESTOCK ASSOCIATION, INC., BSD AGRO INDUSTRIAL DEVELOPMENT CORPORATION and BENJAMIN SAN DIEGO,** *respondents.*

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[18] Petition for Relief of Judgment, paragraph 7; *rollo*, p. 158.

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*, TWO CONCEPTS OF; *"BAR BY PRIOR JUDGMENT"* AND *"CONCLUSIVENESS OF JUDGMENT,"* EXPLAINED.— *Res judicata* embraces two concepts: (1) bar by prior judgment as enunciated in Rule 39, Section 47(b) of the Rules of Civil Procedure; and (2) conclusiveness of judgment in Rule 39, Section 47(c). There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment."

2. ID.; ID.; ID.; ID.; ELEMENTS.— The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a "bar by prior judgment" would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies.

3. ID.; ID.; ID.; ID.; ELEMENTS OF "CONCLUSIVENESS OF JUDGMENT," PRESENT; JUDGMENT IN THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) CASE PERTAINING TO A FINDING OF AN ABSENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PARTIES IS CONCLUSIVE ON THE SOCIAL SECURITY COMMISSION (SSC) CASE.— Verily, the principle of *res judicata* in the mode of "conclusiveness of judgment" applies in this case. The first element is present

in this case. The NLRC ruling was affirmed by the Court of Appeals. It was a judicial affirmation through a decision duly promulgated and rendered final and executory when no appeal was undertaken within the reglementary period. The jurisdiction of the NLRC, which is a quasi-judicial body, was undisputed. Neither can the jurisdiction of the Court of Appeals over the NLRC decision be the subject of a dispute. The NLRC case was clearly decided on its merits; likewise on the merits was the affirmance of the NLRC by the Court of Appeals. With respect to the fourth element of identity of parties, we hold that there is substantial compliance. The parties in SSC and NLRC cases are not strictly identical. Rizal Poultry was impleaded as additional respondent in the SSC case. Jurisprudence however does not dictate absolute identity but only substantial identity. There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case. BSD Agro, Rizal Poultry and San Diego were litigating under one and the same entity both before the NLRC and the SSC. x x x As previously stated, an identity in the cause of action need not obtain in order to apply *res judicata* by "conclusiveness of judgment." An identity of issues would suffice. x x x The illegal dismissal case before the NLRC involved an inquiry into the existence or non-existence of an employer-employee relationship. The very same inquiry is needed in the SSC case. And there was no indication therein that there is an essential conceptual difference between the definition of "employee" under the Labor Code and the Social Security Act. In the instant case, therefore, *res judicata* in the concept of "conclusiveness of judgment" applies. The judgment in the NLRC case pertaining to a finding of an absence of employer-employee relationship between Angeles and respondents is conclusive on the SSC case.

APPEARANCES OF COUNSEL

Naomi G. Alcid-Antazo for petitioner.
Gerodias Suchianco Estrella for respondents.

D E C I S I O N

PEREZ, *J.*:

This petition for *certiorari* challenges the Decision[1] dated 20 September 2004 and Resolution[2] dated 9 February 2005 of the Court of Appeals. The instant case stemmed from a petition filed by Alberto Angeles (Angeles) before the Social Security Commission (SSC) to compel respondents Rizal Poultry and Livestock Association, Inc. (Rizal Poultry) or BSD Agro Industrial Development Corporation (BSD Agro) to remit to the Social Security System (SSS) all contributions due for and in his behalf. Respondents countered with a Motion to Dismiss[3] citing rulings of the National Labor Relations Commission (NLRC) and Court of Appeals regarding the absence of employer-employee relationship between Angeles and the respondents.

As a brief backgrounder, Angeles had earlier filed a complaint for illegal dismissal against BSD Agro and/or its owner, Benjamin San Diego (San Diego). The Labor Arbiter initially found that Angeles was an employee and that he was illegally dismissed. On appeal, however, the NLRC reversed the Labor Arbiter's Decision and held that no employer-employee relationship existed between Angeles and respondents. The ruling was anchored on the finding that the duties performed by Angeles, such as carpentry, plumbing, painting and electrical works, were not independent and integral steps in the essential operations of the company, which is engaged in the poultry business.[4] Angeles elevated the

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[1] Penned by Associate Justice Regalado E. Maambong with Associate Justices Eloy R. Bello, Jr. and Vicente Q. Roxas, concurring. *Rollo*, pp. 58-77.

[2] Penned by Associate Justice Regalado E. Maambong with Associate Justices Rodrigo V. Cosico and Lucenito N. Tagle, concurring. *Id.* at 79-80.

[3] *Id.* at 86-89.

[4] Decision of the National Labor Relations Commission, Second Division. Penned by Commissioner Victoriano R. Calaycay with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring. *Id.* at 91-104.

case to the Court of Appeals *via* petition for *certiorari*. The appellate court affirmed the NLRC ruling and upheld the absence of employer-employee relationship.[5] Angeles moved for reconsideration but it was denied by the Court of Appeals.[6] No further appeal was undertaken, hence, an entry of judgment was made on 26 May 2001.[7]

At any rate, the SSC did not take into consideration the decision of the NLRC. It denied respondents' motion to dismiss in an Order dated 19 February 2002. The SSC ratiocinated, thus:

> Decisions of the NLRC and other tribunals on the issue of existence of employer-employee relationship between parties are not binding on the Commission. At most, such finding has only a persuasive effect and does not constitute *res judicata* as a ground for dismissal of an action pending before Us. While it is true that the parties before the NLRC and in this case are the same, the issues and subject matter are entirely different. The labor case is for illegal dismissal with demand for backwages and other monetary claims, while the present action is for remittance of unpaid SS[S] contributions. In other words, although in both suits the respondents invoke lack of employer-employee relationship, the same does not proceed from identical causes of action as one is for violation of the Labor Code while the instant case is for violation of the SS[S] Law.
>
> Moreover, the respondents' arguments raising the absence of employer-employee relationship as a defense already traverse the very issues of the case at bar, *i.e*., the petitioner's fact of employment and entitlement to SS[S] coverage. Generally, factual matters should not weigh in resolving a motion to dismiss when it is based on the ground of failure to state a cause of action, but rather, merely the sufficiency or insufficiencyiy of the allegations in the complaint. x x x. In this respect, it must be observed that the petitioner very categorically set forth in his Petition, that he was employed by the respondent(s) from 1985 to 1997.[8]

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[5] *Id.* at 105-110.

[6] *Id.* at 112.

[7] *Id.* at 113.

[8] *Id.* at 118.

A subsequent motion for reconsideration filed by respondents was likewise denied on 11 June 2002. The SSC reiterated that the principle of *res judicata* does not apply in this case because of the "absence of the indispensable element of 'identity of cause of action.'"[9]

Unfazed, respondents sought recourse before the Court of Appeals by way of a petition for *certiorari*. The Court of Appeals reversed the rulings of the SSC and held that there is a common issue between the cases before the SSC and in the NLRC; and it is whether there existed an employer-employee relationship between Angeles and respondents. Thus, the case falls squarely under the principle of *res judicata*, particularly under the rule on conclusiveness of judgment, as enunciated in *Smith Bell and Co. v. Court of Appeals*.[10]

The Court of Appeals disposed, thus:

WHEREFORE, the petition is **GRANTED**. The Order dated February 19, 2000 and the Resolution dated June 11, 2002 rendered by public respondent Social Security Commission in SSC Case No. 9-15225-01 are hereby **REVERSED** and **SET ASIDE** and the respondent commission is ordered to **DISMISS** Social Security Commission Case No. 9-15225-01.[11]

After the denial of their motion for reconsideration in a Resolution[12] dated 9 February 2005, petitioner filed the instant petition.

For our consideration are the issues raised by petitioner, to wit:

WHETHER OR NOT THE DECISION OF THE NLRC AND THE COURT OF APPEALS, FINDING NO EMPLOYER-EMPLOYEE RELATIONSHIP, CONSTITUTES *RES JUDICATA* AS A RULE ON CONCLUSIVENESS OF JUDGMENT AS TO PRECLUDE THE

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[9] *Id.* at 126.

[10] G.R. No. 59692, 11 October 1990, 190 SCRA 362.

[11] *Rollo,* pp. 76-77.

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

RELITIGATION OF THE ISSUE OF EMPLOYER-EMPLOYEE RELATIONSHIP IN A SUBSEQUENT CASE FILED BEFORE THE PETITIONER.

WHETHER OR NOT RESPONDENT COURT OF APPEALS MAY ORDER OUTRIGHT THE DISMISSAL OF THE SSC CASE IN THE *CERTIORARI* PROCEEDINGS BEFORE IT.[13]

SSC maintains that the prior judgment rendered by the NLRC and Court of Appeals, that no employer-employee relationship existed between the parties, does not have the force of *res judicata* by prior judgment or as a rule on the conclusiveness of judgment. It contends that the labor dispute and the SSC claim do not proceed from the same cause of action in that the action before SSC is for non-remittance of SSS contributions while the NLRC case was for illegal dismissal. The element of identity of parties is likewise unavailing in this case, according to SSC. Aside from SSS intervening, another employer, Rizal Poultry, was added as respondent in the case lodged before the SSC. There is no showing that BSD Agro and Rizal Poultry refer to the same juridical entity. Thus, the finding of absence of employer-employee relationship between BSD Agro and Angeles could not automatically extend to Rizal Poultry. Consequently, SSC assails the order of dismissal of the case lodged before it.

SSC also claims that the evidence submitted in the SSC case is different from that adduced in the NLRC case. Rather than ordering the dismissal of the SSC case, the Court of Appeals should have allowed SSC to resolve the case on its merits by applying the Social Security Act of 1997.

Respondents assert that the findings of the NLRC are conclusive upon the SSC under the principle of *res judicata* and in line with the ruling in *Smith Bell v. Court of Appeals*. Respondents argue that there is substantially an identity of parties in the NLRC and SSC cases because Angeles himself, in his Petition, treated Rizal Poultry, BSD Agro and San Diego as one and the same entity.

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[13] *Id.* at 40.

Respondents oppose the view proffered by SSC that the evidence to prove the existence of employer-employee relationship obtaining before the NLRC and SSS are entirely different. Respondents opine that the definition of an employee always proceeds from the existence of an employer-employee relationship.

In essence, the main issue to be resolved is whether *res judicata* applies so as to preclude the SSC from resolving anew the existence of employer-employee relationship, which issue was previously determined in the NLRC case.

Res judicata embraces two concepts: (1) bar by prior judgment as enunciated in Rule 39, Section 47(b) of the Rules of Civil Procedure; and (2) conclusiveness of judgment in Rule 39, Section 47(c).[14]

There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action.[15]

But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in

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[14] *Rizal Commercial Banking Corporation v. Royal Cargo Corporation*, G.R. No. 179756, 2 October 2009, 602 SCRA 545, 557.

[15] *Antonio v. Sayman Vda. de Monje*, G.R. No. 149624, 29 September 2010, 631 SCRA 471, 480 citing *Agustin v. Delos Santos*, G.R. No. 168139, 20 January 2009, 576 SCRA 576, 585; *Hacienda Bigaa, Inc. v. Chavez*, G.R. No. 174160, 20 April 2010, 618 SCRA 559, 576-577; *Chris Garments Corporation v. Sto. Tomas*, G.R. No. 167426, 12 January 2009, 576 SCRA 13, 21-22; *Heirs of Rolando N. Abadilla v. Galarosa*, G.R. No. 149041, 12 July 2006, 494 SCRA 675, 688-689.

which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies, whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[16]

Thus, if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issue.[17]

The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a "bar by prior judgment" would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies.[18]

Verily, the principle of *res judicata* in the mode of "conclusiveness of judgment" applies in this case. The first element is present in this case. The NLRC ruling was affirmed by the Court of Appeals. It was a judicial affirmation through a decision duly promulgated and rendered final and executory

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[16] *Antonio v. Sayman Vda. de Monje*, *id.* at 480 citing *Agustin v. Delos Santos, id.* at 585-586.

[17] *Noceda v. Arbizo-Directo*, G.R. No. 178495, 26 July 2010, 625 SCRA 472, 479 citing *Nabus v. Court of Appeals*, G.R. No. 91670, 7 February 1991, 193 SCRA 732, 744-745.

[18] *Oropeza Marketing Corporation v. Allied Banking Corporation*, 441 Phil. 551, 564-565 (2002).

when no appeal was undertaken within the reglementary period. The jurisdiction of the NLRC, which is a quasi-judicial body, was undisputed. Neither can the jurisdiction of the Court of Appeals over the NLRC decision be the subject of a dispute. The NLRC case was clearly decided on its merits; likewise on the merits was the affirmance of the NLRC by the Court of Appeals.

With respect to the fourth element of identity of parties, we hold that there is substantial compliance.

The parties in SSC and NLRC cases are not strictly identical. Rizal Poultry was impleaded as additional respondent in the SSC case. Jurisprudence however does not dictate absolute identity but only substantial identity.[19] There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case.[20]

BSD Agro, Rizal Poultry and San Diego were litigating under one and the same entity both before the NLRC and the SSC. Although Rizal Poultry is not a party in the NLRC case, there are numerous indications that all the while, Rizal Poultry was also an employer of Angeles together with BSD Agro and San Diego. Angeles admitted before the NLRC that he was employed by BSD Agro and San Diego from 1985 until 1997.[21] He made

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[19] *Development Bank of the Philippines v. Court of Appeals*, 409 Phil. 717, 731 (2001) citing *Republic v. Court of Appeals*, 381 Phil. 558, 566 (2000).

[20] *Santos v. Heirs of Dominga Lustre*, G.R. No. 151016, 6 August 2008, 561 SCRA 120, 129-130 citing *Sendon v. Ruiz*, 415 Phil. 376, 385 (2001); *Layos v . Fil-Estate Golf and Development, Inc.*, G.R. No. 150470, 6 August 2008, 561 SCRA 75, 107; *Balanay v. Paderanga*, G.R. No. 136963, 28 August 2006, 499 SCRA 670, 675 citing *Sempio v. Court of Appeals*, G.R. No. 124326, 22 January 1998, 284 SCRA 580, 586-587 citing further *Santos v. Court of Appeals*, G.R. No. 101818, 21 September 1993, 226 SCRA 630, 636-637; *Anticamara v. Ong*, G.R. No. L-29689, 14 April 1978, 82 SCRA 337, 341-342; *Suarez v. Municipality of Naujan*, G.R. No. L-22282, 21 November 1966, 18 SCRA 682, 688.

[21] NLRC Decision dated 18 May 1999. *Rollo*, p. 93.

a similar claim in his Petition before the SSC including as employer Rizal Poultry as respondent.[22] Angeles presented as evidence before the SSC his Identification Card and a Job Order to prove his employment in Rizal Poultry. He clarified in his Opposition to the Motion to Dismiss[23] filed before SSC that he failed to adduce these as evidence before the NLRC even if it would have proven his employment with BSD Agro. Most significantly, the three respondents, BSD Agro, Rizal Poultry and San Diego, litigated as one entity before the SSC. They were represented by one counsel and they submitted their pleadings as such one entity. Certainly, and at the very least, a community of interest exists among them. We therefore rule that there is substantial if not actual identity of parties both in the NLRC and SSC cases.

As previously stated, an identity in the cause of action need not obtain in order to apply *res judicata* by "conclusiveness of judgment." An identity of issues would suffice.

The remittance of SSS contributions is mandated by Section 22(a) of the Social Security Act of 1997, *viz*:

> SEC. 22. *Remittance of Contributions.* - (a) The contributions imposed in the preceding Section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe. Every employer required to deduct and to remit such contributions shall be liable for their payment and if any contribution is not paid to the SSS as herein prescribed, he shall pay besides the contribution a penalty thereon of three percent (3%) per month from the date the contribution falls due until paid. x x x.

The mandatory coverage under the Social Security Act is premised on the existence of an employer-employee relationship.[24] This is evident from Section 9(a) which provides:

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[22] *Id.* at 81.

[23] *Id.* at 114.

[24] *Chua v. Court of Appeals*, 483 Phil. 126, 136 (2004) citing *Social Security System v. Court of Appeals*, 401 Phil. 132, 141 (2000).

SEC. 9. *Coverage.* - (a) Coverage in the SSS shall be compulsory upon all employees not over sixty (60) years of age and their employers: *Provided*, That in the case of domestic helpers, their monthly income shall not be less than One thousand pesos (₱1,000.00) a month x x x.

Section 8(d) of the same law defines an employee as any person who performs services for an employer in which either or both mental or physical efforts are used and who receives compensation for such services, where there is an employer-employee relationship. The illegal dismissal case before the NLRC involved an inquiry into the existence or non-existence of an employer-employee relationship. The very same inquiry is needed in the SSC case. And there was no indication therein that there is an essential conceptual difference between the definition of "employee" under the Labor Code and the Social Security Act.

In the instant case, therefore, *res judicata* in the concept of "conclusiveness of judgment" applies. The judgment in the NLRC case pertaining to a finding of an absence of employer-employee relationship between Angeles and respondents is conclusive on the SSC case.

A case in point is *Smith Bell and Co. v. Court of Appeals*[25] which, contrary to SSC, is apt and proper reference. Smith Bell availed of the services of private respondents to transport cargoes from the pier to the company's warehouse. Cases were filed against Smith Bell, one for illegal dismissal before the NLRC and the other one with the SSC, to direct Smith Bell to report all private respondents to the SSS for coverage. While the SSC case was pending before the Court of Appeals, Smith Bell presented the resolution of the Supreme Court in G.R. No. L-44620, which affirmed the NLRC, Secretary of Labor, and Court of Appeals' finding that no employer-employee relationship existed between the parties, to constitute as bar to the SSC case. We granted the petition of Smith Bell and ordered the dismissal of the case. We held that the controversy is squarely

[25] *Supra* note 10.

covered by the principle of *res judicata*, particularly under the rule on "conclusiveness of judgment." Therefore, the judgment in G.R. No. L-44620 bars the SSC case, as the relief sought in the latter case is inextricably related to the ruling in G.R. No. L-44620 to the effect that private respondents are not employees of Smith Bell.

The fairly recent case of *Co v. People*,[26] likewise applies to the present case. An information was filed against Co by private respondent spouses who claim to be employees of the former for violation of the Social Security Act, specifically for non-remittance of SSS contributions. Earlier, respondent spouses had filed a labor case for illegal dismissal. The NLRC finally ruled that there was no employer-employee relationship between her and respondent spouses. Co then filed a motion to quash the information, arguing that the facts alleged in the Information did not constitute an offense because respondent spouses were not her employees. In support of her motion, she cited the NLRC ruling. This Court applied *Smith Bell* and declared that the final and executory NLRC decision to the effect that respondent spouses were not the employees of petitioner is a ruling binding in the case for violation of the Social Security Act. The Court further stated that the doctrine of "conclusiveness of judgment" also applies in criminal cases.[27]

Applying the rule on *res judicata* by "conclusiveness of judgment" in conjunction with the aforecited cases, the Court of Appeals aptly ruled, thus:

> In SSC Case No. 9-15225-01, private respondent Angeles is seeking to compel herein petitioners to remit to the Social Security System (SSS) all contributions due for and in his behalf, whereas in NLRC NCR CA 018066-99 (NLRC RAB-IV-5-9028-97 RI) private respondent prayed for the declaration of his dismissal illegal. In SSC No. 9-15225-01, private respondent, in seeking to enforce his alleged right to compulsory SSS coverage, alleged that he had been

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[26] G.R. No. 160265, 13 July 2009, 592 SCRA 381.

[27] *Id.* at 390.

an employee of petitioners; whereas to support his position in the labor case that he was illegally dismissed by petitioners BSD Agro and/or Benjamin San Diego, he asserted that there was an employer-employee relationship existing between him and petitioners at the time of his dismissal in 1997. Simply stated, the issue common to both cases is whether there existed an employer-employee relationship between private respondent and petitioners at the time of the acts complaint of were committed both in SSC Case No. 9-15225-01 and NLRC NCR CA 018066-99 (NLRC RAB-IV-5-9028-977-RI).

The issue of employer-employee relationship was laid to rest in CA GR. SP. No. 55383, through this Court's Decision dated October 27, 2000 which has long attained finality. Our affirmation of the NLRC decision of May 18, 1999 was an adjudication on the merits of the case.

Considering the foregoing circumstances, the instant case falls squarely under the umbrage of *res judicata,* particularly, under the rule on conclusiveness of judgment. Following this rule, as enunciated in *Smith Bell and Co. and Carriaga, Jr.* cases, We hold that the relief sought in SSC Case No. 9-15225-01 is inextricably related to Our ruling in CA GR SP No. 55383 to the effect that private respondent was not an employee of petitioners.[28]

The NLRC decision on the absence of employer-employee relationship being binding in the SSC case, we affirm the dismissal by Court of Appeals of the SSC case.

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals Decision dated 20 September 2004, as well as its Resolution dated 9 February 2005, is *AFFIRMED*.

SO ORDERED.

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

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[28] *Rollo,* pp. 75-76.

[*] Per Special Order No. 994, Associate Justice Diosdado M. Peralta is designated as Additional Member of the First Division in place of Associate Justice Mariano C. Del Castillo who is on official leave.

SECOND DIVISION

[G.R. No. 169191. June 1, 2011]

ROMEO VILLARUEL, *petitioner, vs.* **YEO HAN GUAN, doing business under the name and style YUHANS ENTERPRISES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RESIGNATION; DEFINED.— Resignation is defined as the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service and he has no other choice but to disassociate himself from his employment.

2. ID.; ID.; ID.; ID.; A VOLUNTARILY RESIGNING EMPLOYEE IS NOT ENTITLED TO SEPARATION PAY.— It may not be amiss to point out at this juncture that aside from Article 284 of the Labor Code, the award of separation pay is also authorized in the situations dealt with in Article 283 of the same Code and under Section 4(b), Rule I, Book VI of the Implementing Rules and Regulations of the said Code where there is illegal dismissal and reinstatement is no longer feasible. By way of exception, this Court has allowed grants of separation pay to stand as "a measure of social justice" where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. However, there is no provision in the Labor Code which grants separation pay to voluntarily resigning employees. In fact, the rule is that an employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in the employment contract or CBA, or it is sanctioned by established employer practice or policy. In the present case, neither the abovementioned provisions of the Labor Code and its implementing rules and regulations nor the exceptions apply because petitioner was not dismissed from his employment and there is no evidence to show that payment of separation pay is stipulated in his employment contract or sanctioned by established practice or policy of herein respondent, his

employer. Since petitioner was not terminated from his employment and, instead, is deemed to have resigned therefrom, he is not entitled to separation pay under the provisions of the Labor Code.

3. ID.; ID.; ID.; ID.; WHERE A VOLUNTARILY RESIGNED EMPLOYEE WAS GRANTED FINANCIAL ASSISTANCE AS A MEASURE OF SOCIAL AND COMPASSIONATE JUSTICE.— [T]his Court, in a number of cases, has granted financial assistance to separated employees as a measure of social and compassionate justice and as an equitable concession. Taking into consideration the factual circumstances obtaining in the present case, the Court finds that petitioner is entitled to this kind of assistance. x x x [T]he Court finds no cogent reason not to employ the same guiding principle of compassionate justice applied by the Court, taking into consideration the factual circumstances obtaining in the present case. In this regard, the Court finds credence in petitioner's contention that he is in the employ of respondent for more than 35 years. In the absence of a substantial refutation on the part of respondent, the Court agrees with the findings of the Labor Arbiter and the NLRC that respondent company is not distinct from its predecessors but, in fact, merely continued the operation of the latter under the same owners and the same business venture. The Court further notes that there is no evidence on record to show that petitioner has any derogatory record during his long years of service with respondent and that his employment was severed not by reason of any infraction on his part but because of his failing physical condition. Add to this the willingness of respondent to give him financial assistance. Hence, based on the foregoing, the Court finds that the award of ₱50,000.00 to petitioner as financial assistance is deemed equitable under the circumstances.

APPEARANCES OF COUNSEL

Taquio and Associates for petitioner.
Cabio Law Offices and Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in the present petition are the Decision[1] and Resolution[2] of the Court of Appeals (CA) dated February 16, 2005 and August 2, 2005, respectively, in CA-G.R. SP No. 79105. The CA Decision modified the March 31, 2003 Decision of the National Labor Relations Commission (NLRC) in NLRC NCR CA 028050-01, while the CA Resolution denied petitioner's Motion for Reconsideration.

The antecedents of the case are as follows:

On February 15, 1999, herein petitioner filed with the NLRC, National Capital Region, Quezon City a Complaint[3] for payment of separation pay against Yuhans Enterprises.

Subsequently, in his Amended Complaint and Position Paper[4] dated December 6, 1999, petitioner alleged that in June 1963, he was employed as a machine operator by Ribonette Manufacturing Company, an enterprise engaged in the business of manufacturing and selling PVC pipes and is owned and managed by herein respondent Yeo Han Guan. Over a period of almost twenty (20) years, the company changed its name four times. Starting in 1993 up to the time of the filing of petitioner's complaint in 1999, the company was operating under the name of Yuhans Enterprises. Despite the changes in the company's name, petitioner remained in the employ of respondent. Petitioner further alleged that on October 5, 1998, he got sick and was confined in a hospital; on December 12, 1998, he reported for work but was no longer permitted to go back because

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[1] Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Mariano C. del Castillo (now a member of this Court) and Magdangal M. de Leon, concurring; *rollo*, pp. 32-40.

[2] *Id.* at 30.

[3] Records, p. 1.

[4] *Id.* at 41-56.

of his illness; he asked that respondent allow him to continue working but be assigned a lighter kind of work but his request was denied; instead, he was offered a sum of ₱15,000.00 as his separation pay; however, the said amount corresponds only to the period between 1993 and 1999; petitioner prayed that he be granted separation pay computed from his first day of employment in June 1963, but respondent refused. Aside from separation pay, petitioner prayed for the payment of service incentive leave for three years as well as attorney's fees.

On the other hand, respondent averred in his Position Paper[5] that petitioner was hired as machine operator from March 1, 1993 until he stopped working sometime in February 1999 on the ground that he was suffering from illness; after his recovery, petitioner was directed to report for work, but he never showed up. Respondent was later caught by surprise when petitioner filed the instant case for recovery of separation pay. Respondent claimed that he never terminated the services of petitioner and that during their mandatory conference, he even told the latter that he could go back to work anytime but petitioner clearly manifested that he was no longer interested in returning to work and instead asked for separation pay.

On November 27, 2000, the Labor Arbiter handling the case rendered judgment in favor of petitioner. The dispositive portion of the Labor Arbiter's Decision reads, thus:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the complainant and against herein respondent, as follows:
>
> 1. Ordering the respondents to pay separation benefits equivalent to one-half (½) month salary per year of service, a fraction of six months equivalent to one year to herein complainant based on the complainant's length of service reckoned from June 1963 up to October 1998 as provided under Article 284 of the Labor Code, the same computed by the Computation and Examination Unit which we hereby adopt and approved (sic) as our own in the amount of NINETY-ONE THOUSAND FOUR HUNDRED FORTY-FIVE PESOS (₱91,445.00);

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[5] *Id.* at 38-40.

2. Ordering the respondents to pay service incentive leave equivalent to fifteen days' salary in the amount of THREE THOUSAND FIFTEEN PESOS (₱3,015.00).

All other claims are dismissed for lack of merit.

SO ORDERED.[6]

Aggrieved, respondent filed an appeal with the NLRC.

On March 31, 2003, the Third Division of the NLRC rendered its Decision[7] dismissing respondent's appeal and affirming the Labor Arbiter's Decision.

Respondent filed a Motion for Reconsideration,[8] but the same was denied by the NLRC in a Resolution[9] dated May 30, 2003.

Respondent then filed with the CA a petition for *certiorari* under Rule 65 of the Rules of Court.

On February 16, 2005, the CA promulgated its presently assailed Decision disposing as follows:

WHEREFORE, premises considered, the petition is partially GRANTED. The award of separation pay is hereby DELETED, but the Decision insofar as it awards private respondent [herein petitioner] service incentive leave pay of three thousand and fifteen pesos (₱3,015.00) stands. The NLRC is permanently ENJOINED from partially executing its Decision dated November 27, 2000 insofar as the award of separation pay is concerned; or if it has already effected execution, it should order the private respondent to forthwith restitute the same.

SO ORDERED.[10]

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[6] *Id.* at 111-112.

[7] *Id.* at 258-264.

[8] *Id.* at 271-274.

[9] *Id.* at 287-288.

[10] CA *rollo*, p. 108.

Herein petitioner filed his Motion for Reconsideration[11] of the CA Decision, but it was denied by the CA *via* a Resolution[12] dated August 2, 2005.

Hence, the instant petition based on the following assignment of errors:

I

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN ITS FAILURE TO APPRECIATE THE ADMISSION BY [PETITIONER] OF THE FACT AND VALIDITY OF HIS TERMINATION BY THE [RESPONDENT].

II

[THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED] IN DENYING [PETITIONER'S] ENTITLEMENT TO SEPARATION PAY UNDER ARTICLE 284 OF THE LABOR CODE AND UNDER THE OMNIBUS RULES IMPLEMENTING THE LABOR CODE.

III

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN ITS FINDING THAT THE BURDEN OF PROOF THAT AN EMPLOYEE IS SUFFERING FROM DISEASE THAT HAS TO BE TERMINATED REST[S] UPON THE EMPLOYER IN ORDER FOR THE EMPLOYEE TO BE ENTITLED TO SEPARATION PAY.

IV

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN ORDERING THE DELETION OF THE AWARD OF SEPARATION PAY TO THE [PETITIONER].[13]

The Court finds the petition without merit.

The assigned errors in the instant petition essentially boil down to the question of whether petitioner is entitled to separation pay under the provisions of the Labor Code, particularly Article 284 thereof, which reads as follows:

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[11] *Id.* at 111-123.

[12] *Id.* at 129-131.

[13] *Rollo*, pp. 22-23.

An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (½) month salary for every year of service whichever is greater, a fraction of at least six months being considered as one (1) whole year.

A plain reading of the abovequoted provision clearly presupposes that it is the employer who terminates the services of the employee found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees. It does not contemplate a situation where it is the employee who severs his or her employment ties. This is precisely the reason why Section 8,[14] Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code, directs that an employer shall not terminate the services of the employee unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment.

Hence, the pivotal question that should be settled in the present case is whether respondent, in fact, dismissed petitioner from his employment.

A perusal of the Decisions of the Labor Arbiter and the NLRC would show, however, that there was no discussion with respect

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[14] Sec. 8. *Disease as a ground for dismissal*. – Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health.

to the abovementioned issue. Both lower tribunals merely concluded that petitioner is entitled to separation pay under Article 284 of the Labor Code without any explanation. The Court finds no convincing justification, in the Decision of the Labor Arbiter on why petitioner is entitled to such pay. In the same manner, the NLRC Decision did not give any rationalization as the gist thereof simply consisted of a quoted portion of the appealed Decision of the Labor Arbiter.

On the other hand, the Court agrees with the CA in its observation of the following circumstances as proof that respondent did not terminate petitioner's employment: *first*, the only cause of action in petitioner's original complaint is that he was "offered a very low separation pay"; *second*, there was no allegation of illegal dismissal, both in petitioner's original and amended complaints and position paper; and, *third*, there was no prayer for reinstatement.

In consonance with the above findings, the Court finds that petitioner was the one who initiated the severance of his employment relations with respondent. It is evident from the various pleadings filed by petitioner that he never intended to return to his employment with respondent on the ground that his health is failing. Indeed, petitioner did not ask for reinstatement. In fact, he rejected respondent's offer for him to return to work. This is tantamount to resignation.

Resignation is defined as the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service and he has no other choice but to disassociate himself from his employment.[15]

It may not be amiss to point out at this juncture that aside from Article 284 of the Labor Code, the award of separation

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[15] *Virjen Shipping Corporation v. Barraquio*, G.R. No. 178127, April 16, 2009, 585 SCRA 541, 548.

pay is also authorized in the situations dealt with in Article 283[16] of the same Code and under Section 4 (b), Rule I, Book VI of the Implementing Rules and Regulations of the said Code[17] where there is illegal dismissal and reinstatement is no longer feasible. By way of exception, this Court has allowed grants of separation pay to stand as "a measure of social justice" where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character.[18] However, there is no provision in the Labor Code which grants separation pay to voluntarily resigning employees. In fact, the rule is that an employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in the employment contract or CBA, or it is sanctioned by established employer practice or policy.[19] In the present case, neither the abovementioned

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[16] ***Article 283. Closure of establishment and reduction of personnel***. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[17] Book VI, Rule I, Section 4(b) – In case the establishment where the employee is to be reinstated has closed or ceased operations or where his former position no longer exists at the time of reinstatement for reasons not attributable to the fault of the employer, the employee shall be entitled to separation pay equivalent to at least one month salary or to one month salary for every year of service, whichever is higher, a fraction of at least six months being considered as one whole year.

[18] *CJC Trading, Inc. v. NLRC*, 316 Phil. 887, 893 (1995).

[19] *Hinatuan Mining Corporation v. NLRC*, 335 Phil. 1090, 1093-1094 (1997).

provisions of the Labor Code and its implementing rules and regulations nor the exceptions apply because petitioner was not dismissed from his employment and there is no evidence to show that payment of separation pay is stipulated in his employment contract or sanctioned by established practice or policy of herein respondent, his employer.

Since petitioner was not terminated from his employment and, instead, is deemed to have resigned therefrom, he is not entitled to separation pay under the provisions of the Labor Code.

The foregoing notwithstanding, this Court, in a number of cases, has granted financial assistance to separated employees as a measure of social and compassionate justice and as an equitable concession. Taking into consideration the factual circumstances obtaining in the present case, the Court finds that petitioner is entitled to this kind of assistance.

Citing *Eastern Shipping Lines, Inc. v. Sedan*,[20] this Court, in the more recent case of *Eastern Shipping Lines v. Antonio*,[21] held:

> 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.
>
> In this instance, our attention has been called to the following circumstances: that private respondent joined the company when he was a young man of 25 years and stayed on until he was 48 years old; that he had given to the company the best years of his youth, working on board ship for almost 24 years; that in those years there was not a single report of him transgressing

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[20] G.R. No. 159354, April 7, 2006, 486 SCRA 565.

[21] G.R. No. 171587, October 13, 2009, 603 SCRA 590.

> any of the company rules and regulations; that he applied for optional retirement under the company's non-contributory plan when his daughter died and for his own health reasons; and that it would appear that he had served the company well, since even the company said that the reason it refused his application for optional retirement was that it still needed his services; that he denies receiving the telegram asking him to report back to work; but that considering his age and health, he preferred to stay home rather than risk further working in a ship at sea.
>
> In our view, with these special circumstances, we can call upon the same "social and compassionate justice" cited in several cases allowing financial assistance. These circumstances indubitably merit equitable concessions, *via* the principle of "compassionate justice" for the working class. x x x

In the present case, respondent had been employed with the petitioner for almost twelve (12) years. On February 13, 1996, he suffered from a "fractured left transverse process of fourth lumbar vertebra," while their vessel was at the port of Yokohama, Japan. After consulting a doctor, he was required to rest for a month. When he was repatriated to Manila and examined by a company doctor, he was declared fit to continue his work. When he reported for work, petitioner refused to employ him despite the assurance of its personnel manager. Respondent patiently waited for more than one year to embark on the vessel as 2nd Engineer, but the position was not given to him, as it was occupied by another person known to one of the stockholders. Consequently, for having been deprived of continued employment with petitioner's vessel, respondent opted to apply for optional retirement. In addition, records show that respondent's seaman's book, as duly noted and signed by the captain of the vessel was marked "*Very Good,*" and "*recommended for hire.*" Moreover, respondent had no derogatory record on file over his long years of service with the petitioner.

Considering all of the foregoing and in line with *Eastern*, the ends of social and compassionate justice would be served best if respondent will be given some equitable relief. Thus, the award of ₱100,000.00 to respondent as financial assistance is deemed equitable under the circumstances.[22]

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[22] *Id.* at 602-603.

While the abovecited cases authorized the grant of financial assistance in lieu of retirement benefits, the Court finds no cogent reason not to employ the same guiding principle of compassionate justice applied by the Court, taking into consideration the factual circumstances obtaining in the present case. In this regard, the Court finds credence in petitioner's contention that he is in the employ of respondent for more than 35 years. In the absence of a substantial refutation on the part of respondent, the Court agrees with the findings of the Labor Arbiter and the NLRC that respondent company is not distinct from its predecessors but, in fact, merely continued the operation of the latter under the same owners and the same business venture. The Court further notes that there is no evidence on record to show that petitioner has any derogatory record during his long years of service with respondent and that his employment was severed not by reason of any infraction on his part but because of his failing physical condition. Add to this the willingness of respondent to give him financial assistance. Hence, based on the foregoing, the Court finds that the award of ₱50,000.00 to petitioner as financial assistance is deemed equitable under the circumstances.

WHEREFORE, the instant petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals are *AFFIRMED* with *MODIFICATION* by awarding petitioner with financial assistance in the amount of ₱50,000.00.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 169359-61. June 1, 2011]

MARCELO G. GANADEN, OSCAR B. MINA, JOSE M. BAUTISTA and ERNESTO H. NARCISO, JR., *petitioners, vs.* **HONORABLE OFFICE OF THE OMBUDSMAN and ROBERT K. HUMIWAT,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; FINDINGS THEREOF THAT PROBABLE CAUSE EXISTS FOR VIOLATION OF R.A. 3019, UPHELD.— Based on the assessment of the Office of the Ombudsman, there is sufficient reason to believe that a violation of R.A. No. 3019 has been committed. Also, based on the evidence presented, there is sufficient reason to believe that the accused public officials are probably guilty of the violation. On the contention of the petitioners that the Office of the Ombudsman failed to consider some relevant evidence, specifically the December 5, 2001 Comprehensive Internal Audit Report and affidavit of workers, that would show that the complaint lacks factual and legal ground, we find that these are matters of defense more properly raised during trial. The same is true for their allegation that conspiracy does not exist. We have held that the absence (or presence) of any conspiracy among the accused is *evidentiary* in nature and is a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits. It is worth stressing that the Ombudsman's finding of probable cause does not touch on the issue of guilt or innocence of the accused. It is not the function of the Office of the Ombudsman to rule on such issue. All that the Office of the Ombudsman did was to weigh the evidence presented together with the counter-allegations of the accused and determine if there was enough reason to believe that a crime has been committed and that the accused are probably guilty thereof. In this light, we find no compelling reason to disturb the findings of the Office of the Ombudsman.

2. ID.; ID.; ID.; ID.; NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE OFFICE OF THE OMBUDSMAN.— In the case at bar, the Office of the Ombudsman properly conducted the investigation and received evidence on the allegations and counter-allegations. The Office of the Ombudsman diligently sifted through all the relevant and pertinent allegations, statements of witnesses, defenses raised by the accused officials, and audit reports. Based on the submitted data and information, it made a determination of probable cause. There is no showing of any capricious, whimsical and arbitrary action or inaction on the part of the Office of the Ombudsman.

APPEARANCES OF COUNSEL

Kho Bustos Malcontento Argosino Law Offices for petitioners.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is the petition for *certiorari* of petitioners Marcelo G. Ganaden, Oscar B. Mina, Jose M. Bautista and Ernesto H. Narciso, Jr. praying for the annulment of the May 22, 2003 Joint Resolution[1] of the Office of the Ombudsman in OMB-L-C-02-0923-I to OMB-L-C-02-0926-I, as well as the August 21, 2003 and April 26, 2005 Orders[2] in OMB-L-C-02-0926-I and the July 7, 2005 Joint Order[3] in OMB-L-C-02-0923-I to OMB-L-C-02-0926-I, finding probable cause to indict them for violation of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.

The facts that initiated the present controversy were summarized in the assailed Joint Resolution as follows:

A group of employees[4] of the National [P]ower Corp. [NPC], District IV (Cagayan Valley Area) filed a complaint against

[1] *Rollo*, pp. 218-233.

[2] *Id.* at 429-433, 559-562.

[3] *Id.* at 584-587.

[4] Led by private respondent Robert K. Humiwat. See *rollo*, pp. 32, 85.

MARCELO GANADEN, NPC-Area Manager, OSCAR B. MINA, Employee, NPC-Substation, JOSEPHINE V. ATAL, Cashier, NPC-Substation, JOSE M. BAUTISTA, ERNESTO H. NARCISO, JR. and VIRGILIO M. RIMANDO for allegedly committing the following:

1. Printing and sale of raffle tickets using NPC Resources under the direction of Mr. GANADEN by making it appear to be the project of Cagayan Valley Area Employees Association but without consultation with the NPC-District IV employees and the required permit from appropriate agencies. The employees, security guards and janitors were given tickets ranging from ₱200 to ₱1,000.00 with the instruction that [the tickets were] considered sold. However, the tickets were not drawn nor the monies collected…returned.

2. By making it appear that the assembly, erection, mounting of beams, gantry towers and steel towers at the 230 KV and 69 KV switchyard at Tuguegarao substation was thru "*Pakyaw* Labor" [contract for piece of work] done by the linemen of Tuguegarao substation as shown in their daily [t]ime record. In fact, based [o]n the Security In and Out Logbook and Security Attendance Sheet, there was no entry of [the alleged contractors] Mr. DE GRACIA nor JOJO MATEO for the period March 29, 1999 to April 22, 1999, the period the *pakyaw* work [was supposedly done].

3. Mr. GANADEN influenced a certain PERFECTO D. LAZARO, husband of the proprietress of REMY D. LAZARO Builders and Construction Supplier to agree that the volume of soil to be removed and hauled from the 230 KV switchyard of Tuguegarao substation be increased from the actual volume of about 5 cubic meters to 253 cubic meters with the excess payment be given to him (GANADEN).

4. On Dec[ember] 14 and 23, 2000, Mr. GANADEN'S personal car with plate [n]o. TDF 366 refueled at Solano Caltex but [it was made to appear that the gas was] loaded to an NPC vehicle.

5. Mr. GANADEN, also reassigned employees from one province to another by virtue of his Office Order No. AO-99-418. However, said order was based on a fictitious and unapproved Table of Organization which was not approved by the higher management.

6. Purchase and withdrawal of tires in CY 2000 purposely to replace the tires of NPC service vehicle with Plate [No.] SEW 454, his service vehicle, but said tires were installed to his personal Nissan Pick-up car with Plate [No.] ADL 157.

7. Withdrawal and delivery of ceramic tiles in CY 2000 from SANTIAGO Substation to his house at Fairview, Quezon City which was undergoing renovation.[5]

Petitioners defended themselves through their counter-affidavits, basically offering explanations and clarifications to the alleged acts and denying having committed any illegality.

On May 22, 2003, the Office of the Deputy Ombudsman for Luzon issued the assailed Joint Resolution.[6] In said Joint Resolution, the Ombudsman found the charge that petitioners used NPC resources for printing and selling raffle tickets devoid of merit. Also, the charge that petitioner Ganaden misappropriated NPC resources (gasoline, tires and ceramic tiles) for his personal benefit were found to be unsupported by evidence. However, on the other charges, the Deputy Ombudsman for Luzon found probable cause to charge petitioners with violation of the Anti-Graft and Corrupt Practices Act. The dispositive portion of the Joint Resolution reads:

WHEREFORE, **premises considered**, it is hereby recommended that respondents **GANADEN, NARCISO and BAUTISTA** be charged with Violation of Sec. 3 (e) of R.A. 3019.

Likewise, **GANADEN and MINA** should also be charged with Violation of Sec. 3 (b) of R.A. 3019 before the proper court.

However, as to other respondents, finding no sufficient evidence to include them in the information, case is hereby **DISMISSED.**

SO RESOLVED.[7]

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[5] *Rollo*, pp. 221-222.

[6] *Id.* at 218-233.

[7] *Id.* at 233.

Petitioners sought reconsideration of the resolution but their motion was denied in an Order[8] dated August 21, 2003. They subsequently filed a motion for reinvestigation and reopening but said motion was also denied in an Order[9] dated April 26, 2005. Undaunted, petitioners filed a second motion for reconsideration, which, however, was likewise denied by the Ombudsman for lack of merit in an Order[10] dated July 7, 2005.

Meanwhile, considering the denial by the Ombudsman of petitioners' motion for reconsideration on August 21, 2003, the Regional Trial Court, Branch III, of Tuguegarao City issued an Order[11] on July 11, 2005 setting petitioners' arraignment for September 16, 2005 at 8:30 in the morning.

On September 7, 2005, petitioners filed with this Court the present petition for *certiorari* with prayer for the issuance of a temporary restraining order and writ of preliminary injunction.[12] Petitioners pray that the Court annul the May 22, 2003 Joint Resolution, the August 21, 2003 and April 26, 2005 Orders and the July 7, 2005 Joint Order of the Office of the Ombudsman and order the dismissal of the criminal complaints against them for lack of merit.

Petitioners argue that the complaints filed against them are purely intended for harassment and done in retaliation to the reorganization petitioner Ganaden did in 1999 when he was still the NPC Area Manager in District IV-Cagayan Valley Area. They believe that the complaint is a part of a bigger persecution plan against them, pointing out that it is just one of more than thirty-four (34) pending complaints filed against them in different courts, prosecution offices, and administrative agencies.[13]

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[8] *Id.* at 429-433.

[9] *Id.* at 559-562.

[10] *Id.* at 584-587.

[11] *Id.* at 588.

[12] *Id.* at 3-76.

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

Petitioners state that the complaint only relies on self-serving testimonies of persons who are motivated by vengeance and ill will. Petitioners aver that the Office of the Ombudsman blatantly disregarded the December 5, 2001 Comprehensive Internal Audit Report which would show that the complaints filed lack factual and legal basis. Also, petitioners point out that the Ombudsman disregarded several affidavits of workers who performed the actual hauling of soil to prove that actual hauling was indeed done. Petitioners contend that by reason of these evidentiary oversights, the Office of the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[14]

Petitioners further question the Ombudsman's finding of conspiracy among them.[15] They argue that the findings of the Ombudsman are mere conclusions of law unsupported by any evidence that petitioner Ganaden acted in unison with other petitioners in perpetuating the alleged crime. Petitioners insist that the elements of conspiracy are simply inexistent.

Essentially, the question for our resolution is whether the Office of the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its May 22, 2003 Joint Resolution finding probable cause to indict petitioners for alleged violation of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act.

The petition is bereft of merit.

We hold that the Office of the Ombudsman did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in finding probable cause to hold petitioners for trial for alleged violation of R.A. No. 3019.

Jurisprudence has established rules on the determination of probable cause. In *Galario v. Office of the Ombudsman (Mindanao)*,[16] the Court held:

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

[15] *Id.* at 40.

[16] G.R. No. 166797, July 10, 2007, 527 SCRA 190, 204.

[A] finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. x x x. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. (Italics in the original.)

In the case at bar, the Office of the Ombudsman found sufficient reason to believe that a violation of R.A. No. 3019 has been committed and that the petitioners are probably guilty thereof.

The investigation resulted in several affidavits[17] that indicate possible involvement of the petitioners in the alleged violation. Statements to the effect that the assembly, erection, mounting of beams, gantry towers and steel towers at the 230 KV switchyard of the Tuguegarao substation were done by the NPC employees themselves and not by any contractor verify and strengthen the accusations in the complaint.

Further, the alleged contractor himself Randy M. De Gracia, executed a sworn statement[18] that he was requested to sign a price proposal for the supply of "*pakyaw* labor" for the assembly, erection, mounting of beams, steel posts at the 230 KV switchyard of the Tuguegarao substation, and that he did not actually perform the aforementioned work but he was instructed by Engr. Narciso, Jr. in July 1999 to get his check from the cashier of NPC and to encash it and give the proceeds to Engr. Narciso, Jr.

On the charge of taking part in the payment for services rendered by the Rema D. Lazaro Builders and Construction Supplies, Perfecto Lazaro stated under oath that sometime in

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[17] *Rollo*, pp. 103, 119, 130-131.

[18] *Id.* at 102.

the middle of August 1999, petitioner Ganaden through petitioner Mina, offered to give him a project, which was the removal and transit hauling of excess soil from the 230 KV switchyard of the Tuguegarao substation for as long as he will give petitioner Ganaden the excess payment for the actual work to be done. He also stated that in October 1999, he was made to sign the related disbursement voucher and to issue an Official Receipt to make it appear that the entire work claimed to be done was indeed performed.[19]

All these allegations in the complaint coupled with the statements of several key witnesses, among others, all point towards some kind of irregularity in the performance of public works. Based on the assessment of the Office of the Ombudsman, there is sufficient reason to believe that a violation of R.A. No. 3019 has been committed. Also, based on the evidence presented, there is sufficient reason to believe that the accused public officials are probably guilty of the violation.

On the contention of the petitioners that the Office of the Ombudsman failed to consider some relevant evidence, specifically the December 5, 2001 Comprehensive Internal Audit Report and affidavit of workers, that would show that the complaint lacks factual and legal ground, we find that these are matters of defense more properly raised during trial. The same is true for their allegation that conspiracy does not exist. We have held that the absence (or presence) of any conspiracy among the accused is *evidentiary* in nature and is a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits.[20]

It is worth stressing that the Ombudsman's finding of probable cause does not touch on the issue of guilt or innocence of the accused. It is not the function of the Office of the Ombudsman

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[19] *Id.* at 131.

[20] *Go v. The Fifth Division, Sandiganbayan*, G.R. No. 172602, April 13, 2007, 521 SCRA 270, 289, citing *Singian, Jr. v. Sandiganbayan*, G.R. Nos. 160577-94, December 16, 2005, 478 SCRA 348, 363-364.

to rule on such issue. All that the Office of the Ombudsman did was to weigh the evidence presented together with the counter-allegations of the accused and determine if there was enough reason to believe that a crime has been committed and that the accused are probably guilty thereof. In this light, we find no compelling reason to disturb the findings of the Office of the Ombudsman.

On the assertion of grave abuse of discretion amounting to lack or excess of jurisdiction, we are guided by previous pronouncements of this Court regarding this matter. In *Vergara v. Ombudsman*,[21] the Court ruled:

> We reiterate the rule that courts do not interfere in the Ombudsman's exercise of discretion in determining probable cause unless there are compelling reasons. The Ombudsman's finding of probable cause, or lack of it, is entitled to great respect absent a showing of grave abuse of discretion. Besides, to justify the issuance of the writ of *certiorari* on the ground of abuse of discretion, the abuse must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.

Grave abuse of discretion is defined as capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[22]

In the case at bar, the Office of the Ombudsman properly conducted the investigation and received evidence on the

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[21] G.R. No. 174567, March 12, 2009, 580 SCRA 693, 713, citing *San Miguel Corp. v. Sandiganbayan*, 394 Phil. 608, 636-637 (2000).

[22] *Cabrera v. Lapid*, G.R. No. 129098, December 6, 2006, 510 SCRA 55, 66.

allegations and counter-allegations. The Office of the Ombudsman diligently sifted through all the relevant and pertinent allegations, statements of witnesses, defenses raised by the accused officials, and audit reports. Based on the submitted data and information, it made a determination of probable cause. There is no showing of any capricious, whimsical and arbitrary action or inaction on the part of the Office of the Ombudsman. In the questioned May 22, 2003 Joint Resolution, the Office of the Ombudsman carefully considered all the evidence submitted to it when it cleared petitioners of other wrongdoings being attributed to them. The Office of the Ombudsman dismissed the charge that petitioners used NPC resources to print and sell raffle tickets for being devoid of merit. Likewise, the charge that petitioner Ganaden misappropriated NPC resources (gasoline, tires and ceramic tiles) for his personal use was dismissed for lack of supporting evidence. Such findings show that the Office of the Ombudsman carefully weighed the evidence presented and properly discarded baseless and unsupported allegations. The assailed action of the Office of the Ombudsman is therefore well within its jurisdiction and mandate.

WHEREFORE, the petition for *certiorari* is *DISMISSED*.

With costs against petitioners.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 170251. June 1, 2011]

CELIA S. *VDA. DE* HERRERA, *petitioner, vs.* **EMELITA BERNARDO, EVELYN BERNARDO as Guardian of Erlyn, Crislyn and Crisanto Bernardo,**[*] *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COMMISSION ON THE SETTLEMENT OF LAND PROBLEMS (COSLAP); HAS NO JURISDICTION OVER ANY LAND DISPUTE OR PROBLEM— Administrative agencies, like the COSLAP, are tribunals of limited jurisdiction that can only wield powers which are specifically granted to it by its enabling statute. Under Section 3 of E.O. No. 561, the COSLAP has two options in acting on a land dispute or problem lodged before it, to wit: (a) refer the matter to the agency having appropriate jurisdiction for settlement/resolution; or (b) assume jurisdiction if the matter is one of those enumerated in paragraph 2 (a) to (e) of the law, if such case is critical and explosive in nature, taking into account the large number of parties involved, the presence or emergence of social unrest, or other similar critical situations requiring immediate action. In resolving whether to assume jurisdiction over a case or to refer the same to the particular agency concerned, the COSLAP has to consider the nature or classification of the land involved, the parties to the case, the nature of the questions raised, and the need for immediate and urgent action thereon to prevent injuries to persons and damage or destruction to property. The law does not vest jurisdiction on the COSLAP over any land dispute or problem.

2. ID.; ID.; ID.; ID.; JUDGMENT ISSUED BY A QUASI-JUDICIAL BODY WITHOUT JURISDICTION IS VOID; CASE AT BAR.— In the instant case, the COSLAP has no

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[*] Also known as Arnel Crisanto Bernardo (Respondents' Position Paper, COSLAP records, p. 146) and Crisanto Bernardo II (Tax Declaration No. CD-006-0828, COSLAP records, p. 110).

jurisdiction over the subject matter of respondents' complaint. The present case does not fall under any of the cases enumerated under Section 3, paragraph 2 (a) to (e) of E.O. No. 561. The dispute between the parties is not critical and explosive in nature, nor does it involve a large number of parties, nor is there a presence or emergence of social tension or unrest. It can also hardly be characterized as involving a critical situation that requires immediate action. x x x Respondents' cause of action before the COSLAP pertains to their claim of ownership over the subject property, which is an action involving title to or possession of real property, or any interest therein, the jurisdiction of which is vested with the Regional Trial Courts or the Municipal Trial Courts depending on the assessed value of the subject property. x x x Since the COSLAP has no jurisdiction over the action, all the proceedings therein, including the decision rendered, are null and void. A judgment issued by a quasi-judicial body without jurisdiction is void. It cannot be the source of any right or create any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Having no legal effect, the situation is the same as it would be as if there was no judgment at all. It leaves the parties in the position they were before the proceedings.

3. ID.; ID.; ID.; ID.; ID.; LACK OF JURISDICTION OF COSLAP MAY BE RAISED AT ANY STAGE OF THE PROCEEDINGS; CASE AT BAR— Respondents' allegation that petitioner is estopped from questioning the jurisdiction of the COSLAP by reason of laches does not hold water. Petitioner is not estopped from raising the jurisdictional issue, because it may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel. The fact that a person attempts to invoke unauthorized jurisdiction of a court does not estop him from thereafter challenging its jurisdiction over the subject matter, since such jurisdiction must arise by law and not by mere consent of the parties.

4. CIVIL LAW; LAND REGISTRATION; VALIDITY OF TORRENS TITLE CANNOT BE ATTACKED COLLATERALLY.— The issue of the validity of the Title was brought only during the proceedings before this Court as said title was issued in the name of petitioner's husband only during the pendency of the appeal before the CA. The issue on the validity of title, *i.e.,* whether or not it was fraudulently

issued, can only be raised in an action expressly instituted for that purpose and the present appeal before us, is simply not the direct proceeding contemplated by law.

APPEARANCES OF COUNSEL

Atienza Madrid & Formento for petitioner.
Edgardo C. Galvez for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 73674.

The antecedents are as follows:

Respondents heirs of Crisanto S. Bernardo, represented by Emelita Bernardo, filed a complaint before the Commission on the Settlement of Land Problems (COSLAP) against Alfredo Herrera (Alfredo) for interference, disturbance, unlawful claim, harassment and trespassing over a portion of a parcel of land situated at *Barangay* Dalig, Cardona, Rizal, with an area of 7,993 square meters. The complaint was docketed as COSLAP Case No. 99-221.

Respondents claimed that said parcel of land was originally owned by their predecessor-in-interest, Crisanto Bernardo, and was later on acquired by Crisanto S. Bernardo. The parcel of land was later on covered by Tax Declaration No. CD-006-0828 under the name of the respondents.

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[1] Penned by Associate Justice Regalado E. Maambong, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Lucenito N. Tagle, concurring; *rollo*, pp. 62-84.

[2] *Id.* at 88-89.

Petitioner, on the other hand, alleged that the portion of the subject property consisting of about 700 square meters was bought by Diosdado Herrera, Alfredo's father, from a certain Domingo Villaran. Upon the death of Diosdado Herrera, Alfredo inherited the 700-square-meter lot.

The COSLAP, in a Resolution[3] dated December 6, 1999, ruled that respondents have a rightful claim over the subject property. Consequently, a motion for reconsideration and/or reopening of the proceedings was filed by Alfredo. The COSLAP, in an Order[4] dated August 21, 2002, denied the motion and reiterated its Order dated December 6, 1999. Aggrieved, petitioner Celia S. *Vda. de* Herrera, as the surviving spouse of Alfredo, filed a petition for *certiorari* with the CA.[5] The CA, Twelfth Division, in its Decision dated April 28, 2005, dismissed the petition and affirmed the resolution of the COSLAP. The CA ruled that the COSLAP has exclusive jurisdiction over the present case and, even assuming that the COSLAP has no jurisdiction over the land dispute of the parties herein, petitioner is already estopped from raising the issue of jurisdiction because Alfredo failed to raise the issue of lack of jurisdiction before the COSLAP and he actively participated in the proceedings before the said body. Petitioner filed a motion for reconsideration, which was denied by the CA in a Resolution dated October 17, 2005.

Hence, petitioner elevated the case to this Court *via* Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, with the following issues:

I

WHETHER OR NOT COSLAP HAD JURISDICTION TO DECIDE THE QUESTION OF OWNERSHIP.

II

WHETHER OR NOT THE ISSUANCE OF A TORRENS TITLE IN THE NAME OF THE PETITIONER'S HUSBAND IN 2002

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[3] COSLAP records, pp. 289-297.

[4] *Id.* at 365-366.

[5] *Id.* at 430-439.

RENDERED THE INSTANT CONTROVERSY ON THE ISSUE OF OWNERSHIP OVER THE SUBJECT PROPERTY MOOT AND ACADEMIC.[6]

Petitioner averred that the COSLAP has no adjudicatory powers to settle and decide the question of ownership over the subject land. Further, the present case cannot be classified as explosive in nature as the parties never resorted to violence in resolving the controversy. Petitioner submits that it is the Regional Trial Court which has jurisdiction over controversies relative to ownership of the subject property.

Respondents, on the other hand, alleged that the COSLAP has jurisdiction over the present case. Further, respondents argued that petitioner is estopped from questioning the jurisdiction of the COSLAP by reason of laches due to Alfredo's active participation in the actual proceedings before the COSLAP. Respondents said that Alfredo's filing of the Motion for Reconsideration and/or Reopening of the proceedings before the COSLAP is indicative of his conformity with the questioned resolution of the COSLAP.

The main issue for our resolution is whether the COSLAP has jurisdiction to decide the question of ownership between the parties.

The petition is meritorious.

The COSLAP was created by virtue of Executive Order (E.O.) No. 561, issued on September 21, 1979 by then President Ferdinand E. Marcos. It is an administrative body established as a means of providing a mechanism for the expeditious settlement of land problems among small settlers, landowners and members of the cultural minorities to avoid social unrest.

Section 3 of E.O. No. 561 specifically enumerates the instances when the COSLAP can exercise its adjudicatory functions:

Section 3. *Powers and Functions.* - The Commission shall have the following powers and functions:

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[6] *Rollo,* p. 162.

x x x x x x x x x

2. Refer and follow up for immediate action by the agency having appropriate jurisdiction any land problem or dispute referred to the Commission: Provided, That the Commission may, in the following cases, ***assume jurisdiction and resolve land problems or disputes which are critical and explosive in nature considering, for instance, the large number of the parties involved, the presence or emergence of social tension or unrest, or other similar critical situations requiring immediate action:***

(a) Between occupants/squatters and pasture lease agreement holders or timber concessionaires;

(b) Between occupants/squatters and government reservation grantees;

(c) Between occupants/squatters and public land claimants or applicants;

(d) Petitions for classification, release and/or subdivision of lands of the public domain; and

(e) Other similar land problems of grave urgency and magnitude.[7]

Administrative agencies, like the COSLAP, are tribunals of limited jurisdiction that can only wield powers which are specifically granted to it by its enabling statute.[8] Under Section 3 of E.O. No. 561, the COSLAP has two options in acting on a land dispute or problem lodged before it, to wit: (a) refer the matter to the agency having appropriate jurisdiction for settlement/ resolution; or (b) assume jurisdiction if the matter is one of those enumerated in paragraph 2 (a) to (e) of the law, if such case is critical and explosive in nature, taking into account the large number of parties involved, the presence or emergence of social unrest, or other similar critical situations requiring immediate action. In resolving whether to assume jurisdiction over a case

[7] Emphasis supplied.

[8] *National Housing Authority v. Commission on the Settlement of Land Problems*, G.R. No. 142601, October 23, 2006, 505 SCRA 38, 44.

or to refer the same to the particular agency concerned, the COSLAP has to consider the nature or classification of the land involved, the parties to the case, the nature of the questions raised, and the need for immediate and urgent action thereon to prevent injuries to persons and damage or destruction to property. The law does not vest jurisdiction on the COSLAP over any land dispute or problem.[9]

In the instant case, the COSLAP has no jurisdiction over the subject matter of respondents' complaint. The present case does not fall under any of the cases enumerated under Section 3, paragraph 2 (a) to (e) of E.O. No. 561. The dispute between the parties is not critical and explosive in nature, nor does it involve a large number of parties, nor is there a presence or emergence of social tension or unrest. It can also hardly be characterized as involving a critical situation that requires immediate action.

It is axiomatic that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such reliefs.[10]

Respondents' cause of action before the COSLAP pertains to their claim of ownership over the subject property, which is an action involving title to or possession of real property, or any interest therein,[11] the jurisdiction of which is vested with

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[9] *Ga, Jr. v. Tubungan*, G.R. No. 182185, September 18, 2009, 600 SCRA 739, 747.

[10] *Heirs of Julian Dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz*, G.R. No. 162890, November 22, 2005, 475 SCRA 743, 755-756.

[11] An action "involving title to real property" means that the plaintiff's cause of action is based on a claim that he owns such property or that he has the legal rights to have exclusive control, possession, enjoyment, or disposition of the same. (*Heirs of Generoso Sebe v. Heirs of Veronico Sevilla*, G.R. No. 174497, October 12, 2009, 603 SCRA 395, 404).

the Regional Trial Courts or the Municipal Trial Courts depending on the assessed value of the subject property.[12]

The case of *Banaga v. Commission on the Settlement of Land Problems*,[13] applied by the CA and invoked by the respondents, is inapplicable to the present case. *Banaga* involved parties with conflicting free patent applications over a parcel of public land and pending with the Bureau of Lands. Because of the Bureau of Land's inaction within a considerable period of time on the claims and protests of the parties and to conduct an investigation, the COSLAP assumed jurisdiction and resolved the conflicting claims of the parties. The Court held that since the dispute involved a parcel of public land on a free patent issue, the COSLAP had jurisdiction over that case. In the present

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[12] Batas Pambansa Blg. 129, as amended, provides:

SEC. 19. *Jurisdiction in Civil Cases.* " Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigations is incapable of pecuniary estimation.

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00), or for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts; x x x.

SEC. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases.* — Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall exercise:

x x x x x x x x x

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) x x x.

[13] 210 Phil. 643 (1990).

case, there is no showing that the parties have conflicting free patent applications over the subject parcel of land that would justify the exercise of the COSLAP's jurisdiction.

Since the COSLAP has no jurisdiction over the action, all the proceedings therein, including the decision rendered, are null and void.[14] A judgment issued by a quasi-judicial body without jurisdiction is void. It cannot be the source of any right or create any obligation.[15] All acts performed pursuant to it and all claims emanating from it have no legal effect.[16] Having no legal effect, the situation is the same as it would be as if there was no judgment at all. It leaves the parties in the position they were before the proceedings.[17]

Respondents' allegation that petitioner is estopped from questioning the jurisdiction of the COSLAP by reason of laches does not hold water. Petitioner is not estopped from raising the jurisdictional issue, because it may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel.[18] The fact that a person attempts to invoke unauthorized jurisdiction of a court does not estop him from thereafter challenging its jurisdiction over the subject matter, since such jurisdiction must arise by law and not by mere consent of the parties.[19]

In *Regalado v. Go*,[20] the Court held that laches should be clearly present for the *Sibonghanoy*[21] doctrine to apply, thus:

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[14] *Frianela v. Banayad, Jr.*, G.R. No. 169700, July 30, 2009, 594 SCRA 380, 392.

[15] *Machado v. Gatdula*, G.R. No. 156287, February 16, 2010, 612 SCRA 546, 560.

[16] *National Housing Authority v. Commission on the Settlement of Land Problems*, *supra* note 8, at 46.

[17] *Id. at* 46-47.

[18] *Figueroa v. People*, G.R. No. 147406, July 14, 2008, 558 SCRA 63, 81.

[19] *Id.*

[20] G.R. No. 167988, February 6, 2007, 514 SCRA 616, 635.

[21] In *Tijam v. Sibonghanoy*, 131 Phil. 556, the Court held that a party may be barred by laches from invoking lack of jurisdiction at a late hour for

Laches is defined as the "failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier, it is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it."

The ruling in *People v. Regalario* that was based on the landmark doctrine enunciated in *Tijam v. Sibonghanoy* on the matter of jurisdiction by estoppel is the exception rather than the rule. *Estoppel by laches may be invoked to bar the issue of lack of jurisdiction only in cases in which the factual milieu is analogous to that in the cited case*. In such controversies, laches should have been clearly present; that is, lack of jurisdiction must have been raised so belatedly as to warrant the presumption that the party entitled to assert it had abandoned or declined to assert it.

In *Sibonghanoy*, the defense of lack of jurisdiction was raised for the first time in a motion to dismiss filed by the Surety almost 15 years after the questioned ruling had been rendered. At several stages of the proceedings, in the court *a quo* as well as in the Court of Appeals, the Surety invoked the jurisdiction of the said courts to obtain affirmative relief and submitted its case for final adjudication on the merits. It was only when the adverse decision was rendered by the Court of Appeals that it finally woke up to raise the question of jurisdiction.[22]

The factual settings attendant in *Sibonghanoy* are not present in the case at bar that would justify the application of estoppel by laches against the petitioner. Here, petitioner assailed the jurisdiction of the COSLAP when she appealed the case to the CA and at that time, no considerable period had yet elapsed for laches to attach. Therefore, petitioner is not estopped from assailing the jurisdiction of the COSLAP. Additionally, no laches will even attach because the judgment is null and void for want of jurisdiction.[23]

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the purpose of annulling everything done in the case with the active participation of said party invoking the plea of lack of jurisdiction.

[22] *Regalado v. Go*, *supra* note 20, at 635-636.

[23] *Figueroa v. People*, G.R. No. 147406, July 14, 2008, 558 SCRA 63, 82.

Anent the issuance of OCT No. M-10991 in favor of petitioner's husband Alfredo Herrerra in 2002, respondents alleged that there was fraud, misrepresentation and bad faith in the issuance thereof. Thus, respondents are now questioning the legality of OCT No. M-10991, an issue which this Court cannot pass upon in this present petition. It is a rule that the validity of a Torrens title cannot be assailed collaterally.[24] Section 48 of Presidential Decree No. 1529 provides that:

> *Certificate not Subject to Collateral Attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled, except in a direct proceeding in accordance with law.

The issue of the validity of the Title was brought only during the proceedings before this Court as said title was issued in the name of petitioner's husband only during the pendency of the appeal before the CA. The issue on the validity of title, *i.e.*, whether or not it was fraudulently issued, can only be raised in an action expressly instituted for that purpose[25] and the present appeal before us, is simply not the direct proceeding contemplated by law.

WHEREFORE, the petition is *GRANTED*. The Decision and the Resolution of the Court of Appeals, dated April 28, 2005 and October 17, 2005, respectively, in CA-G.R. SP No. 73674 are *REVERSED and SET ASIDE*. The Decision and Order of the Commission on the Settlement of Land Problems, dated December 6, 1999 and August 21, 2002, respectively, in COSLAP Case No. 99-221, are declared *NULL and VOID* for having been issued without jurisdiction.

SO ORDERED.

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

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[24] *Vda. de Gualberto v. Go*, G.R. No. 139843, July 21, 2005, 463 SCRA 671, 677.

[25] *Tanenglian v. Lorenzo*, G.R. No. 173415, March 28, 2008, 550 SCRA 348, 380.

SECOND DIVISION

[G.R. No. 170352. June 1, 2011]

MEGAN SUGAR CORPORATION, *petitioner, vs.* **REGIONAL TRIAL COURT OF ILOILO, BRANCH 68, DUMANGAS, ILOILO; NEW FRONTIER SUGAR CORPORATION and EQUITABLE PCI BANK,** *respondents.*

SYLLABUS

1. CIVIL LAW; ESTOPPEL; CONCEPT.— The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result. It has been applied by this Court wherever and whenever special circumstances of a case so demand.

2. ID.; ID.; A CORPORATION IS ESTOPPED FROM DENYING THE AUTHORITY OF ITS COUNSEL TO APPEAR IN ITS BEHALF ALTHOUGH THERE WAS NO BOARD RESOLUTION TO THAT EFFECT; DOCTRINE OF OSTENSIBLE AGENCY, APPLIED.— MEGAN can no longer deny the authority of Atty. Sabig as they have already clothed him with apparent authority to act in their behalf. It must be remembered that when Atty. Sabig entered his appearance, he was accompanied by Concha, MEGAN's director and general manager. Concha himself attended several court hearings, and on December 17, 2002, even sent a letter to the RTC asking for the status of the case. A corporation may be held in estoppel from denying as against innocent third persons the authority of its officers or agents who have been clothed by it with ostensible or apparent authority. Atty. Sabig may not have been armed with a board resolution, but the appearance of Concha made the parties assume that MEGAN had knowledge of Atty. Sabig's actions and, thus, clothed Atty. Sabig with apparent

authority such that the parties were made to believe that the proper person and entity to address was Atty. Sabig. Apparent authority, or what is sometimes referred to as the "holding out" theory, or doctrine of ostensible agency, imposes liability, *not as the result of the reality of a contractual relationship*, but rather because of the actions of a principal or an employer in somehow misleading the public into believing that the relationship or the authority exists. Like the CA, this Court notes that MEGAN never repudiated the authority of Atty. Sabig when all the motions, pleadings and court orders were sent not to the office of Atty. Sabig but to the office of MEGAN, who in turn, would forward all of the same to Atty. Sabig. x x x One of the instances of estoppel is when the principal has clothed the agent with indicia of authority as to lead a reasonably prudent person to believe that the agent actually has such authority. With the case of MEGAN, it had all the opportunity to repudiate the authority of Atty. Sabig since all motions, pleadings and court orders were sent to MEGAN's office. However, MEGAN never questioned the acts of Atty. Sabig and even took time and effort to forward all the court documents to him.

3. ID.; ID.; WHERE A CORPORATION IS ESTOPPED FROM ASSAILING THE JURISDICTION OF THE COURT.— MEGAN had all the opportunity to assail the jurisdiction of the RTC and yet far from doing so, it even complied with the RTC Order. With the amount of money involved, it is beyond belief for MEGAN to claim that it had no knowledge of the events that transpired. Moreover, it bears to stress that Atty. Sabig even filed subsequent motions asking for affirmative relief, more important of which is his March 27, 2003 Urgent *Ex-Parte* Motion asking the RTC to direct the Sugar Regulatory Administration (SRA) to release certain quedans in favor of MEGAN on the premise that the same were not covered by the RTC Orders. Atty. Sabig manifested that 30% of the value of the quedans will be deposited in court as payment for accrued rentals. Noteworthy is the fact that Atty. Sabig's motion was favorably acted upon by the RTC. Like the CA, this Court finds that estoppel has already set in. It is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief to afterwards deny that same jurisdiction to escape a penalty. The party is barred from

> such conduct not because the judgment or order of the court is valid but because such a practice cannot be tolerated for reasons of public policy. x x x The rule is that the active participation of the party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or administrative body where the action is pending, is tantamount to an invocation of that 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.

APPEARANCES OF COUNSEL

Gerochi Law Office and *Nestor C. Ifurung, Jr.* for petitioner.
Isip San Juan Guirnalda & Associates for EPCI Bank.
Cesar N. Zoleta for New Frontier Sugar Corp.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari*,[1] under Rule 45 of the Rules of Court, seeking to set aside the August 23, 2004 Decision[2] and October 12, 2005 Resolution[3] of the Court of Appeals (CA), in CA-G.R. SP No. 75789.

The facts of the case are as follows:

On July 23, 1993, respondent New Frontier Sugar Corporation (NFSC) obtained a loan from respondent Equitable PCI Bank (EPCIB). Said loan was secured by a real estate mortgage over NFSC's land consisting of ninety-two (92) hectares located in Passi City, Iloilo, and a chattel mortgage over NFSC's sugar mill.

On November 17, 2000, because of liquidity problems and continued indebtedness to EPCIB, NFSC entered into a

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[1] *Rollo*, pp. 10-46.

[2] Penned by Associate Justice Vicente L. Yap, with Associate Justices Arsenio J. Magpale and Ramon M. Bato, Jr., concurring; *id.* at 48-53.

[3] *Id.* at 55-57.

Memorandum of Agreement[4] (MOA) with Central Iloilo Milling Corporation (CIMICO), whereby the latter agreed to take-over the operation and management of the NFSC raw sugar factory and facilities for the period covering crop years 2000 to 2003.

On April 19, 2002, NFSC filed a complaint for specific performance and collection[5] against CIMICO for the latter's failure to pay its obligations under the MOA.

In response, CIMICO filed with the Regional Trial Court (RTC) of Dumangas, Iloilo, Branch 68, a case against NFSC for sum of money and/or breach of contract.[6] The case was docketed as Civil Case No. 02-243.

On May 10, 2002, because of NFSC's failure to pay its debt, EPCIB instituted extra-judicial foreclosure proceedings over NFSC's land and sugar mill. During public auction, EPCIB was the sole bidder and was thus able to buy the entire property and consolidate the titles in its name. EPCIB then employed the services of Philippine Industrial Security Agency (PISA) to help it in its effort to secure the land and the sugar mill.

On September 16, 2002, CIMICO filed with the RTC an Amended Complaint[7] where it impleaded PISA and EPCIB. As a result, on September 25, 2002, upon the motion of CIMICO, the RTC issued a restraining order, directing EPCIB and PISA to desist from taking possession over the property in dispute. Hence, CIMICO was able to continue its possession over the property.

On October 3, 2002, CIMICO and petitioner Megan Sugar Corporation (MEGAN) entered into a MOA[8] whereby MEGAN assumed CIMICO's rights, interests and obligations over the

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[4] Records, Vol. 1, pp. 19-21.

[5] Docketed as Civil Case No. 02-240.

[6] Records, Vol. 1, pp. 9-17.

[7] *Id.* at 98-113.

[8] Records, Vol. 2, pp. 731-732.

property. As a result of the foregoing undertaking, MEGAN started operating the sugar mill on November 18, 2002.

On November 22, 2002, Passi Iloilo Sugar Central, Inc. (Passi Sugar) filed with the RTC a Motion for Intervention claiming to be the vendee of EPCIB. Passi Sugar claimed that it had entered into a Contract to Sell[9] with EPCIB after the latter foreclosed NFSC's land and sugar mill.

On November 29, 2002, during the hearing on the motion for intervention, Atty. Reuben Mikhail Sabig (Atty. Sabig) appeared before the RTC and entered his appearance as counsel for MEGAN. Several counsels objected to Atty. Sabig's appearance since MEGAN was not a party to the proceedings; however, Atty. Sabig explained to the court that MEGAN had purchased the interest of CIMICO and manifested that his statements would bind MEGAN.

On December 10, 2002, EPCIB filed a Motion for Delivery/ Deposit of Mill Shares/Rentals.[10]

On December 11, 2002, Passi Sugar filed a Motion to Order Deposit of Mill Share Production of "MEGAN" and/or CIMICO.[11] On the same day, NFSC filed a Motion to Order Deposit of Miller's Share (37%) or the Lease Consideration under the MOA between NFSC and CIMICO.[12]

On December 27, 2002, NFSC filed another Motion to Hold in Escrow Sugar Quedans or Proceeds of Sugar Sales Equivalent to Miller's Shares.[13]

On January 16, 2003, the RTC issued an Order[14] granting EPCIB's motion for the placement of millers' share in escrow. The dispositive portion of which reads:

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[9] Records, Vol. 1, pp. 322- 328.

[10] Records, Vol. 2, pp. 708-712.

[11] *Id.* at 715- 720.

[12] *Id.* at 705-707.

[13] *Id.* at 745- 752.

[14] *Rollo*, pp. 139-150.

WHEREFORE, in view of the foregoing, the motions to place the mill's share in escrow to the court is hereby GRANTED.

Megan Sugar Corporation or its director-officer, Mr. Joey Concha, who is General Manager of Megan, is ordered to deposit in escrow within five (5) days upon receipt of this order, the sugar quedans representing the miller's share to the Court starting from December 19, 2002 and thereafter, in every Friday of the week pursuant to the Memorandum of Agreement executed by plaintiff CIMICO and defendant NFSC.

SO ORDERED.[15]

On January 29, 2003, Atty. Sabig filed an Omnibus Motion for Reconsideration and Clarification.[16] On February 19, 2003, the RTC issued an Order[17] denying said motion.

On February 27, 2003, EPCIB filed an Urgent *Ex-Parte* Motion for Execution,[18] which was granted by the RTC in an Order[19] dated February 28, 2003.

Aggrieved by the orders issued by the RTC, MEGAN filed before the CA a petition for *certiorari*,[20] dated March 5, 2003. In said petition, MEGAN argued mainly on two points; *first*, that the RTC erred when it determined that MEGAN was subrogated to the obligations of CIMICO and; *second*, that the RTC had no jurisdiction over MEGAN.

On August 23, 2004, the CA issued a Decision dismissing MEGAN's petition, the dispositive portion of which reads:

WHEREFORE, premises considered, the Petition for *Certiorari* is hereby DENIED and forthwith DISMISSED for lack of merit. Cost against petitioner.

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[15] *Id.* at 149-150.

[16] Records, Vol. 2, pp. 799- 804.

[17] *Id.* at 909-911.

[18] *Id.* at 893-895.

[19] Records, Vol. 3, pp.1069-1070.

[20] *Rollo*, pp. 159-190.

SO ORDERED.[21]

In denying MEGAN's petition, the CA ruled that since Atty. Sabig had actively participated before the RTC, MEGAN was already estopped from assailing the RTC's jurisdiction.

Aggrieved, MEGAN then filed a Motion for Reconsideration,[22] which was, however, denied by the CA in Resolution dated October 12, 2005.

Hence, herein petition, with MEGAN raising the following issues for this Court's consideration, to wit:

I.

WHETHER OR NOT THE PETITIONER IS ESTOPPED FROM QUESTIONING THE ASSAILED ORDERS BECAUSE OF THE ACTS OF ATTY. REUBEN MIKHAIL SABIG.

II.

WHETHER OR NOT THE REGIONAL TRIAL COURT HAD JURISDICTION TO ISSUE THE ORDERS DATED JANUARY 16, 2003, FEBRUARY 19, 2003 AND FEBRUARY 28, 2003.[23]

The petition is not meritorious.

MEGAN points out that its board of directors did not issue a resolution authorizing Atty. Sabig to represent the corporation before the RTC. It contends that Atty. Sabig was an unauthorized agent and as such his actions should not bind the corporation. In addition, MEGAN argues that the counsels of the different parties were aware of Atty. Sabig's lack of authority because he declared in court that he was still in the process of taking over the case and that his voluntary appearance was just for the hearing of the motion for intervention of Passi Sugar.

Both EPCIB and NFSC, however, claim that MEGAN is already estopped from assailing the authority of Atty. Sabig.

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[21] *Id.* at 52.

[22] Records, Vol. 4, pp. 1649-1660.

[23] *Rollo*, p. 20.

They contend that Atty. Sabig had actively participated in the proceedings before the RTC and had even filed a number of motions asking for affirmative relief. They also point out that Jose Concha (Concha), who was a member of the Board of Directors of MEGAN, accompanied Atty. Sabig during the hearing. Lastly, EPCIB and NFSC contend that all the motions, pleadings and court orders were sent to the office of MEGAN; yet, despite the same, MEGAN never repudiated the authority of Atty. Sabig.

After a judicial examination of the records pertinent to the case at bar, this Court agrees with the finding of the CA that MEGAN is already estopped from assailing the jurisdiction of the RTC.

Relevant to the discussion herein is the transcript surrounding the events of the November 29, 2002 hearing of Passi Sugar's motion for intervention, to wit:

ATTY. ARNOLD LEBRILLA:
Appearing as counsel for defendant PCI Equitable Bank, your Honor.

ATTY. CORNELIO PANES:
Also appearing as counsel for defendant New Frontier Sugar Corporation.

ATTY. ANTONIO SINGSON:
I am appearing, your Honor, as counsel for Passisugar.

ATTY. REUBEN MIKHAIL SABIG:
Appearing your Honor, for Megan Sugar, Inc.

ATTY. LEBRILLA: Your Honor, the counsel for the plaintiff CIMICO has not yet arrived.

ATTY. SABIG: Your Honor, we have been furnished of a copy of the motion. I've talked to Atty. [Leonardo] Jiz and he informed me that he cannot attend this hearing because we are in the process of taking over this case. However, the Passisugar had intervened and we have to appear because we have been copy furnished of the motion, and also, your Honor, since the motion will directly affect

Megan and we are appearing in this hearing despite the fact that we had not officially received the copy of the motion. Anyway, your Honor, since we are in the process of taking over this case, Atty. Jiz told me that he cannot appear today.

COURT: Here is the representative from CIMICO.

ATTY. PANES: Yes, your Honor, Atty. Gonzales is here.

ATTY. NELIA JESUSA GONZALES:

I am appearing in behalf of the plaintiff CIMICO, your Honor.

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COURT: Shall we tackle first your motion for intervention?

ATTY. SINGSON: Yes, your Honor.

ATTY. PANES: Yes, your Honor, and I would like to make a manifestation in relation to the appearance made by Atty. Sabig. Megan is not, in anyway, a party [to] this case and if he must join, he can file a motion for intervention. We would like to reiterate our stand that he cannot participate in any proceeding before this Court particularly in this case.

COURT: Yes, that is right.

ATTY. SINGSON: Yes, your Honor, unless there is a substitution of the plaintiff.

ATTY. SABIG: I understand, your Honor, that we have been served a copy of this motion.

ATTY. PANES: A service copy of the motion is only a notice and it is not, in anyway, [a] right for him to appear as a party.

COURT: Just a moment, Atty. Panes. Shall we allow Atty. Sabig to finish first?

ATTY. SABIG: This motion directly affects us and that's why we're voluntarily appearing, just for this hearing on the motion and not for the

case itself, specifically for the hearing [on] this motion. That's our appearance for today because we have been served and we have to protect our interest. We are not saying that we are taking over the case but there is a hearing for the motion in intervention and we have been served a copy, that's why we appear voluntarily.

ATTY. LEBRILLA: Your Honor, please, for the defendant, we do not object to the appearance of the counsel for Megan provided that the counsel could assure us that whatever he says [all through] in this proceeding will [bind] his client, your Honor, as he is duly authorized by the corporation, under oath, your Honor, that whatever he says here is binding upon the corporation.

ATTY. SABIG: Yes, your Honor.

COURT: But I thought all the while that your motion for intervention will implead Megan.

ATTY. SINGSON: We will not yet implead them, your Honor.

COURT: Why will you not implead them because they are now in possession of the mill?

ATTY. SINGSON: That's why we want to be clarified. In what capacity is Megan entering into the picture? That's the point now that we would like to ask them. So, whatever statement you'll be making here will bind Megan?

ATTY. SABIG: Yes, your Honor. Specifically for the hearing because apparently, we have to voluntarily appear since they furnished us a copy that would directly affect our rights.

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COURT: **Are you saying that you are appearing now in behalf of Megan?**

ATTY. SABIG: **Yes, your Honor.**

COURT:	**And whatever statement you made here will bind Megan?**
ATTY. SABIG:	**Yes, your Honor.**
x x x	x x x x x x
COURT:	**That's why you're being asked now what interest [does] Megan have here?**
ATTY. SABIG:	**We are already in possession of the mill, your Honor.**
ATTY. SINGSON:	**You are in possession of the mill. [On] what authority are you in possession, this Megan group?**
ATTY. SABIG:	**We have a Memorandum of Agreement which we entered, your Honor, and they transferred their [referring to CIMICO] rights to us.**[24]

The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result. It has been applied by this Court wherever and whenever special circumstances of a case so demand.[25]

Based on the events and circumstances surrounding the issuance of the assailed orders, this Court rules that MEGAN is estopped from assailing both the authority of Atty. Sabig and the jurisdiction of the RTC. While it is true, as claimed by MEGAN, that Atty. Sabig said in court that he was only appearing for the hearing of Passi Sugar's motion for intervention and not for the case

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[24] TSN, November 29, 2002, pp. 2-9. (Emphasis supplied).

[25] *Philippine National Bank v. Court of Appeals*, 183 Phil. 54, 63-64 (1979).

itself, his subsequent acts, coupled with MEGAN's inaction and negligence to repudiate his authority, effectively bars MEGAN from assailing the validity of the RTC proceedings under the principle of estoppel.

In the first place, Atty. Sabig is not a complete stranger to MEGAN. As a matter of fact, as manifested by EPCIB, Atty. Sabig and his law firm SABIG SABIG & VINGCO Law Office has represented MEGAN in other cases[26] where the opposing parties involved were also CIMICO and EPCIB. As such, contrary to MEGAN's claim, such manifestation is neither immaterial nor irrelevant,[27] because at the very least, such fact shows that MEGAN knew Atty. Sabig.

MEGAN can no longer deny the authority of Atty. Sabig as they have already clothed him with apparent authority to act in their behalf. It must be remembered that when Atty. Sabig entered his appearance, he was accompanied by Concha, MEGAN's director and general manager. Concha himself attended several court hearings, and on December 17, 2002, even sent a letter[28] to the RTC asking for the status of the case. A corporation may be held in estoppel from denying as against innocent third persons the authority of its officers or agents who have been clothed by it with ostensible or apparent authority.[29]Atty. Sabig may not have been armed with a board resolution, but the appearance of Concha made the parties assume that MEGAN

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[26] Civil Case No. 03-11917, *Megan Sugar Corporation v. EPCIB, et al.*, filed before the Regional Trial Court, Branch 54 of Bacolod City; Civil Case No. 03-27542, *Central Iloilo Milling Corporation v. Megan Sugar Corporation, et al.*, filed before the Regional Trial Court, Branch 32, Iloilo City. See Opposition to the Motion for Reconsideration, records, Vol. 4, pp. 1687-1703.

[27] See Consolidated Reply to Oppositions to Motion for Reconsideration filed by New Frontier Sugar Corporation and Equitable PCI Bank, records, Vol. 4, pp. 1706- 1712.

[28] Records, Vol. 2, p. 730.

[29] *Rural Bank of Milaor (Camarines Sur) v. Ocfemia*, 381 Phil. 911, 929 (2000).

had knowledge of Atty. Sabig's actions and, thus, clothed Atty. Sabig with apparent authority such that the parties were made to believe that the proper person and entity to address was Atty. Sabig. Apparent authority, or what is sometimes referred to as the "holding out" theory, or doctrine of ostensible agency, imposes liability, *not as the result of the reality of a contractual relationship*, but rather because of the actions of a principal or an employer in somehow misleading the public into believing that the relationship or the authority exists.[30]

Like the CA, this Court notes that MEGAN never repudiated the authority of Atty. Sabig when all the motions, pleadings and court orders were sent not to the office of Atty. Sabig but to the office of MEGAN, who in turn, would forward all of the same to Atty. Sabig, to wit:

> x x x All the motions, pleadings and other notices in the civil case were mailed to Atty. Reuben Mikhail P. Sabig, Counsel for Megan Sugar, NFSC Compound, Barangay Man-it, Passi, Iloilo City which is the address of the Sugar Central being operated by Megan Sugar. The said address is not the real office address of Atty. Sabig. As pointed out by private respondent Equitable PCI Bank, the office address of Atty. Sabig is in Bacolod City. All orders, pleadings or motions filed in Civil Case 02-243 were received in the sugar central being operated by Megan Central and later forwarded by Megan Sugar to Atty. Sabig who is based in Bacolod City. We find it incredible that, granting that there was no authority given to said counsel, the record shows that it was received in the sugar mill operated by Megan and passed on to Atty. Sabig. At any stage, petitioner could have repudiated Atty. Sabig when it received the court pleadings addressed to Atty. Sabig as their counsel.[31]

One of the instances of estoppel is when the principal has clothed the agent with indicia of authority as to lead a reasonably prudent person to believe that the agent actually has such

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[30] *Professional Services, Inc. v. Agana*, G.R. Nos. 126297, 126467 and 127590, January 31, 2007, 513 SCRA 478, 500-501.

[31] *Rollo*, p. 56.

authority.[32] With the case of MEGAN, it had all the opportunity to repudiate the authority of Atty. Sabig since all motions, pleadings and court orders were sent to MEGAN's office. However, MEGAN never questioned the acts of Atty. Sabig and even took time and effort to forward all the court documents to him.

To this Court's mind, MEGAN cannot feign knowledge of the acts of Atty. Sabig, as MEGAN was aware from the very beginning that CIMICO was involved in an on-going litigation. Such fact is clearly spelled out in MEGAN's MOA with CIMICO, to wit:

> WHEREAS, CIMICO had filed a 2nd Amended Complaint for Sum of Money, Breach of Contract and Damages with Preliminary Injunction with a Prayer for a Writ of Temporary Restraining Order against the NEW FRONTIER SUGAR CORPORATION, pending before Branch 68 of the Regional Trial Court, based in Dumangas, Iloilo, Philippines, entitled CENTRAL ILOILO MILLING CORPORATION (CIMICO) versus NEW FRONTIER SUGAR CORPORATION (NFSC), EQUITABLE PCI BANK and PHILIPPINE INDUSTRIAL SECURITY AGENCY docketed as CIVIL CASE NO. 02-243;[33]

Considering that MEGAN's rights stemmed from CIMICO and that MEGAN was only to assume the last crop period of 2002-2003 under CIMICO's contract with NFSC,[34] it becomes improbable that MEGAN would just wait idly by for the final resolution of the case and not send a lawyer to protect its interest.

In addition, it bears to point out that MEGAN was negligent when it did not assail the authority of Atty. Sabig within a reasonable time from the moment when the first adverse order was issued. To restate, the January 16, 2003 RTC Order directed

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[32] *Woodchild Holdings, Inc. v. Roxas Electric and Construction Company, Inc.*, 479 Phil. 896, 914 (2004).

[33] Records, Vol. 2, p. 732.

[34] Note that CIMICO's MOA with NFSC was only for three years, or from year 2000 to 2003. Hence, from the time CIMICO entered into a MOA with MEGAN in 2002, only one year remained from CIMICO's contract.

MEGAN to deposit a sizable number of sugar quedans. With such an order that directly affects the disposition of MEGAN's assets and one that involves a substantial amount, it is inconceivable for Atty. Sabig or for Concha not to inform MEGAN's board of such an order or for one of the directors not to hear of such order thru other sources. As manifested by NFSC, MEGAN is a family corporation and Concha is the son-in-law of Eduardo Jose Q. Miranda (Eduardo), the President of MEGAN. Elizabeth Miranda, one of the directors, is the daughter of Eduardo. MEGAN's treasurer, Ramon Ortiz is a cousin of the Mirandas.[35] Thus, given the nature and structure of MEGAN's board, it is unimaginable that not a single director was aware of the January 16, 2003 RTC Order. However, far from repudiating the authority of Atty. Sabig, Atty. Sabig even filed a Manifestation[36] that MEGAN will deposit the quedans, as directed by the RTC, every "Friday of the week."

MEGAN had all the opportunity to assail the jurisdiction of the RTC and yet far from doing so, it even complied with the RTC Order. With the amount of money involved, it is beyond belief for MEGAN to claim that it had no knowledge of the events that transpired. Moreover, it bears to stress that Atty. Sabig even filed subsequent motions asking for affirmative relief, more important of which is his March 27, 2003 Urgent *Ex-Parte* Motion[37] asking the RTC to direct the Sugar Regulatory Administration (SRA) to release certain quedans in favor of MEGAN on the premise that the same were not covered by the RTC Orders. Atty. Sabig manifested that 30% of the value of the quedans will be deposited in court as payment for accrued rentals. Noteworthy is the fact that Atty. Sabig's motion was favorably acted upon by the RTC. Like the CA, this Court finds that estoppel has already set in. It is not right for a party who has affirmed and invoked the jurisdiction of a court in a

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[35] See Comment, *rollo*, pp. 360-376, 372.

[36] *Rollo*, pp. 154-155.

[37] *Id.* at 156-158.

particular matter to secure an affirmative relief to afterwards deny that same jurisdiction to escape a penalty.[38] The party is barred from such conduct not because the judgment or order of the court is valid but because such a practice cannot be tolerated for reasons of public policy.[39]

Lastly, this Court also notes that on April 2, 2003, Atty. Sabig again filed an Urgent *Ex-Parte* Motion[40] asking the RTC to direct the SRA to release certain quedans not covered by the RTC Orders. The same was granted by the RTC in an Order[41] dated April 2, 2003. Curiously, however, Rene Imperial, the Plant Manager of MEGAN, also signed the April 2, 2003 RTC Order and agreed to the terms embodied therein. If Atty. Sabig was not authorized to act in behalf of MEGAN, then why would MEGAN's plant manager sign an official document assuring the RTC that he would deliver 30% of the value of the quedans earlier released to MEGAN pursuant to the March 27, 2003 Order?

The rule is that the active participation of the party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or administrative body where the action is pending, is tantamount to an invocation of that 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.[42] Based on the preceding discussion, this Court holds that MEGAN's challenge to Atty. Sabig's authority and the RTC's jurisdiction was a mere afterthought after having received an unfavorable decision from the RTC. Certainly, it would be unjust and inequitable to the other parties if this Court were to grant such a belated jurisdictional challenge.

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[38] *Tijam v. Sibonghanoy*, No. L- 21450, April 15, 1968, 23 SCRA 29, 36.

[39] *La Campana Food Products, Inc. v. Court of Appeals*, G.R. No. 88246, June 4, 1993, 223 SCRA 151, 157.

[40] Records, Vol. 3, pp. 1086-1088.

[41] *Id.* at 1095-1096.

[42] *Marquez v. Secretary of Labor*, 253 Phil. 329, 336 (1989).

WHEREFORE, premises considered, the petition is *DENIED*. The August 23, 2004 Decision and October 12, 2005 Resolution of the Court of Appeals, in CA-G.R. SP No. 75789, are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 170500 & 170510-11. June 1, 2011]

MARCELO G. GANADEN, OSCAR B. MINA, JOSE M. BAUTISTA and ERNESTO H. NARCISO, JR., *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, NATIONAL TRANSMISSION COMMISSION (TRANSCO), ALIPIO NOOL, FERMIN P. LANAG, SR., EUSEBIO B. COLLADO, JOSE S. TEJANO, NECIMIO A. ABUZO, ELISEO P. and MARTINEZ AND PERFECTO LAZARO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; DECISIONS THEREOF WERE NOT STAYED BY FILING AN APPEAL WITH THE COURT OF APPEALS.— Under [Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, dated September 15, 2003], a respondent who is found administratively liable by the Office of the Ombudsman and is slapped with a penalty of suspension of more than one month from service has the right to file an appeal with the CA under Rule 43 of the 1997 Rules of Civil

Procedure, as amended. But although a respondent is given the right to appeal, the act of filing an appeal does not stay the execution of the decision of the Office of the Ombudsman.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, DEFINED.— Grave abuse of discretion is defined as capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.

APPEARANCES OF COUNSEL

Kho Bustos Malcontento Argosino Law Offices for petitioners.
The Solicitor General for public respondent.
Ernesto Salunat for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Petitioners Marcelo G. Ganaden, Oscar B. Mina, Jose M. Bautista and Ernesto H. Narciso, Jr., pray in their present petition for *certiorari* that the October 11, 2005, October 28, 2005 and November 23, 2005 Resolutions[1] of the Court of Appeals (CA) in CA-G.R. SP No. 90280-82 be set aside supposedly for having been issued with grave abuse of discretion amounting to lack of or in excess of jurisdiction. Petitioners raise the sole issue of whether administrative decisions of the Office of the Ombudsman imposing the penalties of dismissal and one-year suspension from office are immediately executory pending appeal.

The facts are as follows.

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[1] *Rollo*, pp. 36-37, 39-40 and 42-43. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe, concurring.

On September 30, 2002, the Office of the Ombudsman promulgated its Decisions[2] in OMB-L-A-02-0068-B (involving the charge of dishonesty and misconduct), OMB-L-A-02-0069-B (involving the charge of dishonesty and acts inimical to public service), and OMB-L-A-02-0070-B (likewise involving the charge of dishonesty and acts inimical to public service). In OMB-L-A-02-0068-B and OMB-L-A-02-0070-B, the Ombudsman found petitioners Ganaden, Bautista and Narciso liable for dishonesty and imposed upon them the penalty of one-year suspension while in OMB-L-A-02-0069-B, the Ombudsman found petitioners Ganaden and Mina liable for dishonesty and imposed on them the penalty of one-year suspension.

Petitioners filed motions for reconsideration, but the Office of the Ombudsman, in three Orders[3] all dated April 8, 2005, not only denied their motions for reconsideration, but it also modified the penalties imposed in OMB-L-A-02-0069-B and OMB-L-A-02-0070-B. Instead of the penalty of one-year suspension it originally imposed, the Ombudsman increased the penalty to dismissal from the service as to petitioner Ganaden in OMB-L-A-02-0069-B and as to petitioners Ganaden, Bautista and Narciso in OMB-L-A-02-0070-B. The penalty of one-year suspension as to petitioner Mina was, however, maintained.

Aggrieved, petitioners filed separate petitions for review before the CA to question the three Decisions, as well as the Orders denying their motions for reconsideration. On September 8, 2005, the CA ordered the consolidation of all three petitions.[4]

Meanwhile, on February 28, 2003 petitioners availed of the early retirement program from the NPC. At the time the three Decisions and three orders of the Ombudsman came to their attention, they were already employed at the National Transmission Commission (TRANSCO).

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[2] *Id.* at 44-53, 69-77, 92-101.

[3] *Id.* at 54-68, 78-91, 102-116.

[4] *Id.* at 323-324.

Hence, on September 19, 2005, the Office of the Ombudsman issued a 1st Indorsement[5] referring to respondent Alan T. Ortiz, President and Chief Executive Officer of TRANSCO, the three Decisions dated September 30, 2002 as well as the three Orders dated April 8, 2005. In the 1st Indorsement, the Office of the Ombudsman requested from TRANSCO the issuance of Orders for Dismissal from the service of petitioners Ganaden, Bautista and Narciso and the issuance of an Order of Suspension from Service for one-year against petitioner Mina.

In compliance with the aforesaid 1st Indorsement, respondent Ortiz issued Orders of Dismissal[6] against petitioners Ganaden, Bautista, and Narciso, and an Order of Suspension[7] for one-year against petitioner Mina on October 12, 2005.

Aggrieved again, petitioners filed with the CA a verified petition[8] to cite respondent Ortiz in contempt for issuing the orders of dismissal and suspension. Petitioners claimed that by virtue of their appeal to the CA and a Resolution[9] of the CA granting their verified motion to amend their petition to include TRANSCO as public respondent, the execution of the three Decisions, as modified by the three Orders of the Ombudsman, was automatically stayed even without a restraining order. Thus, respondent Ortiz's issuance of orders of dismissal and suspension was an outright violation of the authority of the CA amounting to contempt.

On October 28, 2005, the CA issued a Resolution[10] denying petitioners' motion to cite respondent Ortiz in contempt of court. The CA clarified that the October 11, 2005 Resolution allowing the inclusion of TRANSCO as public respondent did not carry

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[5] *Id.* at 388-389.

[6] *Id.* at 346-348.

[7] *Id.* at 349.

[8] *Id.* at 350-364.

[9] *Id.* at 36-37.

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

with it the relief of automatic stay of execution. The petitioners filed a motion for reconsideration, but their motion was denied by the CA in a Resolution dated November 23, 2005.[11]

Thus, petitioners now come to this Court via a petition for *certiorari* to annul the October 11, 2005, October 28, 2005 and November 23, 2005 Resolutions of the CA and to enjoin the enforcement of the 1st Indorsement of the Office of the Ombudsman. According to them, jurisprudence provides that the execution of a decision of the Office of the Ombudsman is automatically stayed upon filing of an appeal and is stayed throughout the pendency of the appeal.

We dismiss the petition for utter lack of merit.

Petitioners rely heavily on the cases of *Lopez v. Court of Appeals*[12] and *Lapid v. Court of Appeals*[13] where the Court held, in essence, that a decision of the Office of the Ombudsman in administrative cases is stayed as a matter of right during the pendency of an appeal. The *Lapid* and *Lopez* cases, however, were decided in 2000 and 2002 respectively. Since then, there have been amendments to the Rules of Procedure of the Office of the Ombudsman. At present, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, dated September 15, 2003, provides:

> SECTION 7. *Finality and Execution of Decision.*—Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

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

[12] G.R. No. 144573, September 24, 2002, 389 SCRA 570.

[13] G.R. No. 142261, June 29, 2000, 334 SCRA 738.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (Emphasis supplied.)

Under this provision, a respondent who is found administratively liable by the Office of the Ombudsman and is slapped with a penalty of suspension of more than one month from service has the right to file an appeal with the CA under Rule 43 of the 1997 Rules of Civil Procedure, as amended. But although a respondent is given the right to appeal, the act of filing an appeal does not stay the execution of the decision of the Office of the Ombudsman. Such has been the consistent ruling of this Court since our decision in *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*[14] which overturned the rulings in the *Lopez* and *Lapid* cases.

In the recent case of *Office of the Ombudsman v. Court of Appeals and Barriga*,[15] a January 2011 case, the Court reiterated the rule as follows:

The provision in the Rules of Procedure of the Office of the Ombudsman is clear that **an appeal by a public official from a decision meted out by the Ombudsman shall not stop the decision from being executory**. In *Office of the Ombudsman v. Court of Appeals and Macabulos*,[16] we held that decisions of the Ombudsman are immediately executory even pending appeal in the CA. As

[14] G.R. No. 150274, August 4, 2006, 497 SCRA 626.

[15] G.R. No. 172224, January 26, 2011, pp. 7-8.

[16] G.R. No. 159395, May 7, 2008, 554 SCRA 75.

explained by this Court in the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*,[17] this provision in the rules of the Ombudsman is similar to that provided under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service. (Emphasis supplied.)

In fine, the execution of the April 8, 2005 Orders of the Ombudsman finding petitioners administratively liable and imposing the penalty of dismissal from service against petitioners Ganaden, Bautista, and Narciso, and suspension for one year on petitioner Mina were not stayed by the filing of an appeal with the CA. Accordingly, the Resolutions of the CA dated October 11, 2005, October 28, 2005 and November 23, 2005 were all in order.

Grave abuse of discretion is defined as capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[18] The subject Resolutions having been issued in accordance with law and existing jurisprudence, no grave abuse of discretion could be ascribed to the appellate court.

WHEREFORE, the petition for *certiorari* is *DISMISSED*. The October 11, 2005, October 28, 2005, and November 23, 2005 Resolutions of the Court of Appeals in CA-G.R. SP Nos. 90280-82 are *AFFIRMED*.

The Temporary Restraining Order issued by this Court on December 14, 2005 is hereby *LIFTED and SET ASIDE*.

With costs against petitioners.

SO ORDERED.

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

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[17] *Supra* note 14.

[18] *De Vera v. De Vera*, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 515, citing *People v. Court of Appeals*, 368 Phil. 169, 180 (1999).

FIRST DIVISION

[G.R. No. 173198. June 1, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DOLORES OCDEN,** *accused-appellant.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. 8042); ILLEGAL RECRUITMENT; CIRCUMSTANCES NECESSARY TO PROVE ILLEGAL RECRUITMENT, PRESENT.— It is well-settled that to prove illegal recruitment, it must be shown that appellant gave complainants the distinct impression that he had the power or ability to send complainants abroad for work such that the latter were convinced to part with their money in order to be employed. As testified to by Mana-a, Ferrer, and Golidan, Ocden gave such an impression through the following acts: (1) Ocden informed Mana-a, Ferrer, and Golidan about the job opportunity in Italy and the list of necessary requirements for application; (2) Ocden required Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard, to attend the seminar conducted by Ramos at Ocden's house in Baguio City; (3) Ocden received the job applications, pictures, bio-data, passports, and the certificates of previous employment (which was also issued by Ocden upon payment of ₱500.00), of Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard; (4) Ocden personally accompanied Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard, for their medical examinations in Manila; (5) Ocden received money paid as placement fees by Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard, and even issued receipts for the same; and (6) Ocden assured Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard, that they would be deployed to Italy.

2. ID.; ID.; ID.; PROSECUTION NEED NOT PRESENT CERTIFICATION THAT ACCUSED IS A NON-LICENSEE TO ENGAGE IN RECRUITMENT AND PLACEMENT OF WORKERS; FAILURE TO REIMBURSE THE EXPENSES INCURRED BY THE WORKER WHEN DEPLOYMENT DOES NOT ACTUALLY TAKE PLACE IS ILLEGAL

RECRUITMENT.— It is not necessary for the prosecution to present a certification that Ocden is a non-licensee or non-holder of authority to lawfully engage in the recruitment and placement of workers. Section 6 of Republic Act No. 8042 enumerates particular acts which would constitute illegal recruitment "whether committed by any person, whether a non-licensee, non-holder, licensee **or holder of authority**." Among such acts, under Section 6(m) of Republic Act No. 8042, is the "[f]ailure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault." Since illegal recruitment under Section 6(m) can be committed by any person, even by a licensed recruiter, a certification on whether Ocden had a license to recruit or not, is inconsequential. Ocden committed illegal recruitment as described in said provision by receiving placement fees from Mana-a, Ferrer, and Golidan's two sons, Jeffries and Howard, evidenced by receipts Ocden herself issued; and failing to reimburse/refund to Mana-a, Ferrer, and Golidan's two sons the amounts they had paid when they were not able to leave for Italy, through no fault of their own.

3. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL CANNOT STAND AGAINST POSITIVE IDENTIFICATION AND AFFIRMATIVE TESTIMONY.— Ocden's denial of any illegal recruitment activity cannot stand against the prosecution witnesses' positive identification of her in court as the person who induced them to part with their money upon the misrepresentation and false promise of deployment to Italy as factory workers. Besides, despite several opportunities given to Ocden by the RTC, she failed to present Ramos, who Ocden alleged to be the real recruiter and to whom she turned over the placement fees paid by her co-applicants. Between the categorical statements of the prosecution witnesses, on the one hand, and the bare denial of Ocden, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when the former comes from the mouth of a credible witness. Denial, same as an alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It is considered with suspicion and always received with caution,

not only because it is inherently weak and unreliable but also because it is easily fabricated and concocted.

4. ID.; ID.; CREDIBILITY OF WITNESSES; ABSENCE OF IMPROPER MOTIVE BOLSTERS THE TRIAL COURT'S ASSESSMENT OF THE CREDIBILITY OF WITNESSES.— [I]n the absence of any evidence that the prosecution witnesses were motivated by improper motives, the trial court's assessment of the credibility of the witnesses shall not be interfered with by this Court. It is a settled rule that factual findings of the trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by the Supreme Court, particularly when the Court of Appeals affirmed such findings. After all, the trial court is in the best position to determine the value and weight of the testimonies of witnesses. The absence of any showing that the trial court plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case, or that its assessment was arbitrary, impels the Court to defer to the trial court's determination according credibility to the prosecution evidence.

5. LABOR AND SOCIAL LEGISLATION; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. 8042); ILLEGAL RECRUITMENT ON A LARGE SCALE; MAY BE ESTABLISHED THROUGH THE TESTIMONY OF ONLY TWO VICTIMS AS LONG AS THERE IS CONCLUSIVE EVIDENCE THAT IT IS COMMITTED AGAINST THREE OR MORE PERSONS.— Under the last paragraph of Section 6, Republic Act No. 8042, illegal recruitment shall be considered an offense involving economic sabotage if committed in a large scale, that is, committed against three or more persons individually or as a group. In *People v. Hu*, we held that a conviction for large scale illegal recruitment must be based on a finding in each case of illegal recruitment of three or more persons, whether individually or as a group. While it is true that the law does not require that at least three victims testify at the trial, nevertheless, it is necessary that there is sufficient evidence proving that the offense was committed against three or more persons. In this case, there is conclusive evidence that Ocden recruited Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard, for purported employment as factory workers in Italy. x x x And even though

only Ferrer and Golidan testified as to Ocden's failure to reimburse the placements fees paid when the deployment did not take place, their testimonies already established the fact of non-reimbursement as to three persons, namely, Ferrer and Golidan's two sons, Jeffries and Howard.

6. ID.; ID.; ID.; PENALTY.— Section 7(b) of Republic Act No. 8042 prescribes a penalty of life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00 if the illegal recruitment constitutes economic sabotage. The RTC, as affirmed by the Court of Appeals, imposed upon Ocden the penalty of life imprisonment and a fine of only ₱100,000.00. Since the fine of ₱100,000 is below the minimum set by law, we are increasing the same to ₱500,000.00.

7. ID.; ID.; ID.; ACCUSED MAY BE CHARGED AND CONVICTED SEPARATELY OF ILLEGAL RECRUITMENT UNDER R.A. 8042 IN RELATION TO THE LABOR CODE AND *ESTAFA* UNDER THE REVISED PENAL CODE.— We are likewise affirming the conviction of Ocden for the crime of estafa. The very same evidence proving Ocden's liability for illegal recruitment also established her liability for estafa. It is settled that a person may be charged and convicted separately of illegal recruitment under Republic Act No. 8042 in relation to the Labor Code, and estafa under Article 315, paragraph 2(a) of the Revised Penal Code.

8. ID.; ID.; ID.; ELEMENTS OF *ESTAFA*, PRESENT.— The elements of estafa are: (a) that the accused defrauded another by abuse of confidence or by means of deceit, and (b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. Both these elements are present in the instant case. Ocden represented to Ferrer, Golidan, and Golidan's two sons, Jeffries and Howard, that she could provide them with overseas jobs. Convinced by Ocden, Ferrer, Golidan, and Golidan's sons paid substantial amounts as placement fees to her. Ferrer and Golidan's sons were never able to leave for Italy, instead, they ended up in Zamboanga, where, Ocden claimed, it would be easier to have their visas to Italy processed. Despite the fact that Golidan's sons, Jeffries and Howard, were stranded in Zamboanga for almost a month, Ocden still assured them and their mother that they would be able to leave for Italy. There is definitely deceit on the part of

Ocden and damage on the part of Ferrer and Golidan's sons, thus, justifying Ocden's conviction for estafa in Criminal Case Nos. 16316-R, 16318-R, and 16964-R.

9. ID.; ID.; ID.; PROPER PENALTY FOR *ESTAFA* WHEN THE AMOUNT DEFRAUDED IS OVER PHP22,000.— The penalty for estafa depends in the amount of defraudation x x x. The prescribed penalty for estafa under Article 315 of the Revised Penal Code, when the amount of fraud is over ₱22,000.00, is *prision correccional* maximum to *prision mayor* minimum, adding one year to the maximum period for each additional ₱10,000.00, provided that the total penalty shall not exceed 20 years.

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 Our consideration is an appeal from the Decision[1] dated April 21, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00044, which affirmed with modification the Decision[2] dated July 2, 2001 of the Regional Trial Court (RTC), Baguio City, Branch 60, in Criminal Case No. 16315-R. The RTC found accused-appellant Dolores Ocden (Ocden) guilty of illegal recruitment in large scale, as defined and penalized under Article 13(b), in relation to Articles 38(b), 34, and 39 of Presidential Decree No. 442, otherwise known as the New Labor Code of the Philippines, as amended, in Criminal Case No. 16315-R; and of the crime of estafa under paragraph 2(a), Article 315 of the Revised Penal Code, in Criminal Case Nos. 16316-R, 16318-R,

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[1] *Rollo*, pp. 3-20; penned by Associate Justice Noel G. Tijam with Associate Justices Elvi John S. Asuncion and Arcangelita Romilla-Lontok, concurring.

[2] Records (Crim. Case No. 16964-R), pp. 253-262; penned by Judge Edilberto T. Claravall.

and 16964-R.[3] The Court of Appeals affirmed Ocden's conviction in all four cases, but modified the penalties imposed in Criminal Case Nos. 16316-R, 16318-R, and 16964-R.

The Amended Information[4] for illegal recruitment in large scale in Criminal Case No. 16315-R reads:

> That during the period from May to December, 1998, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously for a fee, recruit and promise employment as factory workers in Italy to more than three (3) persons including, but not limited to the following: JEFFRIES C. GOLIDAN, HOWARD C. GOLIDAN, KAREN M. SIMEON, JEAN S. MAXIMO, NORMA PEDRO, MARYLYN MANA-A, RIZALINA FERRER, and MILAN DARING without said accused having first secured the necessary license or authority from the Department of Labor and Employment.

Ocden was originally charged with six counts of estafa in Criminal Case Nos. 16316-R, 16318-R, 16350-R, 16369-R, 16964-R, and 16966-R.

The Information in Criminal Case No. 16316-R states:

> That sometime during the period from October to December, 1998 in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously defraud JEFFRIES C. GOLIDAN, by way of false pretenses, which are executed prior to or simultaneous with the commission of the fraud, as follows, to wit: the accused knowing fully well that she is not (sic) authorized job recruiter for persons intending to secure work abroad convinced said Jeffries C. Golidan and pretended that she could secure a job for him/her abroad, for and in consideration of the sum of ₱70,000.00 when in truth and in fact they could not; the said Jeffries C. Golidan deceived and convinced by the false pretenses employed by the accused parted away the total sum of ₱70,000.00, in favor of the accused, to the

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[3] Originally, Ocden was indicted for six counts of Estafa (Criminal Case Nos. 16316-R, 16318-R, 16350-R, 16369-R, 16964-R and 16966-R).

[4] Records (Crim. Case No. 16315-R), p. 1.

damage and prejudice of the said Jeffries C. Golidan in the aforementioned amount of SEVENTY THOUSAND PESOS (₱70,000,00), Philippine Currency.[5]

The Informations in the five other cases for estafa contain substantially the same allegations as the one above-quoted, except for the private complainants' names, the date of commission of the offense, and the amounts defrauded, to wit:

Case No.	Name of the Private Complainant	Date of Commission of the offense	Amount Defrauded
16318-R	Howard C. Golidan	Sometime during the period from October to December 1998	₱70,000.00
16350-R	Norma Pedro	Sometime in May, 1998	₱65,000.00
16369-R	Milan O. Daring	Sometime during the period from November 13, 1998 to December 10, 1998	₱70,000.00
16964-R	Rizalina Ferrer	Sometime in September	₱70,000.00
16966-R	Marilyn Mana-a	Sometime in September 1998	₱70,000.00[6]

All seven cases against Ocden were consolidated on July 31, 2000 and were tried jointly after Ocden pleaded not guilty.

The prosecution presented three witnesses namely: Marilyn Mana-a (Mana-a) and Rizalina Ferrer (Ferrer), complainants; and Julia Golidan (Golidan), mother of complainants Jeffries and Howard Golidan.

Mana-a testified that sometime in the second week of August 1998, she and Isabel Dao-as (Dao-as) went to Ocden's house

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[5] Records (Crim. Case No. 16316-R), p. 1.

[6] *Rollo*, p. 4.

in Baguio City to apply for work as factory workers in Italy with monthly salaries of US$1,200.00. They were required by Ocden to submit their bio-data and passports, pay the placement fee of ₱70,000.00, and to undergo medical examination.

Upon submitting her bio-data and passport, Mana-a paid Ocden ₱500.00 for her certificate of employment and ₱20,000.00 as down payment for her placement fee. On September 8, 1998, Ocden accompanied Mana-a and 20 other applicants to Zamora Medical Clinic in Manila for their medical examinations, for which each of the applicants paid ₱3,000.00. Mana-a also paid to Ocden ₱22,000.00 as the second installment on her placement fee. When Josephine Lawanag (Lawanag), Mana-a's sister, withdrew her application, Lawanag's ₱15,000.00 placement fee, already paid to Ocden, was credited to Mana-a.[7]

Mana-a failed to complete her testimony, but the RTC considered the same as no motion to strike the said testimony was filed.

Ferrer narrated that she and her daughter Jennilyn were interested to work overseas. About the second week of September 1998, they approached Ocden through Fely Alipio (Alipio). Ocden showed Ferrer and Jennilyn a copy of a job order from Italy for factory workers who could earn as much as $90,000.00 to $100,000.00.[8] In the first week of October 1998, Ferrer and Jennilyn decided to apply for work, so they submitted their passports and pictures to Ocden. Ferrer also went to Manila for medical examination, for which she spent ₱3,500.00. Ferrer paid to Ocden on November 20, 1998 the initial amount of ₱20,000.00, and on December 8, 1998 the balance of her and Jennilyn's placement fees. All in all, Ferrer paid Ocden ₱140,000.00, as evidenced by the receipts issued by Ocden.[9]

Ferrer, Jennilyn, and Alipio were supposed to be included in the first batch of workers to be sent to Italy. Their flight was

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[7] TSN, October 10, 2000, pp. 1-6.

[8] TSN, January 8, 2001, p. 4.

[9] Records (Crim. Case No. 16964-R), p. 179; Exhibits A, A-1 and A-2.

scheduled on December 10, 1998. In preparation for their flight to Italy, the three proceeded to Manila. In Manila, they were introduced by Ocden to Erlinda Ramos (Ramos). Ocden and Ramos then accompanied Ferrer, Jennilyn, and Alipio to the airport where they took a flight to Zamboanga. Ocden explained to Ferrer, Jennilyn, and Alipio that they would be transported to Malaysia where their visa application for Italy would be processed.

Sensing that they were being fooled, Ferrer and Jennilyn decided to get a refund of their money, but Ocden was nowhere to be found. Ferrer would later learn from the Baguio office of the Philippine Overseas Employment Administration (POEA) that Ocden was not a licensed recruiter.

Expecting a job overseas, Ferrer took a leave of absence from her work. Thus, she lost income amounting to ₱17,700.00, equivalent to her salary for one and a half months. She also spent ₱30,000.00 for transportation and food expenses.[10]

According to Golidan, the prosecution's third witness, sometime in October 1998, she inquired from Ocden about the latter's overseas recruitment. Ocden informed Golidan that the placement fee was ₱70,000.00 for each applicant, that the accepted applicants would be sent by batches overseas, and that priority would be given to those who paid their placement fees early. On October 30, 1998, Golidan brought her sons, Jeffries and Howard, to Ocden. On the same date, Jeffries and Howard handed over to Ocden their passports and ₱40,000.00 as down payment on their placement fees. On December 10, 1998, Jeffries and Howard paid the balance of their placement fees amounting to ₱100,000.00. Ocden issued receipts for these two payments.[11] Ocden then informed Golidan that the first batch of accepted applicants had already left, and that Jeffries would be included in the second batch for deployment, while Howard in the third batch.

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[10] TSN, January 8, 2001, pp. 1-15.

[11] Records (Crim. Case No. 16318-R), pp. 54-55, Exhibits A-1 and A-2.

In anticipation of their deployment to Italy, Jeffries and Howard left for Manila on December 12, 1998 and December 18, 1998, respectively. Through a telephone call, Jeffries informed Golidan that his flight to Italy was scheduled on December 16, 1998. However, Golidan was surprised to again receive a telephone call from Jeffries saying that his flight to Italy was delayed due to insufficiency of funds, and that Ocden went back to Baguio City to look for additional funds. When Golidan went to see Ocden, Ocden was about to leave for Manila so she could be there in time for the scheduled flights of Jeffries and Howard.

On December 19, 1998, Golidan received another telephone call from Jeffries who was in Zamboanga with the other applicants. Jeffries informed Golidan that he was stranded in Zamboanga because Ramos did not give him his passport. Ramos was the one who briefed the overseas job applicants in Baguio City sometime in November 1998. Jeffries instructed Golidan to ask Ocden's help in looking for Ramos. Golidan, however, could not find Ocden in Baguio City.

On December 21, 1998, Golidan, with the other applicants, Mana-a and Dao-as, went to Manila to meet Ocden. When Golidan asked why Jeffries was in Zamboanga, Ocden replied that it would be easier for Jeffries and the other applicants to acquire their visas to Italy in Zamboanga. Ocden was also able to contact Ramos, who assured Golidan that Jeffries would be able to get his passport. When Golidan went back home to Baguio City, she learned through a telephone call from Jeffries that Howard was now likewise stranded in Zamboanga.

By January 1999, Jeffries and Howard were still in Zamboanga. Jeffries refused to accede to Golidan's prodding for him and Howard to go home, saying that the recruiters were already working out the release of the funds for the applicants to get to Italy. Golidan went to Ocden, and the latter told her not to worry as her sons would already be flying to Italy because the same factory owner in Italy, looking for workers, undertook to shoulder the applicants' travel expenses. Yet, Jeffries called Golidan once more telling her that he and the other applicants were still in Zamboanga.

Golidan went to Ocden's residence. This time, Ocden's husband gave Golidan ₱23,000.00 which the latter could use to fetch the applicants, including Jeffries and Howard, who were stranded in Zamboanga. Golidan traveled again to Manila with Mana-a and Dao-as. When they saw each other, Golidan informed Ocden regarding the ₱23,000.00 which the latter's husband gave to her. Ocden begged Golidan to give her the money because she needed it badly. Of the ₱23,000.00, Golidan retained ₱10,000.00, Dao-as received ₱3,000.00, and Ocden got the rest. Jeffries was able to return to Manila on January 16, 1999. Howard and five other applicants, accompanied by Ocden, also arrived in Manila five days later.

Thereafter, Golidan and her sons went to Ocden's residence to ask for a refund of the money they had paid to Ocden. Ocden was able to return only ₱50,000.00. Thus, out of the total amount of ₱140,000.00 Golidan and her sons paid to Ocden, they were only able to get back the sum of ₱60,000.00. After all that had happened, Golidan and her sons went to the Baguio office of the POEA, where they discovered that Ocden was not a licensed recruiter.[12]

The defense presented the testimony of Ocden herself.

Ocden denied recruiting private complainants and claimed that she was also an applicant for an overseas job in Italy, just like them. Ocden identified Ramos as the recruiter.

Ocden recounted that she met Ramos at a seminar held in St. Theresa's Compound, Navy Base, Baguio City, sometime in June 1998. The seminar was arranged by Aida Comila (Comila), Ramos's sub-agent. The seminar was attended by about 60 applicants, including Golidan. Ramos explained how one could apply as worker in a stuff toys factory in Italy. After the seminar, Comila introduced Ocden to Ramos. Ocden decided to apply for the overseas job, so she gave her passport and pictures to Ramos. Ocden also underwent medical examination at Zamora

[12] TSN, November 14, 2000, pp. 1-9; November 20, 2000, pp. 1-15.

Medical Clinic in Manila, and completely submitted the required documents to Ramos in September 1998.

After the seminar, many people went to Ocden's house to inquire about the jobs available in Italy. Since most of these people did not attend the seminar, Ocden asked Ramos to conduct a seminar at Ocden's house. Two seminars were held at Ocden's house, one in September and another in December 1998. After said seminars, Ramos designated Ocden as leader of the applicants. As such, Ocden received her co-applicants' applications and documents; accompanied her co-applicants to Manila for medical examination because she knew the location of Zamora Medical Clinic; and accepted placement fees in the amount of ₱70,000.00 each from Mana-a and Ferrer and from Golidan, the amount of ₱140,000.00 (for Jeffries and Howard).

Ramos instructed Ocden that the applicants should each pay ₱250,000.00 and if the applicants could not pay the full amount, they would have to pay the balance through salary deductions once they start working in Italy. Ocden herself paid Ramos ₱50,000.00 as placement fee and executed a promissory note in Ramos' favor for the balance, just like any other applicant who failed to pay the full amount. Ocden went to Malaysia with Ramos' male friend but she failed to get her visa for Italy.

Ocden denied deceiving Mana-a and Ferrer. Ocden alleged that she turned over to Ramos the money Mana-a and Ferrer gave her, although she did not indicate in the receipts she issued that she received the money for and on behalf of Ramos.

Ocden pointed out that she and some of her co-applicants already filed a complaint against Ramos before the National Bureau of Investigation (NBI) offices in Zamboanga City and Manila.[13]

On July 2, 2001, the RTC rendered a Decision finding Ocden guilty beyond reasonable doubt of the crimes of illegal recruitment

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[13] TSN, February 27, 2001, pp. 1-15; March 6, 2001, pp. 1-6.

in large scale (Criminal Case No. 16315-R) and three counts of estafa (Criminal Case Nos. 16316-R, 16318-R, and 16964-R). The dispositive portion of said decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 16315-R, the Court finds the accused, DOLORES OCDEN, GUILTY beyond reasonable doubt of the crime of Illegal Recruitment committed in large scale as defined and penalized under Article 13(b) in relation to Article 38(b), 34 and 39 of the Labor Code as amended by P.D. Nos. 1693, 1920, 2018 and R.A. 8042. She is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱100,000.00;

2. In Criminal Case No. 16316-R, the Court finds the accused, DOLORES OCDEN, GUILTY beyond reasonable doubt of the crime of estafa and sentences her to suffer an indeterminate penalty ranging from two (2) years, eleven (11) months and ten (10) days of *prision correccional*, as minimum, up to nine (9) years and nine (9) months of *prision mayor*, as maximum, and to indemnify the complainant Jeffries Golidan the amount of ₱40,000.00;

3. In Criminal Case No. 16318-R, the Court finds the accused, DOLORES OCDEN, GUILTY beyond reasonable doubt of the crime of estafa and sentences her to suffer an indeterminate penalty ranging from two (2) years, eleven (11) months and ten (10) days of *prision correccional*, as minimum, up to nine (9) years and nine (9) months of *prision mayor*, as maximum, and to indemnify Howard Golidan the amount of ₱40,000.00;

4. In Criminal Case No. 16350-R, the Court finds the accused, DOLORES OCDEN, NOT GUILTY of the crime of estafa for lack of evidence and a verdict of acquittal is entered in her favor;

5. In Criminal Case No. 16369-R, the Court finds the accused, DOLORES OCDEN, NOT GUILTY of the crime of estafa for lack of evidence and a verdict of acquittal is hereby entered in her favor;

6. In Criminal Case No. 16964-R, the Court finds the accused, DOLORES OCDEN, GUILTY beyond reasonable doubt of the crime of estafa and sentences her to suffer an indeterminate penalty of Four (4) years and Two (2) months of *prision correccional*, as minimum, up to Twelve (12) years and Nine (9) months of *reclusion*

temporal, as maximum, and to indemnify Rizalina Ferrer the amount of ₱70,000.00; and

7. In Criminal Case No. 16966-R, the Court finds the accused, DOLORES OCDEN, NOT GUILTY of the crime of estafa for insufficiency of evidence and a verdict of acquittal is hereby entered in her favor.

In the service of her sentence, the provisions of Article 70 of the Penal Code shall be observed.[14]

Aggrieved by the above decision, Ocden filed with the RTC a Notice of Appeal on August 15, 2001.[15] The RTC erroneously sent the records of the cases to the Court of Appeals, which, in turn, correctly forwarded the said records to us.

In our Resolution[16] dated May 6, 2002, we accepted the appeal and required the parties to file their respective briefs. In the same resolution, we directed the Superintendent of the Correctional Institute for Women to confirm Ocden's detention thereat.

Ocden filed her Appellant's Brief on August 15, 2003,[17] while the People, through the Office of the Solicitor General, filed its Appellee's Brief on January 5, 2004.[18]

Pursuant to our ruling in *People v. Mateo*,[19] we transferred Ocden's appeal to the Court of Appeals. On April 21, 2006, the appellate court promulgated its Decision, affirming Ocden's conviction but modifying the penalties imposed upon her for the three counts of estafa, *viz*:

[T]he trial court erred in the imposition of accused-appellant's penalty.

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[14] Records (Crim. Case No. 16964-R), pp. 261-262.

[15] *Id.* at 263.

[16] CA *rollo*, p. 38.

[17] *Id.* at 67-85.

[18] *Id.* at 111-134.

[19] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

Pursuant to Article 315 of the RPC, the penalty for estafa is *prision correccional* in its maximum period to *prision mayor* in its minimum period. If the amount of the fraud exceeds ₱22,000.00, the penalty provided shall be imposed in its maximum period (6 years, 8 months and 21 days to 8 years), adding 1 year for each additional ₱10,000.00; but the total penalty which may be imposed shall not exceed 20 years.

Criminal Case Nos. 16316-R and 16318-R involve the amount of ₱40,000.00 each. Considering that ₱18,000.00 is the excess amount, only 1 year should be added to the penalty in its maximum period or **9 years**. Also, in Criminal Case No. 16964-R, the amount involved is ₱70,000.00. Thus, the excess amount is ₱48,000.00 and only **4 years** should be added to the penalty in its maximum period.

WHEREFORE, the instant appeal is **DISMISSED**. The assailed Decision, dated 02 July 2001, of the Regional Trial Court (RTC) of Baguio City, Branch 60 is hereby **AFFIRMED with the following MODIFICATIONS:**

1. In **Criminal Case No. 16316-R**, accused-appellant is sentenced to 2 years, 11 months, and 10 days of *prision correccional*, as minimum to 9 years of *prision mayor*, as maximum and to indemnify Jeffries Golidan the amount of ₱40,000.00;

2. In **Criminal Case No. 16318-R**, accused-appellant is sentenced to 2 years, 11 months, and 10 days of *prision correccional*, as minimum to 9 years of *prision mayor*, as maximum and to indemnify Howard Golidan the amount of ₱40,000.00; and

3. In **Criminal Case No. 16964-R**, accused-appellant is sentenced to 4 years and 2 months of *prision correccional*, as minimum to 12 years of *prision mayor*, as maximum and to indemnify Rizalina Ferrer the amount of ₱70,000.00.[20]

Hence, this appeal, in which Ocden raised the following assignment of errors:

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF ILLEGAL RECRUITMENT COMMITTED IN

[20] *Rollo*, pp. 18-19.

LARGE SCALE ALTHOUGH THE CRIME WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF ESTAFA IN CRIMINAL CASES NOS. 16316-R, 16318-R AND 16[9]64-R.[21]

After a thorough review of the records of the case, we find nothing on record that would justify a reversal of Ocden's conviction.

Illegal recruitment in large scale

Ocden contends that the prosecution failed to prove beyond reasonable doubt that she is guilty of the crime of illegal recruitment in large scale. Other than the bare allegations of the prosecution witnesses, no evidence was adduced to prove that she was a non-licensee or non-holder of authority to lawfully engage in the recruitment and placement of workers. No certification attesting to this fact was formally offered in evidence by the prosecution.

Ocden's aforementioned contentions are without merit.

Article 13, paragraph (b) of the Labor Code defines and enumerates the acts which constitute recruitment and placement:

> (b) "Recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contract services, promising for advertising for employment locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

The amendments to the Labor Code introduced by Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, broadened the concept of illegal recruitment and provided stiffer penalties, especially for those that constitute economic sabotage, *i.e.*, illegal recruitment in

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[21] CA *rollo*, p. 69.

large scale and illegal recruitment committed by a syndicate. Pertinent provisions of Republic Act No. 8042 are reproduced below:

SEC. 6. *Definition*. - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: *Provided*, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. **It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority**:

(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;

(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;

(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and

(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

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Sec. 7. *Penalties*. –

(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of Two hundred thousand pesos (₱200,000.00) nor more than Five hundred thousand pesos (₱500,000.00).

(b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority. (Emphasis ours.)

It is well-settled that to prove illegal recruitment, it must be shown that appellant gave complainants the distinct impression that he had the power or ability to send complainants abroad for work such that the latter were convinced to part with their money in order to be employed.[22] As testified to by Mana-a, Ferrer, and Golidan, Ocden gave such an impression through the following acts: (1) Ocden informed Mana-a, Ferrer, and Golidan about the job opportunity in Italy and the list of necessary requirements for application; (2) Ocden required Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard, to attend the seminar conducted by Ramos at Ocden's house in Baguio City; (3) Ocden received the job applications, pictures, bio-data, passports, and the certificates of previous employment (which was also issued by Ocden upon payment of ₱500.00), of Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard; (4) Ocden personally accompanied Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard, for their medical examinations in Manila; (5) Ocden received money paid as placement fees by Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard, and even issued receipts for the same; and (6) Ocden assured Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard, that they would be deployed to Italy.

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[22] *People v. Gasacao*, 511 Phil. 435, 445 (2005).

It is not necessary for the prosecution to present a certification that Ocden is a non-licensee or non-holder of authority to lawfully engage in the recruitment and placement of workers. Section 6 of Republic Act No. 8042 enumerates particular acts which would constitute illegal recruitment "whether committed by any person, whether a non-licensee, non-holder, licensee **or holder of authority**." Among such acts, under Section 6(m) of Republic Act No. 8042, is the "[f]ailure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault."

Since illegal recruitment under Section 6(m) can be committed by any person, even by a licensed recruiter, a certification on whether Ocden had a license to recruit or not, is inconsequential. Ocden committed illegal recruitment as described in said provision by receiving placement fees from Mana-a, Ferrer, and Golidan's two sons, Jeffries and Howard, evidenced by receipts Ocden herself issued; and failing to reimburse/refund to Mana-a, Ferrer, and Golidan's two sons the amounts they had paid when they were not able to leave for Italy, through no fault of their own.

Ocden questions why it was Golidan who testified for private complainants Jeffries and Howard. Golidan had no personal knowledge of the circumstances proving illegal recruitment and could not have testified on the same. Also, Jeffries and Howard already executed an affidavit of desistance. All Golidan wants was a reimbursement of the placement fees paid.

Contrary to Ocden's claims, Golidan had personal knowledge of Ocden's illegal recruitment activities, which she could competently testify to. Golidan herself had personal dealings with Ocden as Golidan assisted her sons, Jeffries and Howard, in completing the requirements for their overseas job applications, and later on, in getting back home from Zamboanga where Jeffries and Howard were stranded, and in demanding a refund from Ocden of the placement fees paid. That Golidan is seeking a reimbursement of the placement fees paid for the failed deployment of her sons Jeffries and Howard strengthens, rather

than weakens, the prosecution's case. Going back to illegal recruitment under Section 6(m) of Republic Act No. 8042, failure to reimburse the expenses incurred by the worker when deployment does not actually take place, without the worker's fault, is illegal recruitment.

The affidavit of desistance purportedly executed by Jeffries and Howard does not exonerate Ocden from criminal liability when the prosecution had successfully proved her guilt beyond reasonable doubt. In *People v. Romero*,[23] we held that:

> The fact that complainants Bernardo Salazar and Richard Quillope executed a Joint Affidavit of Desistance does not serve to exculpate accused-appellant from criminal liability insofar as the case for illegal recruitment is concerned since the Court looks with disfavor the dropping of criminal complaints upon mere affidavit of desistance of the complainant, particularly where the commission of the offense, as is in this case, is duly supported by documentary evidence.
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> Generally, the Court attaches no persuasive value to affidavits of desistance, especially when it is executed as an afterthought. It would be a dangerous rule for courts to reject testimonies solemnly taken before the courts of justice simply because the witnesses who had given them, later on, changed their mind for one reason or another, for such rule would make solemn trial a mockery and place the investigation of truth at the mercy of unscrupulous witness.
>
> Complainants Bernardo Salazar and Richard Quillope may have a change of heart insofar as the offense wrought on their person is concerned when they executed their joint affidavit of desistance but this will not affect the public prosecution of the offense itself. It is relevant to note that "the right of prosecution and punishment for a crime is one of the attributes that by a natural law belongs to the sovereign power instinctly charged by the common will of the members of society to look after, guard and defend the interests of the community, the individual and social rights and the liberties of every citizen and the guaranty of the exercise of his rights." This cardinal principle which states that to the State belongs the power to prosecute and punish crimes should not be overlooked since a criminal offense is an outrage to the sovereign State.[24]

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[23] G.R. Nos. 103385-88, July 26, 1993, 224 SCRA 749.

[24] *Id.* at 757.

In her bid to exculpate herself, Ocden asserts that she was also just an applicant for overseas employment; and that she was receiving her co-applicants' job applications and other requirements, and accepting her co-applicants' payments of placement fees, because she was designated as the applicants' leader by Ramos, the real recruiter.

Ocden's testimony is self-serving and uncorroborated. Ocden's denial of any illegal recruitment activity cannot stand against the prosecution witnesses' positive identification of her in court as the person who induced them to part with their money upon the misrepresentation and false promise of deployment to Italy as factory workers. Besides, despite several opportunities given to Ocden by the RTC, she failed to present Ramos, who Ocden alleged to be the real recruiter and to whom she turned over the placement fees paid by her co-applicants.

Between the categorical statements of the prosecution witnesses, on the one hand, and the bare denial of Ocden, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when the former comes from the mouth of a credible witness. Denial, same as an alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable but also because it is easily fabricated and concocted.[25]

Moreover, in the absence of any evidence that the prosecution witnesses were motivated by improper motives, the trial court's assessment of the credibility of the witnesses shall not be interfered with by this Court.[26] It is a settled rule that factual findings of the trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by the Supreme Court, particularly when the Court of Appeals affirmed such findings. After all, the trial court is in the best position to determine

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[25] *People v. Bulfango*, 438 Phil. 651, 657 (2002).

[26] *People v. Saulo*, 398 Phil. 544, 554 (2000).

the value and weight of the testimonies of witnesses. The absence of any showing that the trial court plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case, or that its assessment was arbitrary, impels the Court to defer to the trial court's determination according credibility to the prosecution evidence.[27]

Ocden further argues that the prosecution did not sufficiently establish that she illegally recruited at least three persons, to constitute illegal recruitment on a large scale. Out of the victims named in the Information, only Mana-a and Ferrer testified in court. Mana-a did not complete her testimony, depriving Ocden of the opportunity to cross-examine her; and even if Mana-a's testimony was not expunged from the record, it was insufficient to prove illegal recruitment by Ocden. Although Ferrer testified that she and Mana-a filed a complaint for illegal recruitment against Ocden, Ferrer's testimony is competent only as to the illegal recruitment activities committed by Ocden against her, and not against Mana-a. Ocden again objects to Golidan's testimony as hearsay, not being based on Golidan's personal knowledge.

Under the last paragraph of Section 6, Republic Act No. 8042, illegal recruitment shall be considered an offense involving economic sabotage if committed in a large scale, that is, committed against three or more persons individually or as a group.

In *People v. Hu*,[28] we held that a conviction for large scale illegal recruitment must be based on a finding in each case of illegal recruitment of three or more persons, whether individually or as a group. While it is true that the law does not require that at least three victims testify at the trial, nevertheless, it is necessary that there is sufficient evidence proving that the offense was committed against three or more persons. In this case, there is conclusive evidence that Ocden recruited Mana-a, Ferrer, and

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[27] *People v. Nogra*, G.R. No. 170834, August 29, 2008, 563 SCRA 723, 735.

[28] G.R. No. 182232, October 6, 2008, 567 SCRA 696, 705.

Golidan's sons, Jeffries and Howard, for purported employment as factory workers in Italy. As aptly observed by the Court of Appeals:

> Mana-a's testimony, although not completed, sufficiently established that accused-appellant promised Mana-a a job placement in a factory in Italy for a fee with accused-appellant even accompanying her for the required medical examination. Likewise, Julia Golidan's testimony adequately proves that accused-appellant recruited Jeffries and Howard Golidan for a job in Italy, also for a fee. Contrary to the accused-appellant's contention, Julia had personal knowledge of the facts and circumstances surrounding the charges for illegal recruitment and estafa filed by her sons. Julia was not only privy to her sons' recruitment but also directly transacted with accused-appellant, submitting her sons' requirements and paying the placement fees as evidenced by a receipt issued in her name. Even after the placement did not materialize, Julia acted with her sons to secure the partial reimbursement of the placement fees.[29]

And even though only Ferrer and Golidan testified as to Ocden's failure to reimburse the placements fees paid when the deployment did not take place, their testimonies already established the fact of non-reimbursement as to three persons, namely, Ferrer and Golidan's two sons, Jeffries and Howard.

Section 7(b) of Republic Act No. 8042 prescribes a penalty of life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00 if the illegal recruitment constitutes economic sabotage. The RTC, as affirmed by the Court of Appeals, imposed upon Ocden the penalty of life imprisonment and a fine of only ₱100,000.00. Since the fine of ₱100,000 is below the minimum set by law, we are increasing the same to ₱500,000.00.

Estafa

We are likewise affirming the conviction of Ocden for the crime of estafa. The very same evidence proving Ocden's liability for illegal recruitment also established her liability for estafa.

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[29] *Rollo*, p. 16.

It is settled that a person may be charged and convicted separately of illegal recruitment under Republic Act No. 8042 in relation to the Labor Code, and estafa under Article 315, paragraph 2(a) of the Revised Penal Code. We explicated in *People v. Yabut*[30] that:

> In this jurisdiction, it is settled that a person who commits illegal recruitment may be charged and convicted separately of illegal recruitment under the Labor Code and estafa under par. 2(a) of Art. 315 of the Revised Penal Code. The offense of illegal recruitment is *malum prohibitum* where the criminal intent of the accused is not necessary for conviction, while estafa is *malum in se* where the criminal intent of the accused is crucial for conviction. Conviction for offenses under the Labor Code does not bar conviction for offenses punishable by other laws. Conversely, conviction for estafa under par. 2(a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of estafa will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and vice versa.[31]

Article 315, paragraph 2(a) of the Revised Penal Code defines estafa as:

> Art. 315. *Swindling* (*estafa*). - Any person who shall defraud another by any of the means mentioned hereinbelow x x x:
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> x x x x x x x x x
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
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> (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

The elements of estafa are: (a) that the accused defrauded another by abuse of confidence or by means of deceit, and

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[30] 374 Phil. 575 (1999).

[31] *Id.* at 586.

(b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.[32]

Both these elements are present in the instant case. Ocden represented to Ferrer, Golidan, and Golidan's two sons, Jeffries and Howard, that she could provide them with overseas jobs. Convinced by Ocden, Ferrer, Golidan, and Golidan's sons paid substantial amounts as placement fees to her. Ferrer and Golidan's sons were never able to leave for Italy, instead, they ended up in Zamboanga, where, Ocden claimed, it would be easier to have their visas to Italy processed. Despite the fact that Golidan's sons, Jeffries and Howard, were stranded in Zamboanga for almost a month, Ocden still assured them and their mother that they would be able to leave for Italy. There is definitely deceit on the part of Ocden and damage on the part of Ferrer and Golidan's sons, thus, justifying Ocden's conviction for estafa in Criminal Case Nos. 16316-R, 16318-R, and 16964-R.

The penalty for estafa depends on the amount of defraudation. According to Article 315 of the Revised Penal Code:

> Art. 315. *Swindling (estafa).* – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
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> 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

The prescribed penalty for estafa under Article 315 of the Revised Penal Code, when the amount of fraud is over ₱22,000.00, is *prision correccional* maximum to *prision mayor*

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[32] *People v. Ballesteros*, 435 Phil. 205, 228 (2002).

minimum, adding one year to the maximum period for each additional ₱10,000.00, provided that the total penalty shall not exceed 20 years.

Applying the Indeterminate Sentence Law, we take the minimum term from the penalty next lower than the minimum prescribed by law, or anywhere within *prision correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months).[33] Consequently, both the RTC and the Court of Appeals correctly fixed the minimum term in Criminal Case Nos. 16316-R and 16318-R at 2 years, 11 months, and 10 days of *prision correccional*; and in Criminal Case No. 16964-R at 4 years and 2 months of *prision correccional*, since these are within the range of *prision correccional* minimum and medium.

As for the maximum term under the Indeterminate Sentence Law, we take the maximum period of the prescribed penalty, adding 1 year of imprisonment for every ₱10,000.00 in excess of ₱22,000.00, provided that the total penalty shall not exceed 20 years. To compute the maximum period of the prescribed penalty, the time included in *prision correccional* maximum to *prision mayor* minimum shall be divided into three equal portions, with each portion forming a period. Following this computation, the maximum period for *prision correccional* maximum to *prision mayor* minimum is from 6 years, 8 months, and 21 days to 8 years. The incremental penalty, when proper, shall thus be added to anywhere from 6 years, 8 months, and 21 days to 8 years, at the discretion of the court.[34]

In computing the incremental penalty, the amount defrauded shall be substracted by ₱22,000.00, and the difference shall be divided by ₱10,000.00. Any fraction of a year shall be discarded as was done starting with *People v. Pabalan*.[35]

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[33] *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 299.

[34] *Id*.

[35] 331 Phil. 64, 85 (1996).

In Criminal Case Nos. 16316-R and 16318-R, brothers Jeffries and Howard Golidan were each defrauded of the amount of ₱40,000.00, for which the Court of Appeals sentenced Ocden to an indeterminate penalty of 2 years, 11 months, and 10 days of *prision correccional* as minimum, to 9 years of *prision mayor* as maximum. Upon review, however, we modify the maximum term of the indeterminate penalty imposed on Ocden in said criminal cases. Since the amount defrauded exceeds ₱22,000.00 by ₱18,000.00, 1 year shall be added to the maximum period of the prescribed penalty (anywhere between 6 years, 8 months, and 21 days to 8 years). There being no aggravating circumstance, we apply the lowest of the maximum period, which is 6 years, 8 months, and 21 days. Adding the one year incremental penalty, the maximum term of Ocden's indeterminate sentence in these two cases is only 7 years, 8 months, and 21 days of *prision mayor*.

In Criminal Case No. 16964-R, Ferrer was defrauded of the amount of ₱70,000.00, for which the Court of Appeals sentenced Ocden to an indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 12 years of *prision mayor*, as maximum. Upon recomputation, we also have to modify the maximum term of the indeterminate sentence imposed upon Ocden in Criminal Case No. 16964-R. Given that the amount defrauded exceeds ₱22,000.00 by ₱48,000.00, 4 years shall be added to the maximum period of the prescribed penalty (anywhere between 6 years, 8 months, and 21 days to 8 years). There likewise being no aggravating circumstance in this case, we add the 4 years of incremental penalty to the lowest of the maximum period, which is 6 years, 8 months, and 21 days. The maximum term, therefor, of Ocden's indeterminate sentence in Criminal Case No. 16964-R is only 10 years, 8 months, and 21 days of *prision mayor*.

WHEREFORE, the instant appeal of accused-appellant Dolores Ocden is *DENIED*. The Decision dated April 21, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00044 is *AFFIRMED* with *MODIFICATION* to read as follows:

1. In Criminal Case No. 16315-R, the Court finds the accused, Dolores Ocden, *GUILTY* beyond reasonable doubt of the crime of Illegal Recruitment committed in large scale as defined and penalized under Article 13(b) in relation to Articles 38(b), 34 and 39 of the Labor Code, as amended. She is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00;

2. In Criminal Case No. 16316-R, the Court finds the accused, Dolores Ocden, *GUILTY* beyond reasonable doubt of the crime of estafa and sentences her to an indeterminate penalty of 2 years, 11 months, and 10 days of *prision correccional*, as minimum, to 7 years, 8 months, and 21 days of *prision mayor*, as maximum, and to indemnify Jeffries Golidan the amount of ₱40,000.00;

3. In Criminal Case No. 16318-R, the Court finds the accused, Dolores Ocden, *GUILTY* beyond reasonable doubt of the crime of estafa and sentences her to an indeterminate penalty of 2 years, 11 months, and 10 days of *prision correccional*, as minimum, to 7 years, 8 months, and 21 days of *prision mayor*, as maximum, and to indemnify Howard Golidan the amount of ₱40,000.00; and

4. In Criminal Case No. 16964-R, the Court finds the accused, Dolores Ocden, *GUILTY* beyond reasonable doubt of the crime of estafa and sentences her to an indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 10 years, 8 months, and 21 days of *prision mayor*, as maximum, and to indemnify Rizalina Ferrer the amount of ₱70,000.00.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Peralta,[*] and *Perez, JJ.,* concur.

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[*] Per Special Order No. 994 dated May 27, 2011.

SECOND DIVISION

[G.R. No. 178925. June 1, 2011]

MANUEL YBIERNAS, VICENTE YBIERNAS, MARIA CORAZON ANGELES, VIOLETA YBIERNAS, and VALENTIN YBIERNAS, *petitioners, vs.* **ESTER TANCO-GABALDON, MANILA BAY SPINNING MILLS, INC., and THE SHERIFF OF THE REGIONAL TRIAL COURT OF PASIG CITY, BRANCH 163,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; FINAL JUDGMENTS OR ORDERS, DEFINED.— A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do in respect thereto, such as an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right, or a judgment or order that dismisses an action on the ground of *res judicata* or prescription, for instance.

2. ID.; ID.; SUMMARY JUDGMENTS; CONSIDERED AS A FINAL JUDGMENT ALTHOUGH NO DETERMINATION OF THE AMOUNT OF DAMAGES.— A summary judgment is granted to settle expeditiously a case if, on motion of either party, there appears from the pleadings, depositions, admissions, and affidavits that no important issues of fact are involved, *except the amount of damages*. The RTC judgment in this case fully determined the rights and obligations of the parties relative to the case for quieting of title and left no other issue unresolved, except the amount of damages. Hence, it is a final judgment. In leaving out the determination of the amount of damages, the RTC did not remove its summary judgment from the category of final judgments. In fact, under Section 3, Rule 35 of the Rules of Court, a summary judgment may not be rendered on the amount of damages, although such judgment may be rendered on the issue of the right to damages.

3. ID.; EVIDENCE; ADMISSIONS; JUDICIAL ADMISSION, DEFINED; COURTS SHOULD CONSIDER THE PURPOSE AND THE CIRCUMSTANCES UNDER WHICH THE ADMISSION WAS MADE.— A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in the same case, which dispenses with the need for proof with respect to the matter or fact admitted. It may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. During the pre-trial, respondents categorically admitted the existence of the Order dated June 30, 1989 only. The Court cannot extend such admission to the existence of Cadastral Case No. 10, considering the circumstances under which the admission was made. In construing an admission, the court should consider the purpose for which the admission is used and the surrounding circumstances and statements. Respondents have constantly insisted that, in making the admission, they relied in good faith on the veracity of the Order which was presented by petitioners. Moreover, they relied on the presumption that the Order has been issued by Judge Enrique T. Jocson in the regular performance of his duties. It would therefore be prejudicial and unfair to respondents if they would be prevented from proving that the Order is in fact spurious by showing that there was no Cadastral Case No. 10 before the RTC, Branch 47, of Bacolod City.

4. ID.; CIVIL PROCEDURE; NEW TRIAL; REQUISITES BEFORE NEW TRIAL MAY BE GRANTED BASED ON NEWLY DISCOVERED EVIDENCE; WHEN SUBJECT CERTIFICATIONS QUALIFIED AS A NEWLY DISCOVERED EVIDENCE.— This Court has repeatedly held that before a new trial may be granted on the ground of newly discovered evidence, it must be shown (1) that the evidence was discovered after trial; (2) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) that it is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted. If the alleged newly discovered evidence could have been very well presented during the trial with the exercise of reasonable diligence, the same cannot be considered newly discovered. The only contentious element in the case

> is whether the evidence could have been discovered with the exercise of reasonable diligence. x x x [R]espondents relied in good faith on the veracity of the Order dated June 30, 1989 which petitioners presented in court. It was only practical for them to do so, if only to expedite the proceedings. Given this circumstance, we hold that respondents exercised reasonable diligence in obtaining the evidence. The certifications therefore qualify as newly discovered evidence.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioners.
Soriano Velez and Partners Law Offices for respondents.

D E C I S I O N

NACHURA, *J.*:

This petition for review on *certiorari* assails the Court of Appeals (CA) Resolutions[1] dated January 31, 2007 and July 16, 2007. The assailed Resolutions granted respondents' motion for new trial of a case for quieting of title and damages, decided in petitioners' favor by the trial court in a summary judgment.

The facts of the case are, as follows:

Estrella Mapa *Vda. de* Ybiernas (Estrella) owned a parcel of land located in Talisay, Negros Occidental, and covered by Transfer Certificate of Title (TCT) No. T-83976. On April 28, 1988, Estrella executed a Deed of Absolute Sale[2] over the property in favor of her heirs, Dionisio Ybiernas (Dionisio) and petitioners Manuel Ybiernas, Vicente Ybiernas, and Maria Corazon Angeles.

On June 30, 1989, the Regional Trial Court (RTC), Branch 47, Bacolod City issued an Order in Cadastral Case No. 10, LRC (G.L.R.O.) Rec. No. 97, Lot 713-C-B, Psd-220027, Talisay

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[1] Penned by Associate Justice Agustin S. Dizon, with Associate Justices Isaias P. Dicdican and Francisco P. Acosta, concurring; *rollo*, pp. 40-47, 61.

[2] *Id.* at 65-66.

Cadastre, directing the registration and annotation of the Deed of Absolute Sale on the title. Thus, on July 5, 1989, the Deed of Absolute Sale and the said RTC Order were annotated on the title, as follows:

> Entry No. 334150; Order; Dionisio M. Ybiernas; Order issued by the RTC of Negros Occ. to register and annotate the deed of sale on this title without need of presenting the owner's duplicate. Date of order-June 30, 1989; Date of prescription-July 5, 1989 at 10:45 a.m.
>
> Entry No. 334151; Sale; Dionisio Ybiernas, *et al*; Deed of absolute sale of this property for the sum of ₱650,000.00 in favor of Dionisio Ybiernas, Vicente M. Ybiernas, Manuel M. Ybiernas and Maria Corazon Y. Angeles in undivided equal share to each; doc. no. 437, page 89, book VI, series of 1988 of the not. reg. of Mr. Indalecio P. Arriola of Iloilo City. Date of instrument-April 28, 1988; Date of inscription-July 5, 1989 at 10:45 a.m.[3]

On October 29, 1991, respondents Ester Tanco-Gabaldon and Manila Bay Spinning Mills, Inc. filed with the RTC of Pasig City a Complaint[4] for sum of money and damages, amounting to ₱6,000,000.00, against Estrella and three other individuals. The Complaint alleged that the defendants were guilty of fraud when they misrepresented to herein respondents that they own a parcel of land in Quezon City, and that the title over the said property is free from liens and encumbrances.

Upon respondents' motion, the Pasig City RTC, in an Order[5] dated November 6, 1991, ordered the issuance of a writ of preliminary attachment upon filing of a bond. The sheriff issued the corresponding writ of attachment and levied the subject property.[6] On November 13, 1991, the notice of attachment was annotated on TCT No. T-83976 as Entry No. 346816.[7]

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[3] *Id.* at 71.

[4] *Id.* at 165-176.

[5] *Id.* at 231.

[6] *Id.* at 232.

[7] *Id.* at 70.

When Estrella's heirs learned about the levy, Dionisio filed, on January 14, 1992, an Affidavit of Third-Party Claim, asserting the transfer of ownership to them.[8] Respondents, however, filed an indemnity bond; thus, the sheriff refused to lift the levy.

The Pasig City RTC resolved the Complaint for sum of money in favor of respondents, and Estrella, *et al*. were ordered to pay ₱6,000,000.00, plus legal interest and damages. Respondents, however, elevated the case all the way up to this Court, questioning the interest rate. This Court eventually denied the appeal in a Minute Resolution dated November 20, 2002, which became final and executory on April 14, 2003.[9]

In the meantime, Dionisio died and was succeeded by his heirs, petitioners Valentin Ybiernas and Violeta Ybiernas.

On November 28, 2001, petitioners filed with the RTC of Bacolod City a Complaint for Quieting of Title and Damages,[10] claiming that the levy was invalid because the property is not owned by any of the defendants in the Pasig City RTC case. They averred that the annotation of the RTC Order and the Deed of Absolute Sale on TCT No. T-83976 serves as notice to the whole world that the property is no longer owned by Estrella.

In their Answer with Counterclaims,[11] respondents contended that (a) the case constituted an interference in the proceeding of the Pasig City RTC, a co-equal court; (b) petitioners should have filed their claims against the indemnity bond filed by respondents; and (c) petitioners were guilty of forum-shopping, considering that the case actually sought a relief similar to the third-party claim.

During pre-trial, the parties admitted, among others, the "[e]xistence of the Order dated June 30, 1989 by RTC Branch 47,

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[8] *Id.* at 279.

[9] *Id.* at 260.

[10] *Id*. at 270-277.

[11] *Id*. at 289-294.

Bacolod City, in Cad. Case No. 10 concerning the same TCT No. T-83976."[12]

On July 30, 2004, petitioners filed a motion for summary judgment. The RTC initially denied the motion in the Order dated December 23, 2004.[13] Upon petitioners' motion for reconsideration, the RTC granted the motion for summary judgment in the decision[14] dated December 27, 2005. The RTC made the following pronouncement:

> A consideration of the issues defined by the parties during the pre-trial x x x shows quite clearly that they are issues that may already be properly resolved now at this stage of the proceedings in this case, as they, other than the amount of damages, are quite apparently pure questions of law, the factual antecedents for these issues having already been admitted by the parties.
>
> As to issue No. 1 [whether ownership has been transferred to petitioners], it is a fact well-established, as admitted by the parties and shown by the annotation as Entry No. 334151 on said TCT No. T-8[39]76, that the said Deed of Absolute Sale, dated April 28, 1988 over the subject property by Estrella Mapa *Vda. de* Ybiernas in favor of Dionisio Ybiernas, Vicente Ybiernas, Manuel Ybiernas and Maria Corazon Y. Angeles, was validly annotated as such Entry No. 334151, inscribed on July 5, 1989, on said TCT No. T-83976 registered in the name of Estrella M. Ybiernas.
>
> Neither the defendants nor anyone else has challenged the validity of the judicial proceedings before RTC, Branch 47, Bacolod City, which issued in Cadastral Case No. 10, the said Order dated June 30, 1989, which directed the registration and annotation of the said Deed of Absolute Sale dated April 28, 1988 on said TCT No. T-83976, and which led to the annotation under said Entry No. 334151 on said TCT No. T-83976.[15]

Thus, the dispositive portion of the December 27, 2005 RTC decision reads:

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[12] *Id.* at 73.

[13] *Id.* at 295.

[14] *Id.* at 295-307.

[15] *Id.* at 301-302.

WHEREFORE, except as to the amount of damages, a summary judgment is hereby rendered in favor of the plaintiffs and against the defendants, and as prayed for by the plaintiffs in their complaint:

1. The levy on attachment made by herein defendant Sheriff of RTC, Branch 163, Pasig City on said TCT No. T-83976, issued by the Registrar of Deeds of the Province of Negros Occidental, covering the Subject Property, is hereby DECLARED INVALID; and, consequently,

2. Entry No. 346816 on the same TCT No. T-83976 is hereby CANCELLED and DISSOLVED.

SO ORDERED.[16]

Respondents filed a notice of appeal,[17] and it was granted by the RTC.

While the appeal was pending in the CA, respondents filed a motion for new trial,[18] claiming that they have discovered on May 9, 2006 that Cadastral Case No. 10 did not exist and the April 28, 1988 Deed of Sale was simulated. Attached to the motion were the affidavit[19] of Atty. Gerely C. Rico, who conducted the research in Bacolod City in behalf of the law office representing respondents, and the following certifications:

a. Certification dated 09 May 2006 issued by Ildefonso M. Villanueva, Jr., Clerk of Court VI of the RTC of Bacolod City, stating that: "no cadastral case involving Lot 713-C-1-B, Psd-220027, Talisay Cadastre, was filed with this office sometime on 30 June 1989 and raffled to Branch 47 of this court which was then presided by Judge Enrique T. Jocson."[20]

b. Certification dated 09 May 2006 issued by Atty. Mehafee G. Sideno, Clerk of Court V of the RTC of Bacolod City,

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[16] *Id.* at 307.

[17] *Id.* at 308.

[18] *Id.* at 315-339.

[19] *Id.* at 310-311.

[20] *Id.* at 312.

Branch 47, stating that: "as per records of this court, no Cadastral Case No. 10, LRC, GLRO Rec. 97, Lot No. 713-C-1-B, Psd 220027, filed by Dionisio Ybiernas was filed and docketed in this office."[21]

c. Certification dated 11 July 2006 issued by Estrella M. Domingo, OIC Archives Division of the National Archives Office, stating that: "no copy is on file with this Office of a DEED OF SALE allegedly executed by and among ESTRELLA MAPA *VDA. DE* YBIERNAS, DIONISIO YBIERNAS, VICENTE M. YBIERNAS, JR., MANUEL YBIERNAS and MARIA CORAZON ANGELES, ratified on April 28, 1988 before INDALECIO P. ARRIOLA, a notary public for and within Iloilo City and acknowledged as Doc. No. 437; Page No. 89; Book No. VI; Series of 1988."[22]

Respondents argued that they have satisfied all the requisites for the grant of a new trial based on newly discovered evidence: (1) they discovered the evidence after the trial court rendered its judgment on December 27, 2005; (2) they could not have discovered and produced the evidence during the trial with reasonable diligence; and (3) the evidence was material, not merely cumulative, corroborative, or impeaching, and was of such weight that, if admitted, would probably change the judgment. On the second requisite, respondents explained that they could not have discovered the evidence with reasonable diligence because they relied in good faith on the veracity of the RTC Order dated June 30, 1989, based on the principle that the issuance of a court order, as an act of a public officer, enjoys the presumption of regularity. On the third requisite, respondents pointed out that, if the nonexistence of Cadastral Case No. 10 and the invalidity of the Order dated June 30, 1989 were allowed to be proven by the newly discovered evidence, the action for quieting of title would probably be dismissed, as respondents' levy would be declared superior to petitioners' claim.[23]

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[21] *Id.* at 313.

[22] *Id.* at 314.

[23] *Id.* at 321-325.

In their Comment/Opposition, petitioners argued that (a) the questioned decision was a partial summary judgment which could not be the subject of a motion for new trial; (b) the existence of Cadastral Case No. 10 was an admitted fact which could not be questioned in a motion for new trial; and (c) there was no newly discovered evidence that would warrant a new trial.[24]

The CA did not agree with petitioners. Hence, on January 31, 2007, it granted respondents' motion for new trial, thus:

> WHEREFORE, premises considered, the defendants-appellants having satisfied all the elements necessary to justify the filing of a Motion for New Trial which appears to be meritorious and in the higher interest of substantial justice, the said motion is GRANTED. ACCORDINGLY, let a new trial of the Quieting of Title case be held and let said case be REMANDED to the Court *a quo* for said purpose.
>
> SO ORDERED.[25]

At the outset, the CA noted that the RTC summary judgment was a proper subject of an appeal because it was a final adjudication on the merits of the case, having completely disposed of all the issues except as to the amount of damages. The CA concluded that respondents properly availed of a motion for new trial because such remedy could be availed of at any time after the appeal from the lower court had been perfected and before the CA loses jurisdiction over the case. According to the CA, respondents were able to show that they obtained the new evidence only after the trial of the case and after the summary judgment had been rendered. The CA also held that respondents never admitted during the pre-trial the existence of Cadastral Case No. 10; they only admitted the existence of the Order dated June 30, 1989 in Cadastral Case No. 10.

On July 16, 2007, the CA denied petitioners' motion for reconsideration.[26]

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[24] *Id.* at 358-365.

[25] *Id.* at 47.

[26] *Supra* note 1.

Petitioners subsequently filed this petition for review on *certiorari*, raising the following issues:

A.

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT THE QUESTIONED DECISION OF THE RTC IS A PROPER SUBJECT OF AN APPEAL AND A MOTION FOR NEW TRIAL UNDER RULE 53 OF THE RULES OF COURT.

B.

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO RULE THAT A MOTION FOR NEW TRIAL IS AN IMPROPER REMEDY TO QUESTION ADMITTED FACTS.

C.

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO RULE THAT NO NEWLY DISCOVERED EVIDENCE WAS ADDUCED TO WARRANT A NEW TRIAL.[27]

Petitioners posit that no appeal could be taken from the trial court's decision because it did not completely dispose of all the issues in the case; it failed to settle the issue on damages. Petitioners categorize the decision as a partial summary judgment, which in *Guevarra, et al. v. Hon. Court of Appeals, et al.*,[28] reiterated in *GSIS v. Philippine Village Hotel, Inc.*,[29] the Court pronounced as not a final and an appealable judgment, hence, interlocutory and clearly an improper subject of an appeal. Petitioners theorize then that the appeal could not have been perfected and the CA could not have acquired jurisdiction over the case, including the motion for new trial. Accordingly, they conclude that the motion for new trial should have been denied outright for being violative of Section 1,[30] Rule 53 of the Rules of Court, which

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[27] *Rollo*, pp. 452-453.

[28] 209 Phil. 241 (1983).

[29] 482 Phil. 47 (2004).

[30] Section 1. *Period for filing; ground.* — At any time after the appeal from the lower court has been perfected and before the Court of Appeals

provides that the motion for new trial may be filed after the appeal has been perfected. Petitioners argue that, pursuant to Section 4, Rule 35 of the Rules of Court, trial should proceed instead to settle the issue on damages. Petitioners point out that the case cited by the CA in its Decision, *Bell Carpets International Trading Corporation v. Court of Appeals*,[31] is not applicable to the case because, unlike in the present case, the trial court's ruling completely disposed of all the issues in that case.

In addition, petitioners insist that respondents already admitted the existence of Cadastral Case No. 10 by its admission of the existence of the Order dated June 30, 1989. They maintain that respondents cannot admit the existence of an order and yet deny the existence of the proceedings from which the order emanates. Respondents' judicial admission that the court Order existed necessarily carried with it the admission that the cadastral proceedings where the Order was issued likewise existed. Petitioners aver that respondents are bound by their judicial admission and they cannot be allowed to present evidence to contradict the same.

Petitioners next argue that the purported newly discovered pieces of evidence have no probative value. Petitioners say that the certifications are self-serving and inconclusive opinions of court employees, who did not even indicate the period when they occupied their positions and state whether they had the authority to issue such certifications and whether they had personal knowledge of the documents archived during the year that the deed of sale was executed. According to petitioners, the certifications cannot overcome the presumption of regularity in

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loses jurisdiction over the case, a party may file a motion for new trial on the ground of newly discovered evidence which could not have been discovered prior to the trial in the court below by the exercise of due diligence and which is of such character as would probably change the result. The motion shall be accompanied by affidavits showing the facts constituting the grounds therefor and the newly discovered evidence.

[31] G.R. No. 75315, May 7, 1990, 185 SCRA 35.

the issuance of the Order dated June 30, 1989. At most, the certifications would simply show that the records of Cadastral Case No. 10 could no longer be found in the records; hence, they would have no bearing on the result of the case.

Petitioners also emphasize that respondents failed to meet the burden of proving that the newly discovered pieces of evidence presented comply with the requisites to justify the holding of a new trial. They contend that respondents could have discovered and presented in court the certifications during trial had they exercised reasonable diligence.

Petitioners' arguments are untenable.

The issue of whether the RTC judgment is a final judgment is indeed crucial. If the judgment were not final, it would be an improper subject of an appeal. Hence, no appeal would have been perfected before the CA, and the latter would not have acquired jurisdiction over the entire case, including the motion for new trial. But more importantly, only a final judgment or order, as opposed to an interlocutory order, may be the subject of a motion for new trial.

A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do in respect thereto, such as an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right, or a judgment or order that dismisses an action on the ground of *res judicata* or prescription, for instance.[32] Just like any other judgment, a summary judgment that satisfies the requirements of a final judgment will be considered as such.

A summary judgment is granted to settle expeditiously a case if, on motion of either party, there appears from the pleadings, depositions, admissions, and affidavits that no important issues of fact are involved, *except the amount of damages*.[33] The

[32] *Intramuros Tennis Club, Inc. v. Philippine Tourism Authority,* 395 Phil. 278, 293 (2000).

[33] *Cotabato Timberland Co., Inc. v. C. Alcantara and Sons, Inc.,* G.R. No. 145469, May 28, 2004, 430 SCRA 227, 233.

RTC judgment in this case fully determined the rights and obligations of the parties relative to the case for quieting of title and left no other issue unresolved, except the amount of damages. Hence, it is a final judgment.

In leaving out the determination of the amount of damages, the RTC did not remove its summary judgment from the category of final judgments. In fact, under Section 3,[34] Rule 35 of the Rules of Court, a summary judgment may not be rendered on the amount of damages, although such judgment may be rendered on the issue of the right to damages.[35]

In *Jugador v. De Vera*,[36] the Court distinguished between the determination of the amount of damages and the issue of the right to damages itself in case of a summary judgment. The Court elucidated on this point, thus:

> [A] summary judgment may be rendered except as to the amount of damages. In other words, such judgment may be entered on the issue relating to the existence of the right to damages. Chief Justice Moran pertinently observes that "if there is any real issue as to the amount of damages, the c[o]urt, after rendering summary judgment, may proceed to assess the amount recoverable."[37]

It is therefore reasonable to distinguish the present case from *GSIS v. Philippine Village Hotel, Inc.*[38] In that case, the summary

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[34] Section 3. *Motion and proceedings thereon.* — The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

[35] FLORENZ D. REGALADO, *I REMEDIAL LAW COMPENDIUM*, 368 (Eighth Revised Edition 2002).

[36] 94 Phil. 704 (1954).

[37] *Id.* at 710.

[38] *Supra* note 29.

judgment specifically stated that "[t]rial on the issu[e] of damages shall resume." Evidently, there remained an unresolved issue on the right to damages. Here, the trial court, in stating that "except as to the amount of damages, a summary judgment is hereby rendered in favor of the plaintiffs and against the defendants," had, in effect, resolved all issues, including the right to damages in favor of the plaintiffs (petitioners). What remained undetermined was only the amount of damages.

On the issue of whether respondents are proscribed from presenting evidence that would disprove the existence of Cadastral Case No. 10, we likewise sustain the CA.

A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in the same case, which dispenses with the need for proof with respect to the matter or fact admitted. It may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made.[39]

During the pre-trial, respondents categorically admitted the existence of the Order dated June 30, 1989 only. The Court cannot extend such admission to the existence of Cadastral Case No. 10, considering the circumstances under which the admission was made. In construing an admission, the court should consider the purpose for which the admission is used and the surrounding circumstances and statements.[40] Respondents have constantly insisted that, in making the admission, they relied in good faith on the veracity of the Order which was presented by petitioners. Moreover, they relied on the presumption that the Order has been issued by Judge Enrique T. Jocson in the regular performance of his duties. It would therefore be prejudicial and unfair to respondents if they would be prevented from proving that the Order is in fact spurious by showing that there was no Cadastral Case No. 10 before the RTC, Branch 47, of Bacolod City.

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[39] *Camitan v. Fidelity Investment Corporation,* G.R. No. 163684, April 16, 2008, 551 SCRA 540, 549.

[40] *Harmon v. Christy Lumber, Inc.*, 402 NW2D 690 (1987); see *Moffett v. Arabian American Oil Co., Inc.*, 85 F. Supp. 174 (1949).

Finally, we find that a new trial based on newly discovered evidence is warranted. New trial is a remedy that seeks to "temper the severity of a judgment or prevent the failure of justice." Thus, the Rules allows the courts to grant a new trial when there are errors of law or irregularities prejudicial to the substantial rights of the accused committed during the trial, or when there exists newly discovered evidence.[41] The grant or denial of a new trial is, generally speaking, addressed to the sound discretion of the court which cannot be interfered with unless a clear abuse thereof is shown.[42]

This Court has repeatedly held that before a new trial may be granted on the ground of newly discovered evidence, it must be shown (1) that the evidence was discovered after trial; (2) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) that it is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted. If the alleged newly discovered evidence could have been very well presented during the trial with the exercise of reasonable diligence, the same cannot be considered newly discovered.[43]

The only contentious element in the case is whether the evidence could have been discovered with the exercise of reasonable diligence. In *Custodio v. Sandiganbayan*,[44] the Court expounded on the due diligence requirement, thus:

> The *threshold question* in resolving a motion for new trial based on newly discovered evidence is whether the [proffered] evidence is in fact a "newly discovered evidence which could not have been discovered by due diligence." *The question of whether evidence is newly discovered has two aspects: a temporal one, i.e.*, when was the evidence discovered, and a *predictive one, i.e.*, when should or

[41] *Brig. Gen. Custodio v. Sandiganbayan*, 493 Phil. 194, 203-204 (2005).

[42] *Philippine Long Distance Telephone Company v. Commissioner of Internal Revenue*, G.R. No. 157264, January 31, 2008, 543 SCRA 329, 340.

[43] *Custodio v. Sandiganbayan, supra*, at 204-205.

[44] *Id.*

could it have been discovered. It is to the latter that the requirement of due diligence has relevance. We have held that in order that a particular piece of evidence may be properly regarded as newly discovered to justify new trial, what is essential is not so much the time when the evidence offered first sprang into existence nor the time when it first came to the knowledge of the party now submitting it; what is essential is that the offering party had exercised *reasonable diligence* in seeking to locate such evidence before or during trial but had nonetheless failed to secure it.

The Rules do not give an exact definition of due diligence, and whether the movant has exercised due diligence depends upon the particular circumstances of each case. Nonetheless, it has been observed that the phrase is often equated with "reasonable promptness to avoid prejudice to the defendant." In other words, the concept of due diligence has both a *time component* and a *good faith component*. The movant for a new trial must not only act in a timely fashion in gathering evidence in support of the motion; he must act reasonably and in good faith as well. Due diligence contemplates that the defendant acts reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him.[45]

As previously stated, respondents relied in good faith on the veracity of the Order dated June 30, 1989 which petitioners presented in court. It was only practical for them to do so, if only to expedite the proceedings. Given this circumstance, we hold that respondents exercised reasonable diligence in obtaining the evidence. The certifications therefore qualify as newly discovered evidence.

The question of whether the certifications presented by respondents have any probative value is left to the judgment and discretion of the trial court which will be hearing the case anew.

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals Resolutions dated January 31, 2007 and July 16, 2007 are *AFFIRMED*.

SO ORDERED.

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

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[45] *Id.* at 206.

SECOND DIVISION

[G.R. No. 179558. June 1, 2011]

ASIATRUST DEVELOPMENT BANK, *petitioner, vs.* **FIRST AIKKA DEVELOPMENT, INC. and UNIVAC DEVELOPMENT, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; A PARTY MAY NOT BE ESTOPPED FROM QUESTIONING THE REHABILITATION COURT'S JURISDICTION.— While it is true that petitioner had been asking the rehabilitation and appellate courts that it be allowed to participate, contrary to respondents' contention, the same did not amount to estoppel that would bar it from questioning the rehabilitation court's jurisdiction. It is well-settled that the court's jurisdiction may be assailed at any stage of the proceedings, even for the first time on appeal. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action. In its Opposition to the petition for rehabilitation, petitioner already questioned the court's jurisdiction over UDI. On appeal to the CA, it again raised the same issue, but it failed to obtain a favorable decision. We cannot, therefore, say that petitioner slept on its rights. It is not estopped from raising the jurisdictional issue even at this stage. In any event, even if petitioner had not raised the issue of jurisdiction, the reviewing court would still not be precluded from ruling on the matter of jurisdiction.

2. ID.; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; CONSOLIDATION OF PETITIONS FOR REHABILITATION OF TWO SEPARATE CORPORATIONS WITH DIFFERENT OFFICE ADDRESSES IS NOT PROPER.— We find that the consolidation of the petitions involving these two separate entities is not proper. Although FADI and UDI have interlocking directors, owners, and officers and intertwined loans, the two corporations are separate, each with a personality distinct from

the other. To be sure, in determining the feasibility of rehabilitation, the court evaluates the assets and liabilities of each of these corporations separately and not jointly with other corporations. Moreover, Section 2, Rule 3 of the Rules, the rule applicable at the time of the filing of the petition, provides: Sec. 2. *Venue.* – Petitions for rehabilitation pursuant to these Rules shall be filed in the Regional Trial Court having jurisdiction over the territory where the debtor's principal office is located. Considering that UDI's principal office is located in Pasig City, the petition should have been filed with the RTC in Pasig City and not in Baguio City. The latter court cannot, therefore, take cognizance of the rehabilitation petition insofar as UDI is concerned for lack of jurisdiction.

3. ID.; ID.; RELAXATION OF THE RULES IN THE INTEREST OF JUSTICE, WARRANTED.— The Court promulgated the Rules in order to provide a remedy for summary and non-adversarial rehabilitation proceedings of distressed but viable corporations. These Rules are to be construed liberally to obtain for the parties a just, expeditious, and inexpensive disposition of the case. To be sure, strict compliance with the rules of procedure is essential to the administration of justice. Nonetheless, technical rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application should be relaxed when they hinder rather than promote substantial justice. Otherwise stated, strict application of technical rules of procedure should be shunned when they hinder rather than promote substantial justice. In this case, instead of filing its opposition to the petition for rehabilitation at least ten days before the date of the initial hearing as required by the Rules, petitioner filed a Motion for Leave of Court to Admit Opposition to Rehabilitation Petition with the attached Opposition to Petition for Rehabilitation on the date of the initial hearing. Because the pleading was not filed on time, the RTC denied the motion. While the court has the discretion whether or not to admit the opposition belatedly filed by petitioner, it is our considered opinion that the RTC gravely abused its discretion when it refused to grant the motion, even as the factual circumstances of the case require that the Rules be liberally construed in the interest of justice.

4. ID.; ID.; ID.; DISPARITY OF THE PARTIES' CLAIMS CONSIDERED AS COMPELLING REASON FOR

LIBERAL INTERPRETATION OF THE RULES.— [P]etitioner and respondents differ in their assessment and computation of the latter's obligations to the former. Petitioner claims that respondents owe it ₱145,830,220.95, while the latter only admit a total obligation of ₱24,202,015. This disparity in the parties' claims makes it more important for the rehabilitation court to have given petitioner the opportunity to be heard. Besides, in their petition before the RTC, respondents sought the determination of the true and correct amount of their loan with petitioner. We consider this as a compelling reason for the liberal interpretation of the Rules, and the rehabilitation court should have admitted petitioner's comment on the petition for rehabilitation and allowed petitioner to participate in the proceedings. Time and again, we have held that cases should, as much as possible, be resolved on the merits, not on mere technicalities. In cases where we dispense with the technicalities, we do not mean to undermine the force and effectivity of the periods set by law. In those rare cases where we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice, as in the present case. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.

5. ID.; ID.; CORPORATE REHABILITATION, CONCEPT OF.— Corporate rehabilitation connotes the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continued operation is economically feasible and its creditors can recover by way of the present value of payments projected in the rehabilitation plan, more if the corporation continues as a going concern than if it is immediately liquidated.

6. ID.; ID.; REHABILITATION PROCEEDINGS; PURPOSES.— Rehabilitation proceedings in our jurisdiction have equitable and rehabilitative purposes. On the one hand, they attempt to provide for the efficient and equitable distribution of an insolvent debtor's remaining assets to its creditors; and on the other, to provide debtors with a "fresh start" by relieving them of the weight of their outstanding debts and permitting them to reorganize their affairs. The purpose of rehabilitation

proceedings is to enable the company to gain a new Lease on life and thereby allow creditors to be paid their claims from its earnings.

7. ID.; ID.; ID.; THE MAJOR CREDITOR OF THE DISTRESSED CORPORATION, LIKE A BANK, SHOULD BE GIVEN OPPORTUNITY TO BE HEARD BY THE REHABILITATION COURT; REASON.— The determination of the true and correct amount due petitioner is important in assessing whether FADI may be successfully rehabilitated. It is thus necessary that petitioner be given the opportunity to be heard by the rehabilitation court. The court should admit petitioner's comment on or opposition to FADI's petition for rehabilitation and allow petitioner to participate in the rehabilitation proceedings to determine if indeed FADI could maintain its corporate existence. A remand of the case to the rehabilitation court is, therefore, imperative. To be sure, the successful rehabilitation of a distressed corporation will benefit its debtors, creditors, employees, and the economy in general. As much as we would like to honor the rehabilitation plan approved by the rehabilitation court, particularly because it has already been partially implemented, we cannot sustain the decision of the court, as affirmed by the CA, if we are to ensure that rehabilitation is indeed feasible. It is especially important in this case to hear petitioner, as the major creditor of the distressed corporation, since it is a banking institution. Banks are entities engaged in the lending of funds obtained through deposits from the public. They borrow the public's excess money and lend out the same. Banks, therefore, redistribute wealth in the economy by channeling idle savings to profitable investments. Banks operate (and earn income) by extending credit facilities financed primarily by deposits from the public. They plough back the bulk of said deposits into the economy in the form of loans. Since banks deal with the public's money, their viability depends largely on their ability to return those deposits on demand. For this reason, banking is undeniably imbued with public interest. Consequently, much importance is given to sound lending practices and good corporate governance.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioner.
Larry P. Ignacio for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision[1] dated June 28, 2007 and Resolution[2] dated August 29, 2007 in CA-G.R. SP No. 97408.

The Facts

Respondents First Aikka Development, Inc. (FADI) and Univac Development, Inc. (UDI) are domestic corporations engaged in the construction and/or development of roads, bridges, infrastructure projects, subdivisions, housing, land, memorial parks, and other industrial and commercial projects for the government or any private entity or individual.[3]

In the course of their business, FADI and UDI availed of separate loan accommodations or credit lines with petitioner Asiatrust Development Bank.[4] The aggregate amount of the loan obtained by respondents was ₱114,000,000.00. Respondents religiously and faithfully complied with their loan obligations, but during the Asian Financial Crisis, which directly and adversely affected mainly the construction and real estate industry, respondents could not pay their obligations in cash.[5] This prompted

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[1] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, concurring; *rollo*, pp. 105-118.

[2] *Id.* at 120.

[3] *Supra* note 1, at 105.

[4] *Rollo*, p. 125.

[5] *Id.* at 127.

respondents to negotiate with petitioner for different modes of payment that the former might avail of. Petitioner thus agreed that respondents assign the receivables of their various contracts to sell involving the lots in the residential subdivision projects they were developing, instead of paying in cash.[6]

Notwithstanding the above agreement, petitioner insisted on collecting the loan per the loan documents. Petitioner claimed that respondents were already in default and demanded the payment of ₱145,830,220.95. Respondents denied that they were in default because of the assignment of their receivables to petitioner. Respondents contested petitioner's claim and demanded for an accounting to determine the correct and true amount of their obligations.[7]

On May 10, 2006, respondents filed a consolidated Petition for Corporate Rehabilitation with Prayer for Suspension of Payments[8] with the Regional Trial Court (RTC) of Baguio City, Branch 59. The case was docketed as Civil Case No. 6267-R. Respondents alleged that they were unable to pay their loan based on the claim of petitioner. Though they have sufficient assets to pay their loan, respondents averred that they were not liquid. They also stated that they were threatened by petitioner with various cases aimed at disrupting the operations of respondents which might eventually lead to the cessation of their business.[9] Respondents prayed that an order be issued staying the enforcement of any and all claims of their creditors, investors, and suppliers, whether for money or otherwise, against petitioner, their guarantors, and sureties.[10] By way of rehabilitation, respondents also sought the determination of the true and correct amount of their loan obligation with petitioner.[11]

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[6] *Id.* at 128.

[7] *Id.*

[8] *Id.* at 121-139.

[9] *Id.* at 129-132.

[10] *Id.* at 136.

[11] *Id.* at 133.

On May 16, 2006, the RTC issued an Order,[12] the pertinent portions of which read:

> After an examination of the contents of the petition setting forth with sufficient particularity and material facts pursuant to Section 2 of Rule 4 of the Interim Rules of Procedures (sic) of Corporate Rehabilitation and the supporting documents attached thereto and finding the same to be sufficient in form and substance, the Court hereby:
>
> 1. ORDERS STAYING enforcement of all claims whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtors (herein petitioners)[, their] guarantors and [sureties] not solidarily liable with the debtors. In particular[,] ASIATRUST BANK BE STAYED from proceeding with the foreclosure and auction sale of the mortgaged properties;
>
> 2. APPOINTS PATRICK V. CAOILE as interim rehabilitation receiver with a bond of two million (₱2,000,000.00) pesos;
>
> x x x x x x x x x
>
> 7. FIXES the initial hearing on the petition on June 29, 2006 at 11:00 o'clock (sic) in the morning.[13]

On June 2, 2006, Robert Cuchado, an officer of petitioner, went to Baguio City to secure a copy of the petition for rehabilitation but failed to do so because, at that time, the personnel of the rehabilitation court were attending the Judicial Service Training. Petitioner then tried to secure a copy of the petition through the sheriff of the RTC of La Trinidad, Benguet. The rehabilitation court, however, required petitioner to file a motion to that effect, together with a written document authorizing the sheriff to secure a copy thereof. On June 9, 2006, the rehabilitation court issued an Order granting the motion filed by petitioner and gave it a certified true copy of the petition.[14]

On the day of the initial hearing, petitioner, through its counsel Atty. Mario C. Lorenzo (Atty. Lorenzo), went to court with a

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[12] *Id.* at 171-173.

[13] *Id.* at 171-172.

[14] *Id.* at 107.

Motion for Leave of Court to Admit Opposition to Rehabilitation Petition[15] with the attached Opposition to Petition for Rehabilitation.[16] In an Order[17] dated July 17, 2006, the RTC denied the motion and explained:

> Under par. 9 of the Stay Order[,] all creditors, *etc*., were given ten (10) days before the initial hearing to file their comment or opposition to the petition and putting them on notice that failure to do so will bar them from participating in the proceedings.
>
> It is only on June 29, 2006, the date of the initial hearing that Asiatrust filed its Motion with Leave to Admit Opposition. The motion partakes of the nature of a motion for extension of time to file pleading which is a prohibited pleading under Rule 3(e) of the Interim Rules of Procedure on Corporate Rehabilitation.[18]

On July 31, 2006, when the case was called for hearing, Enrico J. Ong (Ong) appeared as representative of petitioner because the latter's counsel could not go to court due to the cancellation of his flight as a result of bad weather. The rehabilitation court recognized the appearance of Ong only to inform the court that the counsel for petitioner could not attend the hearing. There being no other oppositors or creditors in court despite due notices, the rehabilitation court terminated the initial hearing and directed the rehabilitation receiver to evaluate respondents' rehabilitation plan and then report the results thereof to the court.[19]

On October 13, 2006, the rehabilitation receiver called for a conference and presented the draft of the rehabilitation report to petitioner, represented by Atty. Lorenzo and Ong, and to respondents. Petitioner filed a manifestation and motion in court calling its attention to the alleged refusal of the receiver to hear

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[15] *Id.* at 176-178.

[16] *Id.* at 179-186.

[17] *Id.* at 187.

[18] *Id.*

[19] *Id.* at 107-108.

its side. Petitioner thus asked for judicial assistance to enable it to actively participate in the rehabilitation proceedings and protect its interest. The receiver finalized and later on filed his evaluation report in court. He recommended the approval of the rehabilitation plan.[20]

On December 5, 2006, the RTC issued an Order,[21] the pertinent portions of which read:

> On the same ground under Rule 3 of the Interim Rules, the Motion of Oppositor Asiatrust to participate in the Rehabilitation Proceedings is **DENIED**. This pleading partakes of a [P]etition for Relief which is also a prohibited pleading under par. d of Rule 3 of the same rule. Moreover, the motion has also the purpose to reconsider the court's ruling in denying the admission of their opposition to the [P]etition for Rehabilitation.
>
> It must be stressed that under par. 9 of the Stay Order, "All creditors, *etc*., were given ten (10) days before the initial hearing to file their comment or opposition to the petition and **putting them on notice that failure to do so will bar them from participating in the proceedings**."
>
> As to the Rehabilitation Report and the Integrated Revised Rehabilitation Plan and Schedule of the petitioners, the court, after a careful and thorough examination and review of the report, it is its considered judgment that the rehabilitation of the debtor is feasible and hereby APPROVES the Rehabilitation Report and the REVISED REHABILITATION PLAN.
>
> x x x x x x x x x
>
> WHEREFORE, premises all duly considered, the Motion of Asiatrust to participate in the Rehabilitation Proceedings is hereby DENIED, the Rehabilitation Report and the Integrated Revised Rehabilitation Plan of Receiver Patrick Caoile is APPROVED and the Notice of the Appearance of the Cabato Law Office as collaborating counsel for Oppositor Asiatrust is NOTED.

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[20] *Id.* at 108.

[21] *Id.* at 207-210.

The court appointed Receiver shall submit his report every three (3) months and a yearly report on the status of the progress of the rehabilitation and the implementation and monitoring of the same.

SO ORDERED.[22]

Aggrieved, petitioner elevated the case to the CA via a Petition for Review[23] under Rule 43 of the Rules of Court.

On June 28, 2007, the appellate court affirmed the above RTC Orders. The appellate court emphasized that petitioner's failure to participate in the rehabilitation proceedings was due to its own fault. First, petitioner failed to file on time its opposition to the petition for rehabilitation and still failed to present good reason for it to be belatedly admitted. Second, on the date of the second hearing, its counsel failed to go to court allegedly due to the cancellation of his flight, which, to the mind of the court, was inexcusable. Lastly, instead of filing a comment to the rehabilitation proceedings, petitioner filed a motion to participate in the rehabilitation proceedings, which is a prohibited pleading. The CA thus concluded that petitioner was given every opportunity to be heard in the rehabilitation proceedings, but it failed to avail of these remedies. On the propriety of the joint petition for rehabilitation, the CA opined that the Interim Rules of Procedure on Corporate Rehabilitation (the Rules) contains no prohibition. Finally, the CA stressed that rehabilitation proceedings are non-adversarial and summary in nature which, therefore, necessitate the proper observance of the period and procedures provided for by law and the Rules.[24]

The Issues

Undaunted, petitioner comes before this Court, raising the following errors:

A.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERRORS OF LAW WHEN IT FAILED TO

[22] *Id.* at 208-210.

[23] CA *rollo*, pp. 7-38.

[24] *Supra* note 1, at 110-117.

RULE THAT PETITIONER WAS UNJUSTLY DEPRIVED OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW WHEN IT WAS NOT ALLOWED TO PROVE THE TRUE AND CORRECT AMOUNT OF THE LOAN OBLIGATIONS OWING TO IT BY THE RESPONDENTS BASED ON A MERE TECHNICALITY, IN BLATANT DISREGARD OF THE APPLICABLE LAWS AND DECISIONS OF THIS HONORABLE COURT.

B.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERRORS OF LAW WHEN IT AFFIRMED THE APPROVAL OF THE REHABILITATION PLAN DESPITE THE REHABILITATION COURT'S FAILURE TO CONDUCT A CLARIFICATORY HEARING TO RESOLVE THE UNSETTLED ISSUE ON THE AMOUNT OF INDEBTEDNESS OF PRIVATE RESPONDENTS AND THE REHABILITATION RECEIVER'S FAILURE TO MAKE A CREDIBLE AND INDEPENDENT INVESTIGATION ON THE AMOUNT OF INDEBTEDNESS OF RESPONDENT CORPORATIONS, THEREBY DEVIATING FROM THE USUAL AND ACCEPTED COURSE OF JUDICIAL PROCEEDINGS.

C.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERRORS OF LAW WHEN IT INEXPLICABLY AFFIRMED THE REHABILITATION COURT'S APPROVAL OF THE CONSOLIDATED *PETITION* FOR REHABILITATION, DESPITE THE SUBSTANTIAL EVIDENCE SHOWING THAT THE *PETITION* WAS FILED IN THE WRONG VENUE INSOFAR AS RESPONDENT UNIVAC DEVELOPMENT IS CONCERNED AND WAS FATALLY DEFECTIVE ON ITS FACE.

D.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN IT REFUSED TO RULE ON THE SUBSTANTIAL AND FORMAL DEFECTS OF THE REHABILITATION PLAN ON THE PRETEXT THAT THE REHABILITATION COURT'S APPROVAL OF THE RESPONDENTS' REHABILITATION IS BINDING ON IT, DESPITE THE ABSENCE OF SUBSTANTIAL EVIDENCE THAT WOULD SUPPORT THE DECISION OF THE REHABILITATION COURT.

E.

WHETHER OR NOT THE HONORABLE COURT'S EXERCISE OF ITS DISCRETIONARY REVIEW POWERS IS WARRANTED UNDER THE CIRCUMSTANCES.[25]

Petitioner's Arguments

Petitioner avers that it was denied due process when the rehabilitation court refused to admit its opposition to the petition for rehabilitation and to comment on the rehabilitation plan.[26] It explains that the late submission of the opposition was brought about by the baseless and unfounded requirements imposed by the court.[27] Considering that there are valid and substantial grounds for the dismissal of the petition for rehabilitation, petitioner insists that its comment and opposition should have been admitted by the rehabilitation court. Petitioner points out that while the court denied its motion for leave to admit its opposition, it (the court) allowed the Securities and Exchange Commission to submit its comment long after the prescribed period.[28]

Petitioner adds that the rehabilitation court's unwarranted refusal to recognize the appearance of its duly authorized representative constitutes a denial of its right to due process.[29] Petitioner also insists that mere delay in the submission of the comment on the petition for rehabilitation does not warrant the denial of petitioner's right to participate in the rehabilitation proceedings. It likewise assails the rehabilitation court's jurisdiction over UDI, whose principal place of business is in Pasig City, which is beyond the jurisdiction of the RTC of Baguio City. It, thus, challenges the consolidated petition for rehabilitation.[30]

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[25] *Rollo*, pp. 544-546.

[26] *Id.* at 547-548.

[27] *Id.* at 548-550.

[28] *Id.* at 550-557.

[29] *Id.* at 557-562.

[30] *Id.* at 572-575.

Moreover, petitioner avers that respondents failed to show that they had adequate capital to sustain their operations during the interim period of corporate rehabilitation.[31] Lastly, petitioner denies that it is estopped from assailing the rehabilitation plan as it already received payment from respondents based on the rehabilitation plan. It clarifies that it accepted the check payments subject to the outcome of this case.[32]

Respondents' Arguments

Respondents, on the other hand, aver that the petition is legally infirm as there are no special important reasons for the Court to exercise its sound judicial discretion to review the assailed CA Decision.[33] They also argue that petitioner's failure to participate in the rehabilitation proceedings could be attributed to its counsel's own slackness and disregard for the rules.[34] On the issue of the rehabilitation court's jurisdiction, respondents counter that petitioner could no longer assail it as petitioner actively participated and continues to participate in the rehabilitation proceedings, including the receipt of payments in accordance with the approved rehabilitation plan.[35] They explain that in the Orders dated May 16, 2006, the rehabilitation court held that the petition is sufficient in form and substance; July 17, 2006, the rehabilitation court denied petitioner's motion for leave to admit its comment on the petition for rehabilitation; and July 31, 2006, the court declared that there is merit in the petition which was given due course. Petitioner's failure to assail the above orders rendered them final and immutable. Respondents thus opine that petitioner could no longer assail them in this petition for review.[36]

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[31] *Id.* at 575-579.

[32] *Id.* at 597-599.

[33] *Id.* at 373-379.

[34] *Id.* at 379-386.

[35] *Id.* at 405-409.

[36] *Id.* at 387-395.

Respondents likewise insist that petitioner could no longer participate in the rehabilitation proceedings because of its failure to file its comment on the petition. In other words, respondents said, the filing of the comment on the petition is a condition precedent to the filing of the comment on the rehabilitation plan.[37] On the amount of the loan obligation, respondents claim that there was a valid basis and there was a determination of the true and correct amount thereof.[38]

The Court's Ruling

Though the rehabilitation proceedings had gone as far as the approval and the subsequent implementation of the rehabilitation plan, we must confront the issue of the rehabilitation court's jurisdiction to hear and decide the case insofar as respondent UDI is concerned. A perusal of petitioner's pleadings clearly shows that it had repeatedly raised the jurisdictional question. The courts below, however, ignored this issue as they did not recognize petitioner's right to participate in the rehabilitation proceedings.

While it is true that petitioner had been asking the rehabilitation and appellate courts that it be allowed to participate, contrary to respondents' contention, the same did not amount to estoppel that would bar it from questioning the rehabilitation court's jurisdiction. It is well-settled that the court's jurisdiction may be assailed at any stage of the proceedings, even for the first time on appeal. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.[39] In its Opposition to the petition for rehabilitation, petitioner already questioned the court's jurisdiction over UDI. On appeal to the CA, it again raised the same issue, but it failed to obtain a favorable decision. We cannot, therefore, say that petitioner

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

[38] *Id.* at 400.

[39] *Sales v. Barro*, G.R. No. 171678, December 10, 2008, 573 SCRA 456, 464.

slept on its rights. It is not estopped from raising the jurisdictional issue even at this stage. In any event, even if petitioner had not raised the issue of jurisdiction, the reviewing court would still not be precluded from ruling on the matter of jurisdiction.

Neither can estoppel be imputed to petitioner for its receipt of payments made by respondents in accordance with the rehabilitation plan. It has been established that in its letters to respondents, petitioner explained that it received payments subject to the results of its appeal. Besides, it is a basic rule that estoppel does not confer jurisdiction on a tribunal that has none over the cause of action or subject matter of the case.[40]

Records show that the Petition for Corporate Rehabilitation with Prayer for Suspension of Payments[41] was filed by two corporations, namely, FADI and UDI. Respondent FADI is a real estate corporation duly organized and existing under and by virtue of Philippine laws, with principal place of business in Baguio City.[42] Respondent UDI, on the other hand, is a real estate corporation with principal place of business in Pasig City.[43] Respondents explain in their petition that they filed the consolidated petition because they availed of separate but intertwined loan obligations or credit lines, and that they have interlocking directors, owners, and officers. As such, a full and complete settlement of the loan obligations will involve the two corporations and, consequently, the rehabilitation of one will entail the rehabilitation of the other.[44]

We find that the consolidation of the petitions involving these two separate entities is not proper.

Although FADI and UDI have interlocking directors, owners, and officers and intertwined loans, the two corporations are

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[40] *Atwel v. Concepcion Progressive Association, Inc.*, G.R. No. 169370, April 14, 2008, 551 SCRA 272, 283.

[41] *Rollo,* pp. 121-139.

[42] *Id.* at 121.

[43] *Id.* at 123.

[44] *Id.* at 125.

separate, each with a personality distinct from the other. To be sure, in determining the feasibility of rehabilitation, the court evaluates the assets and liabilities of each of these corporations separately and not jointly with other corporations.

Moreover, Section 2, Rule 3 of the Rules, the rule applicable at the time of the filing of the petition, provides:

> Sec. 2. *Venue.* – Petitions for rehabilitation pursuant to these Rules shall be filed in the Regional Trial Court having jurisdiction over the territory where the debtor's principal office is located.

Considering that UDI's principal office is located in Pasig City, the petition should have been filed with the RTC in Pasig City and not in Baguio City. The latter court cannot, therefore, take cognizance of the rehabilitation petition insofar as UDI is concerned for lack of jurisdiction.

This error, however, will not result in the dismissal of the entire petition since the RTC of Baguio City had jurisdiction over the petition of FADI in accordance with the above-quoted provision of the Rules.

On the issue of whether the rehabilitation court, as affirmed by the CA, correctly denied petitioner's prayer to participate in the rehabilitation proceedings because of the belated filing of its Comment/Opposition to respondents' petition for rehabilitation, we answer in the negative.

The Court promulgated the Rules in order to provide a remedy for summary and non-adversarial rehabilitation proceedings of distressed but viable corporations.[45] These Rules are to be construed liberally to obtain for the parties a just, expeditious, and inexpensive disposition of the case.[46] To be sure, strict compliance with the rules of procedure is essential to the administration of justice. Nonetheless, technical rules of procedure

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[45] *North Bulacan Corporation v. Philippine Bank of Communications*, G.R. No. 183140, August 2, 2010, 626 SCRA 260, 262-263.

[46] *Id.* at 263.

are mere tools designed to facilitate the attainment of justice. Their strict and rigid application should be relaxed when they hinder rather than promote substantial justice.[47] Otherwise stated, strict application of technical rules of procedure should be shunned when they hinder rather than promote substantial justice.[48]

In this case, instead of filing its opposition to the petition for rehabilitation at least ten days before the date of the initial hearing as required by the Rules, petitioner filed a Motion for Leave of Court to Admit Opposition to Rehabilitation Petition[49] with the attached Opposition to Petition for Rehabilitation[50] on the date of the initial hearing. Because the pleading was not filed on time, the RTC denied the motion. While the court has the discretion whether or not to admit the opposition belatedly filed by petitioner, it is our considered opinion that the RTC gravely abused its discretion when it refused to grant the motion, even as the factual circumstances of the case require that the Rules be liberally construed in the interest of justice.

Admittedly, petitioner is respondents' major creditor. The parties even explained that the new payment scheme adopted in the approved rehabilitation plan maintained the same scheme as that stipulated in the contracts between respondents and their creditors except that of petitioner. In other words, respondents could pay the other creditors in the same manner as that stipulated in their contracts but could not abide by the terms of their contracts with petitioner.

Moreover, petitioner and respondents differ in their assessment and computation of the latter's obligations to the former. Petitioner claims that respondents owe it ₱145,830,220.95, while the latter only admit a total obligation of ₱24,202,015. This disparity in

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[47] *Tan v. Planters Products, Inc.*, G.R. No. 172239, March 28, 2008, 550 SCRA 287, 300.

[48] *Id.* at 289.

[49] *Supra* note 15.

[50] *Supra* note 16.

the parties' claims makes it more important for the rehabilitation court to have given petitioner the opportunity to be heard. Besides, in their petition before the RTC, respondents sought the determination of the true and correct amount of their loan with petitioner.[51] We consider this as a compelling reason for the liberal interpretation of the Rules, and the rehabilitation court should have admitted petitioner's comment on the petition for rehabilitation and allowed petitioner to participate in the proceedings.

Time and again, we have held that cases should, as much as possible, be resolved on the merits, not on mere technicalities. In cases where we dispense with the technicalities, we do not mean to undermine the force and effectivity of the periods set by law. In those rare cases where we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice, as in the present case.[52] Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.[53]

Corporate rehabilitation connotes the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continued operation is economically feasible and its creditors can recover by way of the present value of payments projected in the rehabilitation plan, more if the corporation continues as a going concern than if it is immediately liquidated.[54]

Rehabilitation proceedings in our jurisdiction have equitable and rehabilitative purposes. On the one hand, they attempt to provide for the efficient and equitable distribution of an insolvent

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[51] *Rollo*, pp. 127-128.

[52] *Tanenglian v. Lorenzo*, G.R. No. 173415, March 28, 2008, 550 SCRA 348, 364.

[53] *Id*.

[54] *Castillo v. Uniwide Warehouse Club, Inc.*, G.R. No. 169725, April 30, 2010, 619 SCRA 641, 646.

debtor's remaining assets to its creditors; and on the other, to provide debtors with a "fresh start" by relieving them of the weight of their outstanding debts and permitting them to reorganize their affairs.[55] The purpose of rehabilitation proceedings is to enable the company to gain a new Lease on life and thereby allow creditors to be paid their claims from its earnings.[56]

The determination of the true and correct amount due petitioner is important in assessing whether FADI may be successfully rehabilitated. It is thus necessary that petitioner be given the opportunity to be heard by the rehabilitation court. The court should admit petitioner's comment on or opposition to FADI's petition for rehabilitation and allow petitioner to participate in the rehabilitation proceedings to determine if indeed FADI could maintain its corporate existence. A remand of the case to the rehabilitation court is, therefore, imperative. To be sure, the successful rehabilitation of a distressed corporation will benefit its debtors, creditors, employees, and the economy in general.[57]

As much as we would like to honor the rehabilitation plan approved by the rehabilitation court, particularly because it has already been partially implemented, we cannot sustain the decision of the court, as affirmed by the CA, if we are to ensure that rehabilitation is indeed feasible. It is especially important in this case to hear petitioner, as the major creditor of the distressed corporation, since it is a banking institution.

Banks are entities engaged in the lending of funds obtained through deposits from the public. They borrow the public's

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[55] *China Banking Corporation v. ASB Holdings, Inc.*, G.R. No. 172192, December 23, 2008, 575 SCRA 247, 259, citing *Bank of the Philippine Islands v. Securities and Exchange Commission*, G.R. No. 164641, December 20, 2007, 541 SCRA 294, 301.

[56] *Philippine National Bank v. Court of Appeals*, G.R. No. 165571, January 20, 2009, 576 SCRA 537, 559; *Metropolitan Bank and Trust Company v. ASB Holdings, Inc.*, G.R. No. 166197, February 27, 2007, 517 SCRA 1, 15.

[57] *Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*, G.R. Nos. 178768 & 180893, November 25, 2009, 605 SCRA 503, 517.

excess money and lend out the same. Banks, therefore, redistribute wealth in the economy by channeling idle savings to profitable investments.[58] Banks operate (and earn income) by extending credit facilities financed primarily by deposits from the public. They plough back the bulk of said deposits into the economy in the form of loans. Since banks deal with the public's money, their viability depends largely on their ability to return those deposits on demand. For this reason, banking is undeniably imbued with public interest. Consequently, much importance is given to sound lending practices and good corporate governance.[59]

WHEREFORE, premises considered, the petition is *PARTIALLY GRANTED*. The Court of Appeals Decision dated June 28, 2007 and Resolution dated August 29, 2007 in CA-G.R. SP No. 97408 are *SET ASIDE*. Consequently, the Order of the RTC dated July 17, 2006 and those issued subsequent thereto are hereby *NULLIFIED*.

We *REMAND* the records of the case pertaining to the petition for rehabilitation of First Aikka Development, Inc. to the Regional Trial Court of Baguio City, Branch 59, for further proceedings. The court is *ORDERED* to admit petitioner Asiatrust Development Bank's Comment/Opposition to the petition for rehabilitation and to allow petitioner to participate in said proceedings.

The Regional Trial Court of Baguio City, Branch 59, is likewise *ORDERED* to *DISMISS* the petition for rehabilitation of Univac Development, Inc. for lack of jurisdiction.

SO ORDERED.

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

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[58] *Banco de Oro-EPCI, Inc. v. JAPRL Development Corporation,* G.R. No. 179901, April 14, 2008, 551 SCRA 342, 355.

[59] *Id.* at 356.

FIRST DIVISION

[G.R. No. 180683. June 1, 2011]

AURORA L. TECSON, SPOUSES JOSE L. TECSON and LEONILA TECSON, *petitioners, vs.* **MINERVA, MARIA, FRANCISCO, AGUSTINA, JOSE, ROMUALDO, ELIZABETH and VICTOR, all surnamed FAUSTO, and ISABEL *VDA. DE* FAUSTO,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; CO-OWNERSHIP; CIRCUMSTANCES ESTABLISHING CO-OWNERSHIP IN EQUAL SHARES.— We hold that the siblings have equal shares in the said lot. *First*. The mother title of Lot 2189, OCT No. 734, states in no unclear terms that Waldetrudes and Atty. Fausto were co-owners of the subject lot. The inscription in the original title for Lot 2189 carries more than sufficient weight to prove the existence of a co-ownership between Waldetrudes and Atty. Fausto. *Second*. Other than the bare assertion of the petitioners, there is absolutely no proof on record that Waldetrudes was the sole beneficial owner of Lot 2189. Tax Declaration No. 6521 simply cannot prevail over OCT No. 734 as conclusive evidence of the true ownership of Lot 2189. *Third*. During the cadastral proceeding involving Lot 2189, Waldetrudes herself stated that Atty. Fausto was a co-owner of the subject lot. x x x *Fourth*. There was likewise no evidence behind the petitioners' allegation that the registered co-ownership between Waldetrudes and Atty. Fausto was based on their actual occupancy of Lot 2189. On the contrary, OCT No. 734 categorically states that Waldetrudes and Atty. Fausto are co-owners "*in undivided share*" of Lot 2189. The conspicuous silence of OCT No. 734 as to the definite extent of the respective shares of Atty. Fausto and Waldetrudes in Lot 2189 gives rise to a presumption that they are in equal measure. x x x *Fifth*. The equality in terms of share in Lot 2189, was affirmed by Waldetrudes when she testified in open court. x x x Clearly, the evidence preponderates in favor of the position that Waldetrudes and Atty. Fausto were co-owners in equal share of Lot 2189.

2. ID.; ID.; ID.; LEGAL CONSEQUENCES OF A VOID PARTITION AGREEMENT.— The established facts have several legal consequences: *First*. The Second Plan, having been prepared without the knowledge and consent of any of the co-owners of Lot 2189, have no binding effect on them. *Second*. The Second Partition Agreement is null and void as an absolute simulation, albeit induced by a third party. **The fraud perpetrated by Atty. Tecson did more than to vitiate the consent of Waldetrudes and the respondents. It must be emphasized that Waldetrudes and the respondents never had any intention of entering into a new partition distinct from the First Partition Agreement**. The established facts reveal that Waldetrudes and the respondents assented to the Second Partition Agreement because Atty. Tecson told them that **the instrument was merely required to expedite the sale of Waldetrudes' share**. In other words, **the deceit employed by Atty. Tecson goes into the very nature of the Second Partition Agreement and not merely to its object or principal condition**. Evidently, there is an absence of a genuine intent on the part of the co-owners to be bound under a new partition proposing a new division of Lot 2189. The apparent consent of Waldetrudes and the respondents to the Second Partition Agreement is, in reality, totally wanting. For that reason, the Second Partition Agreement is null and void. *Third*. The Second Partition Agreement being a complete nullity, it cannot be ratified either by the lapse of time or by its approval by the guardianship court. *Fourth*. The First Plan and the First Partition Agreement remain as the valid and binding division of Lot 2189. Hence, pursuant to the First Partition Agreement, Waldetrudes is the absolute owner of Lot 2189-A with an area of only five hundred seven (507) square meters. Atty. Fausto, on the other hand, has dominion over Lot 2189-B with an area of five hundred eight (508) square meters. *Fifth*. Inevitably, Waldetrudes can only sell her lawful share of five hundred seven (507) square meters. The sales in favor of Aurora and, subsequently, Atty. Tecson, are thereby null and void insofar as it exceeded the 507 square meter share of Waldetrudes in Lot 2189. *Nemo dat quod non habet*.

3. ID.; SALES; INNOCENT PURCHASER FOR VALUE, CIRCUMSTANCES NEGATING THE CLAIM OF.— The proven facts indicate that Atty. Tecson knew or, at the very

least, should have known that Atty. Fausto and Waldetrudes were co-owners in equal share of Lot 2189. We must be reminded of the following circumstances: 1. Atty. Tecson was a long-time friend and neighbor of the Faustos. Atty. Tecson himself testified that he considered Atty. Fausto as a good friend and even admitted that he would sometimes visit the latter in his house to play *mahjong*. By this, Atty. Tecson knew that Atty. Fausto has an actual interest in Lot 2189. 2. Atty. Tecson was the one who presented the Second Partition Agreement to Waldetrudes and the respondents; 3. Waldetrudes and the respondents were not involved in the preparation of the Second Partition Agreement and, at the time they signed the said agreement, had no knowledge of the existence of the Second Plan; and 4. The Second Partition Agreement failed to state the specific areas allotted for each component of Lot 2189 and made no mention of the division proposed by the Second Plan. Being the one behind the execution of the Second Partition Agreement, there is no doubt that Atty. Tecson knew that Lot 2189 was owned in common by Waldetrudes and Atty. Fausto. This, taken together with the instrument's unusual silence as to the definite area allotted for each component lot and the Second Plan, reveals a deliberate attempt on the part of Atty. Tecson to conceal from Waldetrudes and the respondents the unequal division of Lot 2189. The necessity to conceal the disproportionate division of Lot 2189 can only be explained by Atty. Tecson's prior knowledge that such a partition is inherently defective for being contrary to the actual sharing between Waldetrudes and Atty. Fausto. Atty. Tecson is clearly in bad faith. Verily, Atty. Tecson cannot be considered as an innocent purchaser of the excess area of Lot 2189-B. Based on the facts and circumstances prevailing in this case, Atty. Tecson may be charged with actual notice of the defect plaguing the Second Partition Agreement. The respondents may, therefore, recover.

APPEARANCES OF COUNSEL

Andres T. Nacilla for petitioners.
Eltanal Maglinao & Partners for respondents.

D E C I S I O N

PEREZ, *J.*:

For Review[1] are the Decision[2] dated 12 December 2006 and Resolution[3] dated 2 October 2007 of the Court of Appeals in CA-G.R. CV No. 70303. In the said decision and resolution, the Court of Appeals reversed the Regional Trial Court (RTC), Branch 19 of Pagadian City[4] thereby allowing the respondents to recover four hundred fifty-seven (457) square meters of land from Transfer Certificate of Title (TCT) No. T-4,342 in the name of petitioner Jose Tecson. The decretal portion of the decision of the appellate court reads:[5]

> WHEREFORE, **in the light of the foregoing**, the appeal is hereby **GRANTED**. The assailed decision is hereby **REVERSED and SET ASIDE**.
>
> Defendant-appellee Atty. Jose L. Tecson is entitled only to 507 square meters under Lot 2189-A; he is DIRECTED to reconvey, within thirty (30) days from notice, the excess of 457 square meters thereof to herein plaintiff-appellants in order to restore the latter's original area of 508 square meters under Lot 2189-B pursuant to Exhibit "B" (Subdivision Plan Psd-09-06-000110 dated March 25, 1974) and Exhibit "C" (the Agreement of Partition dated April 15, 1974). Failure on his part to reconvey the aforesaid 457 square meters within the period prescribed thereto, the Clerk of Court of RTC, Branch 19, Pagadian City, is hereby directed to cause the transfer

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[1] *Via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Teresita Dy-Liacco Flores and Mario V. Lopez, concurring. *Rollo*, pp. 109-172.

[3] *Id.* at 93-94.

[4] Decision of the RTC in Civil Case No. 2692. The decision was promulgated on 8 November 2000 and was penned by Presiding Judge Franklyn A. Villegas. *Id.* at 95-108.

[5] *Id.* at 170-171.

of the same in favor of herein plaintiff-appellants pursuant to Section 10, Rule 39 of the Rules of Court.

Defendant-appellees Aurora L. Tecson and Atty. Jose L. Tecson are directed to pay, jointly and severally, plaintiff-appellants the following:

a.) ₱200,000 as moral damages;
b.) ₱10,000 as exemplary damages; and
c.) ₱20,000 as attorney's fees.

The antecedents of this case are as follows:

Sometime in 1945, Atty. Agustin Fausto (Atty. Fausto) acquired in co-ownership with his sister, Waldetrudes Fausto-Nadela (Waldetrudes), Lot 2189—a one thousand fifteen (1,015) square meter parcel of land situated at Jose Zulueta Street corner National Highway in Pagadian City, Zamboanga Del Sur.[6] In 1953, Atty. Fausto constructed his house on a portion of the said lot.[7]

In 1970, following a cadastral proceeding, Atty. Fausto and Waldetrudes were recognized as co-owners of Lot 2189. Consequently, Original Certificate of Title (OCT) No. 734[8] covering Lot 2189 was issued in the names of:

[I]n undivided shares, Waldetrudes Fausto, married to Leon Nadela; and Agustin Fausto, married to Isabel Pareja, x x x.

Not long after, Atty. Fausto and Waldetrudes decided to partition Lot 2189. For this purpose, Waldetrudes hired one Engr. Ernesto D. Aguilar (Engr. Aguilar) to prepare a subdivision plan for the lot. On 25 March 1974, Engr. Aguilar prepared subdivision plan Psd-09-06-000110 (First Plan)[9] that divided Lot 2189 into two (2) lots, *i.e.*, Lot 2189-A with an area of 507 square meters, and Lot 2189-B with an area of 508 square meters. An illustration of the First Plan shows this division:

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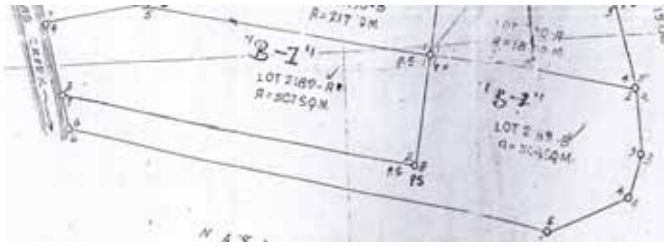
[6] *Id.* at 102.

[7] *Id.* at 111.

[8] Index of Exhibits, p. 1.

[9] *Id.* at 3.



On 6 April 1974, the Regional Director of the Bureau of Lands approved the First Plan.

On 15 April 1974, Atty. Fausto and Waldetrudes formalized their decision to subdivide Lot 2189 by executing an Agreement of Partition.[10] Under this agreement (First Partition Agreement), Waldetrudes was to be given absolute ownership over Lot 2189-A, while Atty. Fausto was to be conferred separate dominion over Lot 2189-B.[11] The First Partition Agreement, however, was never registered with the Register of Deeds.

On 14 March 1975, Atty. Fausto died. He was survived by herein respondents, who are his wife[12] and children.[13]

On 7 July 1977, however, Waldetrudes entered into a Contract to Sell[14] with herein petitioner Aurora L. Tecson (Aurora). In it, Waldetrudes undertook to sell, among others, her "*ideal share*" in Lot 2189 to Aurora upon full payment of the purchase price.[15]

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[10] *Id.* at 4.

[11] *Id.*

[12] Respondent Isabel *Vda. De* Fausto.

[13] Respondents Minerva, Maria, Francisco, Agustina, Jose, Romualdo, Elizabeth and Victor, all surnamed Fausto.

[14] Index of Exhibits, p. 35

[15] *Id.*

On 28 July 1977, Engr. Aguilar prepared a second subdivision plan (Second Plan)[16] for Lot 2189. The Second Plan, designated as Psd-268803, drastically altered the division of Lot 2189 under the First Plan.[17] It introduced the following changes:

1. Waldetrudes' Lot 2189-A with an area of 507 square meters under the First Plan was now **Lot 2189-B with an increased area of 964 square meters**.[18]

2. Atty. Fausto's Lot 2189-B with an area of 508 square meters under the First Plan was now **Lot 2189-A with a decreased area of 51 square meters**.[19]

An illustration of the Second Plan will further highlight these changes:

The Second Plan was approved by the Land Registration Commission on 12 August 1977.

On 28 September 1977, a second partition over Lot 2189 (Second Partition Agreement)[20] was executed between the respondents in their capacity as heirs of Atty. Fausto on one

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[16] *Id.* at 25.

[17] *Id.*

[18] *Id.*

[19] *Id.*

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

hand, and Waldetrudes on the other. Presumably with the Second Plan as a new basis, the agreement named Waldetrudes as the owner of Lot 2189-B while the respondents were allocated Lot 2189-A.

On 8 May 1978, Waldetrudes sold Lot 2189-B, with an area of nine hundred sixty-four (964) square meters, to Aurora.[21]

Meanwhile, it would seem that the Register of Deeds had refused registration of the Second Partition Agreement in view of the fact that several of the respondents, namely Jose, Romualdo, Elizabeth and Victor were still minors.[22] Hence, a guardianship proceeding was commenced by respondent Isabel *Vda. De* Fausto (Isabel)—the wife of Atty. Fausto—to secure her appointment as the legal guardian of her minor children in connection with the Second Partition Agreement.[23]

On 28 July 1978, the guardianship court granted Isabel's Petition[24] and, on 17 January 1980, issued an Order approving the Second Partition Agreement.[25]

On 19 February 1980, the following events transpired:

1. The Second Partition Agreement was finally registered with the Register of Deeds. As a consequence, OCT No. 734 covering Lot 2189 was cancelled and, in lieu thereof, were issued the following titles:

    a. Transfer Certificate of Title (TCT) No. T-4,335 covering Lot 2189-A in the name of Atty. Fausto; and

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[21] Thru an instrument entitled "Extrajudicial Settlement and Partition of Estate with Sale." *Id.* at 16.

[22] Jose was then only 20 years old, Romualdo only 19 years old, Elizabeth only 16 years old, and Victor only 14 years old. TSN dated 13 July 1978, p. 2. Index of Exhibits, p. 47. *Id.* at 47.

[23] Docketed as SPL Case No. 1697 and assigned to the Court of First Instance, Branch III of Pagadian City.

[24] *Via* an Order dated 28 July 1978. Index of Exhibits, pp. 20-24.

[25] *Via* an Order dated 17 January 1980. *Id.* at 28-29.

b. TCT No. T-4,336 for Lot 2189-B in the name of Waldetrudes.[26]

2. The sale of Lot 2189-B in favor of Aurora was likewise registered with the Register of Deeds.[27] Accordingly, the newly issued TCT No. T-4,336 was immediately cancelled and replaced by TCT No. T-4,338[28] in the name of Aurora.

3. Aurora executed a Deed of Absolute Sale,[29] conveying Lot 2189-B to her brother, herein petitioner Atty. Jose L. Tecson (Atty. Tecson).

4. On the very same day, the above deed was registered with the Register of Deeds.[30]

On 20 February 1980, TCT No. T-4,338 was cancelled. In its place, TCT No. T-4,342[31] was issued, this time, in the name of Atty. Tecson.

Seven (7) years after, or on 28 May 1987, the respondents filed a Complaint[32] for the Declaration of Nullity of Documents, Titles, Reconveyance and Damages against Waldetrudes and the petitioners before the Regional Trial Court (RTC) of Pagadian City. In essence, the respondents seek the recovery of four hundred fifty-seven (457) square meters of land from TCT No. T-4,342, which they believe was unlawfully taken from the lawful share of their predecessor-in-interest, Atty. Fausto, in Lot 2189.[33]

The respondents allege that Atty. Fausto and Waldetrudes are, in actual fact, co-owners in equal share of Lot 2189.[34]

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[26] *Rollo*, p. 117.

[27] *Id.*

[28] Index of Exhibits, p. 65.

[29] *Id.* at 34.

[30] *Rollo*, p. 117.

[31] Index of Exhibits, p. 66.

[32] Records, p. 1-3.

[33] *Id.*

[34] Memorandum of the Respondents. *Rollo* pp. 462-492.

They insist on the First Partition Agreement as the only true, correct and binding division of Lot 2189.[35] Hence, Atty. Fausto is entitled not merely to the meager fifty-one (51) square meter lot actually given to him under the Second Plan and Second Partition Agreement, but to the five hundred eight (508) square meters of land allotted for him under the original partition.[36]

Verily, Waldetrudes could not have sold more than her rightful share of only five hundred seven (507) square meters.[37] The respondents, thus, ask for the nullification of the sale of Lot 2189-B to the petitioners, at least with respect to the excess amounting to four hundred fifty-seven (457) square meters.[38]

In the same vein, the respondents impugn the validity and binding effect of the Second Plan and the ensuing Second Partition Agreement.[39] They denounce the said plan and agreement as mere handiworks of respondent Atty. Tecson himself in a fraudulent scheme to get a lion's share of Lot 2189.[40] More particularly, the respondents claim that:

1. Atty. Tecson was the one who deceived them into signing the Second Partition Agreement.[41] The respondents say that they were not involved in the preparation of the Second Partition Agreement.[42] It was only respondent Atty. Tecson who presented them with the said agreement and who misleadingly told them that it was required to facilitate the sale of Waldetrudes' share.[43] The respondents explain that they believed Atty. Tecson because

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[35] *Id.* at 480-486.

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

he was their long-time neighbor, a close family friend and, not the least, a respected member of the community being a former governor of the province.[44]

2. The respondents also point out that the Second Partition Agreement did not specify the exact areas allotted for each component lot, and that they were never furnished with copies of the Second Plan.[45]

3. The Second Plan, which supposedly supplants the First Plan and divides Lot 2189 into two (2) vastly unequal portions, was prepared without the respondents' knowledge or consent.[46] For which reason, the Second Plan could not be binding upon them.

4. The guardianship proceeding purportedly initiated in the name of respondent Isabel was actually orchestrated and financed by Atty. Tecson.[47] Atty. Tecson was the one who hired Atty. Fausto M. Lingating, his former legal adviser during his term as governor, to handle the guardianship case for and on behalf of Isabel.[48]

On 20 October 1988, Waldetrudes, who was originally sued by the respondents as a defendant in the RTC, executed an affidavit[49] expressing her intent to join the respondents in their cause. In the mentioned affidavit, Waldetrudes confirmed the allegations of the respondents as follows:

x x x x x x x x x

4. That the truth of the matter is that, my brother the late Agustin Fausto and I are co-owners of a parcel of land covered by Original Certificate of Title No. 734 of Lot 2189, situated at Gatas District,

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[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] Index of Exhibits, pp. 5-6.

Pagadian City, containing an area of 1,015 square meters, more or less, in equal share *pro indiviso*;

5. That sometimes (sic) in 1974 the late Agustin Fausto and myself agreed to terminate our co-ownership and have the area surveyed and the same was approved and designated as PSD-09-06-000110, of which we have executed an agreement of partition on April 15, 1974 apportioning Lot No. 2189-A with an area of 508 square meters in favor of my late brother Agustin Fausto and Lot No. 2189-B with an area of 507 square meters in my favor;

6. That the aforestated documents were not registered in the Office of the Register of Deeds until the death of my brother Agustin Fausto on March 14, 1975, however, the papers or documents involving Lot No. 2189 was kept by me;

7. That due to financial problem especially I am already very old and sickly, I thought of selling my portion which is Lot 2189-B in favor of Jose L. Tecson, however, in the document the vendee appears to be the sister of Jose L. Tecson in the person of Aurora L. Tecson;

8. That I do not know later on how Jose L. Tecson maneuvered to have the parcel of land again surveyed reducing the area of my brother to only 51 square meters, when in truth and in fact the portion of my late brother has an area of 508 square meters;

9. That while it is true that I sold Jose L. Tecson my portion of Lot 2189-B but the area sold is only 507 square meters and there is no intention on my part to sell to Jose L. Tecson more than that area;

10. That several occasion in the past I was made to sign documents by Jose L. Tecson in relation to the portion sold in his favor, trusting him to be closed (*sic*) to the family, not knowing later on that he maneuvered to change the area of my portion from 507 square meters to 964 square meters encroaching the share of my late brother Atty. Agustin Fausto thereby reducing his area to 51 square meters;

11. That because of the illegal maneuvering which does not reflect to be my true intention in selling my share to Jose L. Tecson, I am informing the Honorable Court that I am joining as party plaintiff in Civil Case No. 2692 in order that the truth will come out and justice will prevail.

On 18 August 1992, the trial court ordered Waldetrudes to be dropped as a party-defendant from the case and, instead, be impleaded therein as a party-plaintiff.[50]

During the trial, Waldetrudes[51] and respondents Romualdo,[52] Minerva[53] and Isabel[54] were able to testify.

In its decision dated 8 December 2000, the RTC dismissed the complaint of the respondents.[55] The trial court found no merit in the position of the respondents and considered the petitioners to be innocent purchasers for value of Lot 2189-B.[56] The dispositive portion of the ruling of the trial court reads:[57]

> WHEREFORE, judgment is hereby rendered dismissing the case, and placing defendants spouses Jose Tecson and Leonila F. Tecson in physical possession of Lot No. 2189-B, with an area of 964 square meters in accordance with the approved subdivision plan on August 12, 1977 of the then Land Registration Commission; and ordering the plaintiffs to pay defendants:
>
> a. Moral damages in the amount of ₱30,000.00;
>
> b. Attorney's fee in the amount of ₱15,000.00;
>
> c. And the cost of litigation expenses in the amount of ₱5,000.00.

As earlier mentioned, the Court of Appeals reversed the ruling of the trial court on appeal.[58] Hence, the present appeal by the petitioners.

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[50] *See* TSN dated 18 August 1992, p. 9.

[51] *Id.*

[52] TSN dated 22 September 1992.

[53] TSN dated 3 November 1992.

[54] TSN dated 6 November 1992.

[55] *Rollo*, p. 108.

[56] *Id.* at 107.

[57] *Id.* at 108.

[58] *Id.* at 170-171.

The primary issue in this appeal is whether the respondents may recover the four hundred fifty-seven (457) square meters of land from TCT No. T-4,342, registered in the name of petitioner Atty. Tecson.

The petitioners would like this Court to answer in the negative.

The claim of petitioner Atty. Tecson over the entire nine hundred sixty-four (964) square meters of land covered by TCT No. T-4,342 is intricately linked with the validity of the Second Plan and the Second Partition Agreement. As a perusal of the facts reveal, TCT No. T-4,342, along with its precursors TCT Nos. T-4,338 and T-4,336, are but derivates of the division of Lot 2189 fixed by the Second Plan and the Second Partition Agreement.

Understandably, the petitioners argue in favor of the validity of the Second Plan and the Second Partition Agreement.[59] They deny Atty. Tecson's participation in the preparation of the said instruments.[60] The petitioners insist that the Second Plan and the Second Partition Agreement were voluntary and intelligent deeds of Waldetrudes and the respondents themselves.[61]

The petitioners also claim that the Second Plan and the Second Partition Agreement present a more accurate reflection of the true nature of the co-ownership between Atty. Fausto and Waldetrudes. Contrary to what the respondents profess, Waldetrudes and Atty. Fausto were not actually co-owners in equal share of Lot 2189.[62] In truth, the siblings were not even co-owners at all.[63]

According to the petitioners, Lot 2189 was originally the conjugal property of Waldetrudes and her late husband, Leon

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[59] Memorandum of the Petitioners. *Id.* at 360-449.

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] Petition for Review on *Certiorari*. *Id.* at 4-89.

Nadela.[64] At the inception, Atty. Fausto was never a co-owner of Lot 2189.[65] Suitably, it was only Waldetrudes who initially declared Lot 2189 for taxation purposes per Tax Declaration No. 6521.[66]

During the cadastral proceedings in 1970, however, Waldetrudes allowed Lot 2189 to be registered in her name and the name of Atty. Fausto as co-owners.[67] The petitioners claim that Waldetrudes consented to such a registration only because Atty. Fausto had already constructed his house on a portion of Lot 2189.[68] The registered co-ownership between Waldetrudes and Atty. Fausto is, therefore, based merely on the siblings' actual occupancy of Lot 2189.[69]

The petitioners point out that the interest of Atty. Fausto in Lot 2189 was only limited to the house he constructed thereon—which, as it happened, lies evenly on the fifty-one (51) square meter portion eventually assigned to him under the Second Plan and Second Partition Agreement.[70] Hence, the Second Plan and the Second Partition Agreement must be sustained as perfectly valid instruments.

We are not convinced.

Waldetrudes and Atty. Fausto are Co-owners in Equal Share

After reviewing the arguments and evidence presented in this case, We rule that Waldetrudes and Atty. Fausto are, indeed, co-owners of Lot 2189. Moreover, We hold that the siblings have equal shares in the said lot.

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[64] *Id.*

[65] *Id.*

[66] Index of Exhibits, p. 38.

[67] *Rollo*, pp. 4-89.

[68] *Id.*

[69] *Id.*

[70] *Id.*

First. The mother title of Lot 2189, OCT No. 734, states in no unclear terms that Waldetrudes and Atty. Fausto were co-owners of the subject lot. The inscription in the original title for Lot 2189 carries more than sufficient weight to prove the existence of a co-ownership between Waldetrudes and Atty. Fausto.

Second. Other than the bare assertion of the petitioners, there is absolutely no proof on record that Waldetrudes was the sole beneficial owner of Lot 2189. Tax Declaration No. 6521 simply cannot prevail over OCT No. 734 as conclusive evidence of the true ownership of Lot 2189.[71]

Third. During the cadastral proceeding involving Lot 2189, Waldetrudes herself stated that Atty. Fausto was a co-owner of the subject lot. The transcript taken from the proceeding shows:[72]

Commissioner: What is your relation with Waldetrudes Fausto who is the claimant of Lot No. 2189 (portion) of a parcel of land located at Pagadian City and more particularly bounded as follows: On the North by Lot No. 2190, on the East by Zulueta St., on the South by National Highway and on the West by Gatas Creek with an area of 1015 sq. meters and a house as a permanent improvement.

A: I am the very one sir.

Q: How did you acquire the said land?

A: I purchase (*sic*) it from Sofia *Vda*. Claro in the year 1945 but a copy of the document was lost.

x x x x x x x x x

Q: Who is your co-owner of this land?

A: My co-owner is my brother Atty. Agustin Fausto.

Fourth. There was likewise no evidence behind the petitioners' allegation that the registered co-ownership between Waldetrudes and Atty. Fausto was based on their actual occupancy of

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[71] *Heirs of Leopoldo Vencilao, Sr. v. Court of Appeals*, G.R. No. 123713, 1 April 1998, 288 SCRA 574, 581-582.

[72] Index of Exhibits, pp. 36-37.

Lot 2189. On the contrary, OCT No. 734 categorically states that Waldetrudes and Atty. Fausto are co-owners "*in undivided share*" of Lot 2189. The conspicuous silence of OCT No. 734 as to the definite extent of the respective shares of Atty. Fausto and Waldetrudes in Lot 2189 gives rise to a presumption that they are in equal measure. We are at once reminded of Article 485 of the Civil Code,[73] to wit:

Article 485. x x x.

The portions belonging to the co-owners in the co-ownership shall be presumed equal, unless the contrary is proved.

Fifth. The equality in terms of share in Lot 2189, was affirmed by Waldetrudes when she testified in open court, to wit:[74]

DIRECT EXAMINATION

ATTY. PERALTA

Q: Now considering that you are, you owned that parcel of land jointly with your younger brother Atty. Agustin Fausto, what is the extent of your ownership?

A: We have co-equal shares sir.

Clearly, the evidence preponderates in favor of the position that Waldetrudes and Atty. Fausto were co-owners in equal share of Lot 2189.

Second Plan and Second Partition Agreement is Invalid

Having settled the existence and extent of the co-ownership between Waldetrudes and Atty. Fausto, We next inquire into the validity of the Second Plan and Second Partition Agreement.

We find the Second Plan and Second Partition Agreement to be invalid.

We agree with the findings of the Court of Appeals that Atty. Tecson was behind the execution of the Second Partition

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[73] Republic Act No. 386.

[74] TSN dated 18 August 1992, p. 13.

Agreement.[75] It was Atty. Tecson who misled Waldetrudes and the respondents into signing the Second Partition Agreement without giving them notice of the existence of a Second Plan.[76] As a consequence, Waldetrudes and the respondents were misinformed as to the true nature of the Second Partition Agreement. These factual findings are adequately supported by the positive testimonies of respondents Romualdo Fausto,[77] Minerva Fausto[78] and Isabel,[79] to wit:

ROMUALDO'S DIRECT EXAMINATION

ATTY. PERALTA:

Q: Will you please go over if this is the machine copy of the Deed of partition which was brought to you by Atty. Tecson and requested you to sign the same?

A: Yes sir that is the one.

x x x x x x x x x

Q: When was that Deed of Partition marked as Exhibit "G" presented to you by Atty. Tecson?

A: Early part of 1977. I was already connected with the Provincial Assessor that was the time I have seen so many Deed of Sale and the area is specified so before I signed I asked Atty. Tecson where is the area and he told me never mind the area it will be surveyed and I did not insist because I trusted him very much.

Q: By the time this was presented to you by Atty. Tecson there was no survey of 2189?

A: There was no survey.

x x x x x x x x x

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[75] *Rollo*, pp. 148-152.

[76] *Id.*

[77] TSN dated 22 September 1992, pp. 27, 29 and pp. 31-33.

[78] TSN dated 3 November 1992, pp. 5-8, 10 and 12.

[79] TSN dated 6 November 1992, pp. 13-14 and pp. 16-17.

COURT:

This document which you said you were present during the signing of your brothers and sisters but you cannot remember whether you were present for the others where did you sign this document?

A: At our house.

COURT:

Who delivered this document to you[r] house?

A: Atty. Tecson.

COURT:

You want to impress this court that when you affixed your signatures in your house Atty. Tecson was present?

A: Yes sir.

COURT:

After signing what was done to this document?

A: We are not aware of that but we just waited for the survey because Atty. Tecson told us that the survey follows later.

COURT:

Who kept this document?

A: My Auntie Waldetrudes Nadela.

COURT:

It is clear now that this document was signed in your house and it was kept by your Auntie?

A: Yes, sir.

x x x x x x x x x

ATTY. PERALTA:

Q: When Atty. Tecson went your house to request you to sign how did he tell you?

A: He told us just to sign the document and the survey will just follow we just sign the document without the area and he told us that the area will just follow later.

Q: When you signed the document with your mother, brothers and sisters Atty. Tecson brought the documents?

A: Yes, sir.

MINERVA FAUSTO'S DIRECT EXAMINATION

ATTY. PERALTA:

Q: Why, at the time when – who brought this deed of partition for signature?

A: Jose L. Tecson.

Q: You are referring to one of the defendants, Jose L. Tecson?

A: Yes, sir.

Q: Now, when this was brought by Jose L. Tecson, the defendant Jose L. Tecson, where did he

COURT: For a moment.

Q: You said that defendant Jose L. Tecson brought that deed of partition. Were you there when defendant Jose L. Tecson brought that deed of partition?

A: Yes, your Honor.

Q: Where was it brought?

A: In the house.

COURT: Proceed.

ATTY. PERALTA:

Q: Who were present in your house when this was brought by defendant Jose L. Tecson?

A: Myself, Neneth or Agustin, Romualdo and Jose Fausto. There were four (4) of us when that deed of partition was brought to the house, myself, my sister Agustina, my brothers Romualdo and Jose.

Q: Do you want to convey to the Court that when this was brought to you Francisco Fausto, Victor Fausto and your sister Elizabeth, Maria Fausto were not around when this was brought by Jose L. Tecson for signature in your house?

A: Yes, sir.

x x x x x x x x x

Q: Why did you sign above the typewritten name of Francisco Fausto knowing that he was not around?

A: Because defendant Jose L. Tecson told me to affix the signature of Francisco Fausto because this deed of partition is just to facilitate the transferring (sic) of the title of the land.

x x x x x x x x x

Q: Who signed for her, for and behalf of Maria Lilia Fausto?

A: I signed myself.

Q: Why did you sign for Maria Lilia Fausto?

A: Because Jose L. Tecson told me to sign the document in order that the deed of partition could be accomplished.

x x x x x x x x x

Q: Now, how about the residence certificates appearing after the name of Agustina Fausto, with her own residence certificate 3976584 to have been issued January 6, 1977, Pagadian City, and the Residence Certificate of Jose Fausto which has the same number 3976584 issued on January 6, 1977, Pagadian City, who placed this residence certificate?

A: All of us sir never exhibited our residence certificates. It was the Tecsons who supplied the residence certificate numbers.

ISABEL'S DIRECT EXAMINATION

ATTY. PERALTA:

Q: Do you remember having signed a Deed of Partition together with some of your children?

A: Yes sir[.] I can remember.

Q: Who brought that Deed of Partition for signature together with some of your children?

A: Governor Tecson.

Q: Were you able to sign the Deed of Partition?

A: I signed that Deed of Partition because according to him "just sign this for purposes of subdividing the property."

x x x x x x x x x

Q: Do you recall if you have filed guardianship proceeding?

A: I have not remembered having filed a guardianship proceeding.

Q: Have you heard that there was guardianship proceeding?

A: All I can remember about that guardianship proceeding was that when Gov. Tecson let me sign a guardianship because some of my children were not around.

Q: Do you want to convey to this court that personally you have not filed guardianship proceeding but it was Governor Tecson who let you sign some documents regarding guardianship?

A: It was Governor Tecson who explained to me to sign that guardianship proceeding because according to him it will facilitate and I thought that guardianship was only for purposes of being guardian to my children as a mother.

Indeed, the lack of a plausible explanation why a co-owner would gratuitously cede a very substantial portion of his rightful share to another co-owner in partition renders the foregoing testimonies more credible as against the plain general denial of Atty. Tecson. On this point, We find no reversible error on the part of the Court of Appeals.

The established facts have several legal consequences:

First. The Second Plan, having been prepared without the knowledge and consent of any of the co-owners of Lot 2189, have no binding effect on them.

Second. The Second Partition Agreement is null and void as an absolute simulation,[80] albeit induced by a third party. **The**

[80] Under Article 1346 of the Civil Code, which provides:

***Article 1346*. An absolutely simulated or fictitious contract is void**. A relative simulation, when it does not prejudice a third person and is not

fraud perpetrated by Atty. Tecson did more than to vitiate the consent of Waldetrudes and the respondents. It must be emphasized that Waldetrudes and the respondents never had any intention of entering into a new partition distinct from the First Partition Agreement. The established facts reveal that Waldetrudes and the respondents assented to the Second Partition Agreement because Atty. Tecson told them that **the instrument was merely required to expedite the sale of Waldetrudes' share**.[81]

In other words, **the deceit employed by Atty. Tecson goes into the very nature of the Second Partition Agreement and not merely to its object or principal condition**. Evidently, there is an absence of a genuine intent on the part of the co-owners to be bound under a new partition proposing a new division of Lot 2189. The apparent consent of Waldetrudes and the respondents to the Second Partition Agreement is, in reality, totally wanting. For that reason, the Second Partition Agreement is null and void.

Third. The Second Partition Agreement being a complete nullity, it cannot be ratified either by the lapse of time or by its approval by the guardianship court.[82]

Fourth. The First Plan and the First Partition Agreement remain as the valid and binding division of Lot 2189. Hence, pursuant to the First Partition Agreement, Waldetrudes is the absolute owner of Lot 2189-A with an area of only five hundred seven (507) square meters. Atty. Fausto, on the other hand, has dominion over Lot 2189-B with an area of five hundred eight (508) square meters.

Fifth. Inevitably, Waldetrudes can only sell her lawful share of five hundred seven (507) square meters. The sales in favor of Aurora and, subsequently, Atty. Tecson, are thereby null

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intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement. (Emphasis supplied.)

[81] TSN dated 3 November 1992, p. 8.

[82] *Rollo*, p. 137.

and void insofar as it exceeded the 507 square meter share of Waldetrudes in Lot 2189. *Nemo dat quod non habet*.[83]

Atty. Tecson is not an innocent purchaser for value

The remaining bar to the recovery by the respondents of the excess area held by Atty. Tecson is the principle of an innocent purchaser for value of land under the Torrens System of Registration.

The petitioners claim that they are *bona fide* purchasers of the entire nine hundred sixty-four (964) square meters of land covered by Lot 2189-B—with Aurora merely relying on the strength of TCT No. T-4,336 in the name of Waldetrudes, while Atty. Tecson placing confidence in TCT No. T-4,338 in the name of Aurora. Both TCT Nos. T-4,336 and T-4,338 define the area of Lot 2189-B as nine hundred sixty-four (964) square meters.[84] The petitioners allege that at the time they made their respective purchase, they did not know of the existing partition of Lot 2189 *per* the First Plan and the First Partition Agreement.[85]

We disagree. The proven facts indicate that Atty. Tecson knew or, at the very least, should have known that Atty. Fausto and Waldetrudes were co-owners in equal share of Lot 2189. We must be reminded of the following circumstances:

1. Atty. Tecson was a long-time friend and neighbor of the Faustos.[86] Atty. Tecson himself testified that he considered Atty. Fausto as a good friend and even admitted that he would sometimes visit the latter in his house to play *mahjong*.[87] By this, Atty. Tecson knew that Atty. Fausto has an actual interest in Lot 2189.

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[83] Literally, "*one cannot give what one does not have*." *See* Art. 1459, New Civil Code.

[84] *Rollo*, pp. 391-404.

[85] *Id*.

[86] TSN dated 12 April 1993, pp. 15-17.

[87] *Id*.

2. Atty. Tecson was the one who presented the Second Partition Agreement to Waldetrudes and the respondents;[88]

3. Waldetrudes and the respondents were not involved in the preparation of the Second Partition Agreement and, at the time they signed the said agreement, had no knowledge of the existence of the Second Plan;[89] and

4. The Second Partition Agreement failed to state the specific areas allotted for each component of Lot 2189 and made no mention of the division proposed by the Second Plan.[90]

Being the one behind the execution of the Second Partition Agreement, there is no doubt that Atty. Tecson knew that Lot 2189 was owned in common by Waldetrudes and Atty. Fausto. This, taken together with the instrument's unusual silence as to the definite area allotted for each component lot and the Second Plan, reveals a deliberate attempt on the part of Atty. Tecson to conceal from Waldetrudes and the respondents the unequal division of Lot 2189.

The necessity to conceal the disproportionate division of Lot 2189 can only be explained by Atty. Tecson's prior knowledge that such a partition is inherently defective for being contrary to the actual sharing between Waldetrudes and Atty. Fausto. Atty. Tecson is clearly in bad faith.

Verily, Atty. Tecson cannot be considered as an innocent purchaser of the excess area of Lot 2189-B. Based on the facts and circumstances prevailing in this case, Atty. Tecson may be charged with actual notice of the defect plaguing the Second Partition Agreement. The respondents may, therefore, recover.

WHEREFORE, the petition is hereby *DENIED*. Accordingly, the appealed Court of Appeals decision in CA-G.R. CV No. 70303 dated 12 December 2006 is hereby *AFFIRMED*.

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[88] TSN dated 22 September 1992, pp. 27, 29, and pp. 31-33.

[89] *Id*.

[90] *Id*.

Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183849. June 1, 2011]

DOMINGO M. ULEP, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S FINDINGS ARE GENERALLY ACCORDED FINALITY BY APPELLATE COURTS BUT NOT WHEN SUCH FINDINGS ARE EVIDENTLY FLAWED; CASE AT BAR.— Appellate courts generally accord finality to the trial court's findings but not when, as in this case, such findings are evidently flawed. Tuzon said that a police asset directly tipped him that Ulep was about to buy *shabu* from a source; Labutong said, however, that it was the Chief Police Inspector who told them that Ulep had just bought *shabu* from the source. Labutong said that the police had been watching Ulep as a user for a month before the incident; Tuzon said they only came to know Ulep after they apprehended and brought him to the police station. Also, Tuzon said that he and Labutong went to *Barangay* 13 on board a tricycle that he drove; Labutong was sure, on the other hand, that they came in

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[*] Per Special Order No. 994, Associate Justice Diosdado M. Peralta is designated as Additional Member of the First Division in place of Associate Justice Mariano C. Del Castillo who is on official leave.

a patrol car which he himself drove. These inconsistencies are irreconcilable and could not possibly be the result of mere memory lapses. They bear the signs of poor fabrication.

2. ID.; ID.; PRESENTATION OF EVIDENCE; CHAIN OF CUSTODY RULE; PROMPT MARKING OF SEIZED DRUGS IS REQUIRED.— [S]ince custody and possession of the drugs usually change from the time they are seized to the time they are presented in court, it is indispensable that, if the drugs are already in sealed plastic sachets, the police officer involved immediately place identifying marks on the cover. If the drugs are not in a sealed container, the officer is to place them in a plastic container, seal the container, and put his marking on the cover. In this way there is assurance that the drugs would reach the crime laboratory analyst in the same condition it was seized from the accused. This did not happen here. None of the officers involved in the seizure marked the plastic sachets of alleged drugs. The markings took place at the police station already and it is not clear who made them. Tuzon testified that Labutong placed the markings; Labutong said that SPO2 Butay did it. Prompt marking of the seized items is vital because it serves as the starting point in the custodial link and succeeding handlers of the specimens often use the marking as reference. Since the officers in this case could not even agree as to who made the required marking, then it would be difficult for the Court to rest easy that the specimens presented before the trial court were the same specimens seized from Ulep. These lapses cast a serious doubt on the authenticity of the *corpus delicti*, warranting acquittal on reasonable doubt.

3. ID.; RULES GOVERNING DRUG-RELATED CASES; NON-OBSERVANCE THEREOF RESULTS NOT ONLY IN ACQUITTALS BUT ALSO IN LOSS OF PRECIOUS TIME TO FUTILE EXERCISE.— The Court has recently held that drug enforcement agencies should continually train their officers and agents to observe the rules governing drug-related cases and transfer out those who would not. Failure to observe these basic rules results not only in consequent acquittals but also in loss of precious time to futile exercise.

APPEARANCES OF COUNSEL

Reynaldo A. Corpuz for petitioner.
The Solicitor General for respondent.

D E C I S I O N

ABAD, *J.*:

This is about irreconcilable inconsistencies in the testimonies of the arresting officers in a drugs case and their failure to preserve the integrity of the seized articles.

The Facts and the Case

The Assistant Provincial Prosecutor of Ilocos Norte charged the accused Domingo Ulep with aggravated illegal possession of *shabu* before the Regional Trial Court (RTC) of Laoag City, Branch 13, in Criminal Case 11863-13.

As summarized by the RTC, PO2 Elizer Tuzon and SPO3 Rogelio Labutong testified that on the morning of May 8, 2005, acting on a report that Ulep bought *shabu* at a certain Maria Karen Cacayorin's house at Mckinley Street, *Barangay* 13, San Nicolas, Ilocos Norte, the Chief Police Inspector dispatched the two officers to the place. When they were about 30 meters from Cacayorin's house, the officers saw Ulep walking on the street with a plastic sachet in his hand.

The officers approached and seized from Ulep two plastic sachets of what appeared to be *shabu*. They arrested and brought him to the police station where they turned over the seized sachets to SPO2 Ramon Butay. In turn, the latter turned over the articles to the Ilocos Norte Provincial Crime Laboratory Office where a forensic chemical officer found them to contain *shabu.*[1]

Ulep did not deny that he was in *Barangay* 13 on the morning of May 8, 2005. He went there to claim a package that his mother sent from abroad through an aunt. But his aunt had gone to Manila without leaving the package. While Ulep was waiting on the road to get a ride home, officer Tuzon and a certain Monmel Corpuz approached him in their motorbikes and took him near the Mobile Video Center where Tuzon frisked him, saying that they suspected him of coming from Cacayorin's house. Ulep denied this.

[1] Chemistry Report D-019-2005, records, p. 8.

When officer Tuzon failed to get anything from Ulep, he eventually let him go, telling him not to show his face ever in that place. As Ulep started to walk away, he heard Corpuz, who was then crossing Mckinley Street, shout at Tuzon to get his attention. Ulep saw Corpuz waving a plastic sachet in his right hand. After talking to Corpuz, Tuzon approached Ulep, saying that the thing they got belonged to him. Tuzon apprehended Ulep and brought him to the police station.

On July 14, 2006 the RTC rendered a decision in the case, finding Ulep guilty of the crime charged and sentencing him to imprisonment ranging from 12 years and 1 day as minimum to 15 years as maximum and to pay a fine of ₱300,000.00 with costs.

On appeal, the Court of Appeals (CA) rendered judgment[2] dated July 18, 2008 in CA-G.R. CR 30328, affirming the RTC's decision.

The Issues Presented

The case presents the following issues:

1. Whether or not the CA erred in giving credence to the testimonies of the prosecution witnesses given certain inconsistencies in them;

2. Whether or not the CA erred in not excluding the evidence of the seized *shabu* on the ground of the prosecution's failure to prove the chain of custody over the same; and

3. Whether or not the CA erred in affirming the RTC's judgment of conviction.

The Rulings of the Court

Appellant Ulep insists that the testimonies of the two arresting officers cannot be believed because they are inconsistent and contradictory. The trial court itself noted these flaws. It said:[3]

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[2] Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Andres B. Reyes, Jr. and Jose Catral Mendoza (now a member of this Court).

[3] Records, p. 70.

The Court notes with concern these contradictions of PO2 Tuzon and SPO3 Labutong. We see here two police officers seemingly destroying each other's credibility by testifying inconsistently on simple details. This surely does not speak well of them because, by their involvement in the same operation, it is the least expected of them. x x x

Still, the RTC gave credence to the officers' testimonies, pointing out that the inconsistencies it noted were minor and in fact enhanced their truthfulness because they appeared to be unrehearsed. The Court disagrees. The disparity in the testimonies of those witnesses is too serious to be simply brushed aside.

Officer Tuzon testified[4] to receiving information directly from a police asset that someone was about to buy *shabu* from Cacayorin's house in *Barangay* 13. Their Chief then ordered Tuzon and officer Labutong to proceed to the place. They went in a tricycle driven by Tuzon. On reaching Mckinley Street, the two officers saw a man in a white-and-blue stripes shirt. They were uncertain about where he came from but he held a plastic sachet containing white substance that he was hitting with his fingers.

The two officers stopped the man whom they later identified as Ulep. When officer Labutong searched Ulep, he found two plastic sachets on him. The officers brought Ulep to the police station where Labutong marked the confiscated sachets with the initials RBB-1 and RBB-2 and handed the same over to SPO2 Butay. The latter subsequently brought the sachets to the crime laboratory.

Officer Labutong, on the other hand, testified[5] that it was the Chief Police Inspector who heard, through an officer, of an information passed on by an asset that Ulep, who had been under surveillance for a month for using *shabu*, just left Cacayorin's house in *Barangay* 13. The Chief Police Inspector then ordered officers Labutong and Tuzon to verify the report. The two went to the described place, accompanied by the asset, on board a patrol car.

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[4] TSN, November 10, 2005, pp. 4-19.

[5] TSN, December 1, 2005, pp. 20-40.

On reaching the place, the officers saw Ulep holding two small plastic sachets of *shabu*. They apprehended him, seized the sachets, and brought him to the police station. Officer Labutong turned over the sachets to officer Butay who marked the same as RBB-1 and RBB-2. The officers then submitted the specimens to the crime laboratory.

Appellate courts generally accord finality to the trial court's findings but not when, as in this case, such findings are evidently flawed.[6] Tuzon said that a police asset directly tipped him that Ulep was about to buy *shabu* from a source; Labutong said, however, that it was the Chief Police Inspector who told them that Ulep had just bought *shabu* from the source. Labutong said that the police had been watching Ulep as a user for a month before the incident; Tuzon said they only came to know Ulep after they apprehended and brought him to the police station. Also, Tuzon said that he and Labutong went to *Barangay* 13 on board a tricycle that he drove; Labutong was sure, on the other hand, that they came in a patrol car which he himself drove. These inconsistencies are irreconcilable and could not possibly be the result of mere memory lapses. They bear the signs of poor fabrication.

Further, since custody and possession of the drugs usually change from the time they are seized to the time they are presented in court, it is indispensable that, if the drugs are already in sealed plastic sachets, the police officer involved immediately place identifying marks on the cover. If the drugs are not in a sealed container, the officer is to place them in a plastic container, seal the container, and put his marking on the cover. In this way there is assurance that the drugs would reach the crime laboratory analyst in the same condition it was seized from the accused.[7]

This did not happen here. None of the officers involved in the seizure marked the plastic sachets of alleged drugs. The markings took place at the police station already and it is not

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[6] *People v. Andarme*, 434 Phil. 657, 665 (2002).

[7] *People v. Pajarin*, G.R. No. 190640, January 12, 2011.

clear who made them. Tuzon testified that Labutong placed the markings; Labutong said that SPO2 Butay did it. Prompt marking of the seized items is vital because it serves as the starting point in the custodial link and succeeding handlers of the specimens often use the marking as reference.[8] Since the officers in this case could not even agree as to who made the required marking, then it would be difficult for the Court to rest easy that the specimens presented before the trial court were the same specimens seized from Ulep. These lapses cast a serious doubt on the authenticity of the *corpus delicti*, warranting acquittal on reasonable doubt.[9]

The Court has recently held that drug enforcement agencies should continually train their officers and agents to observe the rules governing drug-related cases and transfer out those who would not. Failure to observe these basic rules results not only in consequent acquittals but also in loss of precious time to futile exercise.[10]

WHEREFORE, the Court *GRANTS* the petition and *SETS ASIDE* the decision of the Court of Appeals dated July 18, 2008 in CA-G.R. CR 30328 and the decision of the Regional Trial Court of Laoag City in Criminal Case 11863-13, and *ACQUITS* the accused-appellant Domingo Ulep on the ground of reasonable doubt. The Court orders his immediate *RELEASE* from custody unless he is being held for some other lawful cause.

SO ORDERED.

Carpio, Nachura, Brion,[*] and *Peralta, JJ.*, concur.

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[8] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 357.

[9] *People v. Laxa*, 414 Phil. 156, 170 (2001).

[10] *People v. Pajarin*, *supra* note 7.

[*] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per raffle dated May 18, 2011.

SECOND DIVISION

[G.R. No. 185230. June 1, 2011]

JOSEPH C. CEREZO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES, JULIET YANEZA, PABLO ABUNDA, JR., and VICENTE AFULUGENCIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; ONCE A CASE IS FILED WITH THE COURT, ANY DISPOSITION OF IT RESTS ON THE SOUND DISCRETION OF THE COURT.— Well-entrenched is the rule that once a case is filed with the court, any disposition of it rests on the sound discretion of the court. In thus resolving a motion to dismiss a case or to withdraw an Information, the trial court should not rely solely and merely on the findings of the public prosecutor or the Secretary of Justice. It is the court's bounden duty to assess independently the merits of the motion, and this assessment must be embodied in a written order disposing of the motion. While the recommendation of the prosecutor or the ruling of the Secretary of Justice is persuasive, it is not binding on courts.

2. ID.; CIVIL PROCEDURE; JUDGMENTS; COURT ORDERS WHICH WERE STAINED WITH GRAVE ABUSE OF DISCRETION AND WHICH VIOLATED A PARTY'S RIGHT TO DUE PROCESS ARE CONSIDERED VOID; CASE AT BAR.— In this case, it is obvious from the March 17, 2004 Order of the RTC, dismissing the criminal case, that the RTC judge failed to make his own determination of whether or not there was a *prima facie* case to hold respondents for trial. He failed to make an independent evaluation or assessment of the merits of the case. The RTC judge blindly relied on the manifestation and recommendation of the prosecutor when he should have been more circumspect and judicious in resolving the Motion to Dismiss and Withdraw Information especially so when the prosecution appeared to be uncertain, undecided, and irresolute on whether to indict respondents. The same holds true with respect to the October 24, 2006 Order, which reinstated the case. The RTC judge failed to make a separate evaluation and merely awaited the resolution of the DOJ Secretary. x x x

By relying solely on the manifestation of the public prosecutor and the resolution of the DOJ Secretary, the trial court abdicated its judicial power and refused to perform a positive duty enjoined by law. The said Orders were thus stained with grave abuse of discretion and violated the complainant's right to due process. They were void, had no legal standing, and produced no effect whatsoever.

3. ID.; CRIMINAL PROCEDURE; MOTION TO QUASH; DOUBLE JEOPARDY; ELEMENTS.— It is beyond cavil that double jeopardy did not set in. Double jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) **when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent**. Since we have held that the March 17, 2004 Order granting the motion to dismiss was committed with grave abuse of discretion, then respondents were not acquitted nor was there a valid and legal dismissal or termination of the case. Ergo, the fifth requisite which requires the conviction and acquittal of the accused, or the dismissal of the case without the approval of the accused, was not met. Thus, double jeopardy has not set in.

APPEARANCES OF COUNSEL

Antonio R. Malasig for petitioner.
Rodrigo Mallari for respondents.

D E C I S I O N

NACHURA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to annul the July 11, 2008 Decision[1] and

[1] Penned by Associate Justice Arturo G. Tayag, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Noel G. Tijam, concurring; *rollo*, pp. 18-38.

the November 4, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 99088, which reversed and set aside the October 24, 2006[3] and the February 26, 2007[4] Orders of the Regional Trial Court (RTC) of Quezon City, Branch 92.

The RTC Orders revived Criminal Case No. Q-03-115490, entitled "*People of the Philippines v. Juliet Yaneza, Pablo Abunda, Jr., Oscar Mapalo and Vicente Afulugencia,*" after the same was dismissed in an earlier Order.

The Facts

On September 12, 2002, petitioner Joseph Cerezo filed a complaint for libel against respondents Juliet Yaneza, Pablo Abunda, Jr., and Vicente Afulugencia (respondents), as well as Oscar Mapalo (Mapalo).[5]

Finding probable cause to indict respondents,[6] the Quezon City Prosecutor's Office (OP-QC) filed the corresponding Information against them on February 18, 2003 before the RTC.[7]

Respondents thereafter filed a Motion for Reconsideration and/or Motion to Re-evaluate Prosecution's Evidence before the OP-QC.[8]

In its resolution dated November 20, 2003, the OP-QC reversed its earlier finding and recommended the withdrawal of the Information.[9] Consequently, a Motion to Dismiss and Withdraw Information was filed before the RTC on December 3, 2003. During the intervening period, specifically on November 24,

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[2] *Id.* at 41-47.

[3] *Id.* at 49-51.

[4] *Id.* at 52.

[5] *Supra* note 1, at 20.

[6] Resolution dated February 18, 2003 in I.S. No. 02-12597; *rollo*, pp. 53-57.

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

[8] *Id.*

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

2003, respondents were arraigned. All of them entered a "not guilty" plea.[10]

In deference to the prosecutor's last resolution, the RTC ordered the criminal case dismissed in its Order dated March 17, 2004, *viz*.:

> Settled is the rule that the determination of the persons to be prosecuted rests primarily with the Public Prosecutor who is vested with quasi-judicial discretion in the discharge of this function. Being vested with such power, he can reconsider his own resolution if he finds that there is reasonable ground to do so. x x x.
>
> More so, the Court cannot interfere with the Public Prosecutor's discretion to determine probable cause or the propriety of pursuing or not a criminal case when the case is not yet filed in Court, as a general rule. However, if the same criminal case has been filed in Court already, the Public Prosecutor can still interfere with it subject to the approval of the Court. In the case of Republic vs. Sunga, *et al*., the Supreme Court held that while it has been settled in the case of Crespo vs. Mogul that the trial court is the sole judge on whether a criminal case should be dismissed after the complaint or information has been filed in court, nonetheless any motion of the offended party for the dismissal of the criminal case, even if without objection of the accused, should first be referred to the prosecuting fiscal and only after hearing should the court exercise its exclusive authority to dismiss or continue with the prosecution of the case. The Court, therefore, after hearing and conferring with the fiscal, can dismiss the case if convinced that there is [no] reason to continue with the prosecution [of] the same. As in this case, the Court finds merit [in] the motion of the Public Prosecutor.[11]

Aggrieved, petitioner moved for reconsideration of the said Order, arguing that the November 20, 2003 OP-QC resolution has not yet attained finality, considering that the same was the subject of a Petition for Review filed before the Department of Justice (DOJ).[12] The RTC deferred action on the said motion to await the resolution of the DOJ.[13]

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[10] *Supra* note 1, at 21-22.

[11] *Id.* at 23-24.

[12] *Rollo*, pp. 60-76.

[13] *Supra* note 1, at 25.

On June 26, 2006, the Secretary of Justice promulgated his resolution reversing and setting aside the OP-QC's November 20, 2003 resolution, and directing the latter to refile the earlier Information for libel.[14]

On October 24, 2006, the RTC issued its first assailed Order granting petitioner's motion for reconsideration, conformably with the resolution of the DOJ Secretary, thus:

> Considering the findings of the Department of Justice reversing the resolution of the City Prosecutor, the Court gives favorable action to the Motion for Reconsideration. In the same manner as discussed in arriving at its assailed order dated 17 March 2004, the Court gives more leeway to the Public Prosecutor in determining whether it has to continue or stop prosecuting a case. While the City Prosecutor has previously decided not to pursue further the case, the Secretary of Justice, however, through its resolution on the Petition for Review did not agree with him.
>
> The Court disagrees with the argument raised by the accused that double jeopardy sets in to the picture. The order of dismissal as well as the withdrawal of the Information was not yet final because of the timely filing of the Motion for Reconsideration. The Court[,] therefore, can still set aside its order. Moreover, there is no refiling of the case nor the filing of a new one. The case filed remains the same and the order of dismissal was merely vacated because the Court finds the Motion for Reconsideration meritorious.
>
> WHEREFORE, finding the Motion for Reconsideration meritorious, the Order dated 17 March 2004 is hereby RECONSIDERED and SET ASIDE.
>
> Let the arraignment of accused Oscar Mapalo and pre-trial [of] the other accused be set on 06 December 2006 at 8:30 in the morning.
>
> SO ORDERED.[15]

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[14] As summarized in the October 24, 2006 Order of the RTC; *supra* note 3, at 50.

[15] *Id.* at 50-51.

Respondents moved for reconsideration, but the motion was denied in the RTC's second assailed Order dated February 26, 2007.[16]

Relentless, respondents elevated their predicament to the CA through a Petition for *Certiorari* under Rule 65 of the Rules of Court, arguing in the main that the RTC Orders violated their constitutional right against double jeopardy.

Ruling of the CA

The appellate court found the RTC to have gravely abused its discretion in ordering the reinstatement of the case. The CA annulled the impugned RTC Orders, ruling that all the elements of double jeopardy exist. There was a valid Information sufficient in form and substance filed before a court of competent jurisdiction to which respondents had pleaded, and that the termination of the case was not expressly consented to by respondents; hence, the same could not be revived or refiled without transgressing respondents' right against double jeopardy.

The CA further found that the DOJ Secretary improperly took cognizance of the Petition for Review because DOJ Department Order No. 223 mandates that no appeal shall be entertained if the accused has already been arraigned or, if the arraignment took place during the pendency of the appeal, the same shall be dismissed.[17]

Petitioner interposed the instant appeal when his motion for reconsideration of the CA Decision was denied.[18]

The Issues

Petitioner ascribes the following errors to the CA:

a. The Honorable Court of Appeals erred in finding that there was Double Jeopardy, specifically on the alleged existence of the requisites to constitute Double Jeopardy;

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[16] *Supra* note 4.

[17] *Supra* note 1.

[18] *Supra* note 2.

b. The Honorable Court of Appeals failed to consider the fact that there was NO refiling of the case nor the filing of a new one in arriving [at] its conclusion that Double Jeopardy sets in to the picture;

c. The Honorable Court of Appeals erred in finding that there was 1.) a valid termination of the case on the basis of the Order of the Trial Court dated 17 March 2004, and allegedly 2.) without the express consent of the respondents.[19]

The assigned errors will be subsumed into this issue:

Whether there was a valid termination of the case so as to usher in the impregnable wall of double jeopardy.

Our Ruling

The petition is impressed with merit.

Well-entrenched is the rule that once a case is filed with the court, any disposition of it rests on the sound discretion of the court. In thus resolving a motion to dismiss a case or to withdraw an Information, the trial court should not rely solely and merely on the findings of the public prosecutor or the Secretary of Justice.[20] It is the court's bounden duty to assess independently the merits of the motion, and this assessment must be embodied in a written order disposing of the motion.[21] While the recommendation of the prosecutor or the ruling of the Secretary of Justice is persuasive, it is not binding on courts.

In this case, it is obvious from the March 17, 2004 Order of the RTC, dismissing the criminal case, that the RTC judge failed to make his own determination of whether or not there was a *prima facie* case to hold respondents for trial. He failed

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

[20] *First Women's Credit Corporation v. Baybay*, G.R. No. 166888, January 31, 2007, 513 SCRA 637, 646, citing *Santos v. Orda, Jr.*, 481 Phil. 93, 106 (2004).

[21] *Lee v. KBC Bank N.V.*, G.R. No. 164673, January 15, 2010, 610 SCRA 117, 132, citing *Ledesma v. Court of Appeals*, 344 Phil. 207, 235 (1997).

to make an independent evaluation or assessment of the merits of the case. The RTC judge blindly relied on the manifestation and recommendation of the prosecutor when he should have been more circumspect and judicious in resolving the Motion to Dismiss and Withdraw Information especially so when the prosecution appeared to be uncertain, undecided, and irresolute on whether to indict respondents.

The same holds true with respect to the October 24, 2006 Order, which reinstated the case. The RTC judge failed to make a separate evaluation and merely awaited the resolution of the DOJ Secretary. This is evident from the general tenor of the Order and highlighted in the following portion thereof:

> As discussed during the hearing of the Motion for Reconsideration, the Court will resolve it depending on the outcome of the Petition for Review. Considering the findings of the Department of Justice reversing the resolution of the City Prosecutor, the Court gives favorable action to the Motion for Reconsideration.[22]

By relying solely on the manifestation of the public prosecutor and the resolution of the DOJ Secretary, the trial court abdicated its judicial power and refused to perform a positive duty enjoined by law. The said Orders were thus stained with grave abuse of discretion and violated the complainant's right to due process. They were void, had no legal standing, and produced no effect whatsoever.[23]

This Court must therefore remand the case to the RTC, so that the latter can rule on the merits of the case to determine if a *prima facie* case exists and consequently resolve the Motion to Dismiss and Withdraw Information anew.

It is beyond cavil that double jeopardy did not set in. Double jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy

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[22] *Supra* note 3, at 50.

[23] See *Co v. Lim*, G.R. Nos. 164669-70, October 30, 2009, 604 SCRA 702, 712, citing *Summerville General Merchandising & Co., Inc. v. Eugenio, Jr.*, G.R. No. 163741, August 7, 2007, 529 SCRA 274, 281-282.

has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) **when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent**.[24]

Since we have held that the March 17, 2004 Order granting the motion to dismiss was committed with grave abuse of discretion, then respondents were not acquitted nor was there a valid and legal dismissal or termination of the case. Ergo, the fifth requisite which requires the conviction and acquittal of the accused, or the dismissal of the case without the approval of the accused, was not met. Thus, double jeopardy has not set in.

WHEREFORE, the petition is hereby *GIVEN DUE COURSE*, and the assailed July 11, 2008 Decision and the November 4, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 99088, and the October 24, 2006 and the February 26, 2007 Orders of the Regional Trial Court of Quezon City, Branch 92, are hereby *ANNULLED* and *SET ASIDE*. The case is *REMANDED* to the Quezon City RTC, Branch 92, for evaluation on whether probable cause exists to hold respondents for trial.

No costs.

SO ORDERED.

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

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[24] Section 7, Rule 117 of the Revised Rules of Criminal Procedure, as amended provides:

Sec. 7. *Former conviction or acquittal; double jeopardy*. - When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

SECOND DIVISION

[G.R. No. 185917. June 1, 2011]

FREDCO MANUFACTURING CORPORATION, *petitioner, vs.* **PRESIDENT AND FELLOWS OF HARVARD COLLEGE (HARVARD UNIVERSITY),** *respondents.*

SYLLABUS

1. MERCANTILE LAW; INTELLECTUAL PROPERTY LAWS; REPUBLIC ACT NO. 8293 (THE INTELLECTUAL PROPERTY CODE); TRADEMARKS; REGISTRATION OF; THE ALLEGED DEFECT ARISING FROM THE ABSENCE OF ACTUAL PRIOR USE OF THE MARK IN THE PHILIPPINES IN CASE AT BAR HAS BEEN CURED BY THE ACT.— Under Section 2 of Republic Act No. 166, as amended (R.A. No. 166), before a trademark can be registered, it must have been actually used in commerce for not less than two months in the Philippines prior to the filing of an application for its registration. While Harvard University had actual prior use of its marks abroad for a long time, it did not have actual prior use in the Philippines of the mark "Harvard Veritas Shield Symbol" before its application for registration of the mark "Harvard" with the then Philippine Patents Office. However, Harvard University's registration of the name "Harvard" is based on home registration which is allowed under Section 37 of R.A. No. 166. x x x Indeed, in its Petition for Cancellation of Registration No. 56561, Fredco alleged that Harvard University's registration "is based on 'home registration' for the mark 'Harvard Veritas Shield' for Class 25." In any event, under Section 239.2 of Republic Act No. 8293 (R.A. No. 8293), "[m]arks registered under Republic Act No. 166 shall remain in force **but shall be deemed to have been granted under this Act** x x x," which does not require actual prior use of the mark in the Philippines. Since the mark "Harvard Veritas Shield Symbol" is now deemed granted under R.A. No. 8293, any alleged defect arising from the absence of actual prior use in the Philippines has been cured by Section 239.2. In addition, Fredco's registration was already cancelled on 30 July 1998 when it failed to file the required affidavit of use/non-use for

the fifth anniversary of the mark's registration. Hence, at the time of Fredco's filing of the Petition for Cancellation before the Bureau of Legal Affairs of the IPO, Fredco was no longer the registrant or presumptive owner of the mark "Harvard."

2. ID.; ID.; REPUBLIC ACT NO. 166, SECTION 4(a); PROHIBITS THE REGISTRATION OF A MARK WHICH MAY FALSELY SUGGEST A CONNECTION WITH INSTITUTIONS; CASE AT BAR.— Fredco's registration of the mark "Harvard" and its identification of origin as "Cambridge, Massachusetts" falsely suggest that Fredco or its goods are connected with Harvard University, which uses the same mark "Harvard" and is also located in Cambridge, Massachusetts. x x x Fredco's registration of the mark "Harvard" should not have been allowed because Section 4(a) of R.A. No. 166 prohibits the registration of a mark "which may disparage or **falsely suggest a connection with** persons, living or dead, **institutions**, beliefs x x x." x x x Fredco's use of the mark "Harvard," coupled with its claimed origin in Cambridge, Massachusetts, obviously suggests a false connection with Harvard University. On this ground alone, Fredco's registration of the mark "Harvard" should have been disallowed. Indisputably, Fredco does not have any affiliation or connection with Harvard University, or even with Cambridge, Massachusetts. Fredco or its predecessor New York Garments was not established in 1936, or in the U.S.A. as indicated by Fredco in its oblong logo. Fredco offered no explanation to the Court of Appeals or to the IPO why it used the mark "Harvard" on its oblong logo with the words "Cambridge, Massachusetts," "Established in 1936," and "USA." Fredco now claims before this Court that it used these words "to evoke a 'lifestyle' or suggest a 'desirable aura' of petitioner's clothing lines." Fredco's belated justification merely confirms that it sought to connect or associate its products with Harvard University, riding on the prestige and popularity of Harvard University, and thus appropriating part of Harvard University's goodwill without the latter's consent.

3. ID.; ID.; ID.; INTENDED TO PROTECT THE RIGHT OF PUBLICITY OF FAMOUS INDIVIDUALS AND INSTITUTIONS FROM COMMERCIAL EXPLOITATION OF THEIR GOODWILL BY OTHERS.— Section 4(a) of R.A. No. 166 is identical to Section 2(a) of the Lanham Act,

the trademark law of the United States. These provisions are intended to protect the *right of publicity* of famous individuals and institutions from commercial exploitation of their goodwill by others. What Fredco has done in using the mark "Harvard" and the words "Cambridge, Massachusetts," "USA" to evoke a "desirable aura" to its products is precisely to exploit commercially the goodwill of Harvard University without the latter's consent. This is a clear violation of Section 4(a) of R.A. No. 166. Under Section 17(c) of R.A. No. 166, such violation is a ground for cancellation of Fredco's registration of the mark "Harvard" because the registration was obtained in violation of Section 4 of R.A. No. 166.

4. ID.; ID.; ID.; TRADE NAMES; UNDER PHILIPPINE LAW, A TRADE NAME OF A NATIONAL OF A STATE THAT IS A PARTY TO PARIS CONVENTION, WHETHER OR NOT THE TRADE NAME FORMS PART OF A TRADEMARK, IS PROTECTED WITHOUT THE OBLIGATION OF FILING OR REGISTRATION.— [T]he Philippines and the United States of America are both signatories to the Paris Convention for the Protection of Industrial Property (Paris Convention). The Philippines became a signatory to the Paris Convention on 27 September 1965. x x x [T]his Court has ruled that the Philippines is obligated to assure nationals of countries of the Paris Convention that they are afforded an effective protection against violation of their intellectual property rights in the Philippines in the same way that their own countries are obligated to accord similar protection to Philippine nationals. Article 8 of the Paris Convention has been incorporated in Section 37 of R.A. No. 166 x x x. [U]nder Philippine law, a trade name of a national of a State that is a party to the Paris Convention, whether or not the trade name forms part of a trademark, is protected "without the obligation of filing or registration." Harvard" is the trade name of the world famous Harvard University, and it is also a trademark of Harvard University. Under Article 8 of the Paris Convention, as well as Section 37 of R.A. No. 166, Harvard University is entitled to protection in the Philippines of its trade name "Harvard" even without registration of such trade name in the Philippines. This means that no educational entity in the Philippines can use the trade name "Harvard" without the consent of Harvard University. Likewise, no entity in the Philippines

can claim, expressly or impliedly through the use of the name and mark "Harvard," that its products or services are authorized, approved, or licensed by, or sourced from, Harvard University without the latter's consent.

5. ID.; ID.; ID.; TRADEMARKS; TO BE PROTECTED, THE MARK IS REQUIRED TO BE WELL-KNOWN INTERNATIONALLY AND IN THE PHILIPPINES FOR IDENTICAL AND SIMILAR GOODS, WHETHER OR NOT IT IS REGISTERED OR USED IN THE PHILIPPINES.— Article 6*bis* of the Paris Convention has been administratively implemented in the Philippines through two directives of the then Ministry (now Department) of Trade, which directives were upheld by this Court in several cases. On 20 November 1980, then Minister of Trade Secretary Luis Villafuerte issued a Memorandum directing the Director of Patents to reject, pursuant to the Paris Convention, all pending applications for Philippine registration of signature and other world-famous trademarks by applicants other than their original owners. x x x In a Memorandum dated 25 October 1983, then Minister of Trade and Industry Roberto Ongpin affirmed the earlier Memorandum of Minister Villafuerte. Minister Ongpin directed the Director of Patents to implement measures necessary to comply with the Philippines' obligations under the Paris Convention x x x. In *Mirpuri*, the Court ruled that the essential requirement under Article 6*bis* of the Paris Convention is that the trademark to be protected must be "well-known" in the country where protection is sought. The Court declared that the power to determine whether a trademark is well-known lies in the competent authority of the country of registration or use. The Court then stated that the competent authority would either be the registering authority if it has the power to decide this, or the courts of the country in question if the issue comes before the courts. To be protected under the two directives of the Ministry of Trade, an internationally well-known mark need not be registered or used in the Philippines. All that is required is that the mark is well-known internationally and in the Philippines for identical or similar goods, whether or not the mark is registered or used in the Philippines.

6. ID.; ID.; REPUBLIC ACT NO. 8293 (THE INTELLECTUAL PROPERTY CODE); TRADEMARKS; TO BE ENTITLED TO PROTECTION, AN INTERNATIONALLY WELL-

KNOWN MARK IS NOT REQUIRED TO BE USED IN COMMERCE IN THE PHILIPPINES BUT ONLY THAT IT BE WELL-KNOWN IN THE PHILIPPINES.— Section 123.1(e) of R.A. No. 8293 now categorically states that "a mark which is considered by the competent authority of the Philippines to be **well-known internationally and in the Philippines, whether or not it is registered here**," cannot be registered by another in the Philippines. Section 123.1(e) does not require that the well-known mark be used in commerce in the Philippines but only that it be well-known in the Philippines. Moreover, Rule 102 of the Rules and Regulations on Trademarks, Service Marks, Trade Names and Marked or Stamped Containers, which implement R.A. No. 8293, provides: "Rule 102. Criteria for determining whether a mark is well-known. In determining whether a mark is well-known, the following criteria or **any combination thereof** may be taken into account: (a) the duration, extent and geographical area of any use of the mark, in particular, the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies; (b) the market share, in the Philippines and in other countries, of the goods and/or services to which the mark applies; (c) the degree of the inherent or acquired distinction of the mark; d) the quality-image or reputation acquired by the mark; (e) the extent to which the mark has been registered in the world; (f) the exclusivity of registration attained by the mark in the world; (g) the extent to which the mark has been used in the world; (h) the exclusivity of use attained by the mark in the world; (i) the commercial value attributed to the mark in the world; (j) the record of successful protection of the rights in the mark; (k) the outcome of litigations dealing with the issue of whether the mark is a well-known mark; and (l) the presence or absence of identical or similar marks validly registered for or used on identical or similar goods or services and owned by persons other than the person claiming that his mark is a well-known mark." Since "**any combination**" of the foregoing criteria is sufficient to determine that a mark is well-known, it is clearly not necessary that the mark be used in commerce in the Philippines. Thus, while under the territoriality principle a mark must be used in commerce in the Philippines

to be entitled to protection, internationally well-known marks are the exceptions to this rule.

APPEARANCES OF COUNSEL

Cordova & Associates for petitioner.
Ortega Del Castillo Bacorro Odulio Calma & Carbonell for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 24 October 2008 Decision[2] and 8 January 2009 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 103394.

The Antecedent Facts

On 10 August 2005, petitioner Fredco Manufacturing Corporation (Fredco), a corporation organized and existing under the laws of the Philippines, filed a Petition for Cancellation of Registration No. 56561 before the Bureau of Legal Affairs of the Intellectual Property Office (IPO) against respondents President and Fellows of Harvard College (Harvard University), a corporation organized and existing under the laws of Massachusetts, United States of America. The case was docketed as Inter Partes Case No. 14-2005-00094.

Fredco alleged that Registration No. 56561 was issued to Harvard University on 25 November 1993 for the mark "Harvard

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

[2] *Rollo*, pp. 103-116. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Rosalinda Asuncion-Vicente and Ramon M. Bato, Jr., concurring.

[3] *Id.* at 118-119. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Arcangelita M. Romilla-Lontok and Ramon M. Bato, Jr., concurring.

Veritas Shield Symbol" for decals, tote bags, serving trays, sweatshirts, t-shirts, hats and flying discs under Classes 16, 18, 21, 25 and 28 of the Nice International Classification of Goods and Services. Fredco alleged that the mark "Harvard" for t-shirts, polo shirts, *sandos*, briefs, jackets and slacks was first used in the Philippines on 2 January 1982 by New York Garments Manufacturing & Export Co., Inc. (New York Garments), a domestic corporation and Fredco's predecessor-in-interest. On 24 January 1985, New York Garments filed for trademark registration of the mark "Harvard" for goods under Class 25. The application matured into a registration and a Certificate of Registration was issued on 12 December 1988, with a 20-year term subject to renewal at the end of the term. The registration was later assigned to Romeo Chuateco, a member of the family that owned New York Garments.

Fredco alleged that it was formed and registered with the Securities and Exchange Commission on 9 November 1995 and had since then handled the manufacture, promotion and marketing of "Harvard" clothing articles. Fredco alleged that at the time of issuance of Registration No. 56561 to Harvard University, New York Garments had already registered the mark "Harvard" for goods under Class 25. Fredco alleged that the registration was cancelled on 30 July 1998 when New York Garments inadvertently failed to file an affidavit of use/non-use on the fifth anniversary of the registration but the right to the mark "Harvard" remained with its predecessor New York Garments and now with Fredco.

Harvard University, on the other hand, alleged that it is the lawful owner of the name and mark "Harvard" in numerous countries worldwide, including the Philippines. Among the countries where Harvard University has registered its name and mark "Harvard" are:

1.	Argentina	26.	South Korea
2.	Benelux[4]	27.	Malaysia

[4] Belgium, the Netherlands and Luxembourg.

3. Brazil	28. Mexico
4. Canada	29. New Zealand
5. Chile	30. Norway
6. China P.R.	31. Peru
7. Colombia	32. Philippines
8. Costa Rica	33. Poland
9. Cyprus	34. Portugal
10. Czech Republic	35. Russia
11. Denmark	36. South Africa
12. Ecuador	37. Switzerland
13. Egypt	38. Singapore
14. Finland	39. Slovak Republic
15. France	40. Spain
16. Great Britain	41. Sweden
17. Germany	42. Taiwan
18. Greece	43. Thailand
19. Hong Kong	44. Turkey
20. India	45. United Arab Emirates
21. Indonesia	46. Uruguay
22. Ireland	47. United States of America
23. Israel	48. Venezuela
24. Italy	49. Zimbabwe
25. Japan	50. European Community[5]

The name and mark "Harvard" was adopted in 1639 as the name of Harvard College[6] of Cambridge, Massachusetts, U.S.A. The name and mark "Harvard" was allegedly used in commerce as early as 1872. Harvard University is over 350 years old and is a highly regarded institution of higher learning in the United

[5] Exhibits "5" to "5-r". *Rollo*, pp. 288-306.

[6] Originally called "New College," founded in 1636. *Rollo*, p. 129.

States and throughout the world. Harvard University promotes, uses, and advertises its name "Harvard" through various publications, services, and products in foreign countries, including the Philippines. Harvard University further alleged that the name and the mark have been rated as one of the most famous brands in the world, valued between US $750,000,000 and US $1,000,000,000.

Harvard University alleged that in March 2002, it discovered, through its international trademark watch program, Fredco's website www.harvard-usa.com. The website advertises and promotes the brand name "Harvard Jeans USA" without Harvard University's consent. The website's main page shows an oblong logo bearing the mark "Harvard Jeans USA®," "Established 1936," and "Cambridge, Massachusetts." On 20 April 2004, Harvard University filed an administrative complaint against Fredco before the IPO for trademark infringement and/or unfair competition with damages.

Harvard University alleged that its valid and existing certificates of trademark registration in the Philippines are:

1. Trademark Registration No. 56561 issued on 25 November 1993 for "Harvard Veritas Shield Design" for goods and services in Classes 16, 18, 21, 25 and 28 (decals, tote bags, serving trays, sweatshirts, t-shirts, hats and flying discs) of the Nice International Classification of Goods and Services;

2. Trademark Registration No. 57526 issued on 24 March 1994 for "Harvard Veritas Shield Symbol" for services in Class 41; Trademark Registration No. 56539 issued on 25 November 1998 for "Harvard" for services in Class 41; and

3. Trademark Registration No. 66677 issued on 8 December 1998 for "Harvard Graphics" for goods in Class 9. Harvard University further alleged that it filed the requisite affidavits of use for the mark "Harvard Veritas Shield Symbol" with the IPO.

Further, on 7 May 2003 Harvard University filed Trademark Application No. 4-2003-04090 for "Harvard Medical International & Shield Design" for services in Classes 41 and 44. In 1989, Harvard University established the Harvard Trademark Licensing Program, operated by the Office for Technology and Trademark Licensing, to oversee and manage the worldwide licensing of the "Harvard" name and trademarks for various goods and services. Harvard University stated that it never authorized or licensed any person to use its name and mark "Harvard" in connection with any goods or services in the Philippines.

In a Decision[7] dated 22 December 2006, Director Estrellita Beltran-Abelardo of the Bureau of Legal Affairs, IPO cancelled Harvard University's registration of the mark "Harvard" under Class 25, as follows:

> WHEREFORE, premises considered, the Petition for Cancellation is hereby GRANTED. Consequently, Trademark Registration Number 56561 for the trademark "HARVARD VE RI TAS 'SHIELD' SYMBOL" issued on November 25, 1993 to PRESIDENT AND FELLOWS OF HARVARD COLLEGE (HARVARD UNIVERSITY) should be CANCELLED only with respect to goods falling under Class 25. On the other hand, considering that the goods of Respondent-Registrant falling under Classes 16, 18, 21 and 28 are not confusingly similar with the Petitioner's goods, the Respondent-Registrant has acquired vested right over the same and therefore, should not be cancelled.
>
> Let the filewrapper of the Trademark Registration No. 56561 issued on November 25, 1993 for the trademark "HARVARD VE RI TAS 'SHIELD' SYMBOL", subject matter of this case together with a copy of this Decision be forwarded to the Bureau of Trademarks (BOT) for appropriate action.
>
> SO ORDERED.[8]

Harvard University filed an appeal before the Office of the Director General of the IPO. In a Decision[9] dated 21 April

[7] *Id.* at 135-156.

[8] *Id.* at 156.

[9] *Id.* at 121-133. Penned by Director General Adrian S. Cristobal, Jr.

2008, the Office of the Director General, IPO reversed the decision of the Bureau of Legal Affairs, IPO.

The Director General ruled that more than the use of the trademark in the Philippines, the applicant must be the owner of the mark sought to be registered. The Director General ruled that the right to register a trademark is based on ownership and when the applicant is not the owner, he has no right to register the mark. The Director General noted that the mark covered by Harvard University's Registration No. 56561 is not only the word "Harvard" but also the logo, emblem or symbol of Harvard University. The Director General ruled that Fredco failed to explain how its predecessor New York Garments came up with the mark "Harvard." In addition, there was no evidence that Fredco or New York Garments was licensed or authorized by Harvard University to use its name in commerce or for any other use.

The dispositive portion of the decision of the Office of the Director General, IPO reads:

> WHEREFORE, premises considered, the instant appeal is GRANTED. The appealed decision is hereby REVERSED and SET ASIDE. Let a copy of this Decision as well as the trademark application and records be furnished and returned to the Director of Bureau of Legal Affairs for appropriate action. Further, let also the Directors of the Bureau of Trademarks and the Administrative, Financial and Human Resources Development Services Bureau, and the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this Decision for information, guidance, and records purposes.
>
> SO ORDERED.[10]

Fredco filed a petition for review before the Court of Appeals assailing the decision of the Director General.

The Decision of the Court of Appeals

In its assailed decision, the Court of Appeals affirmed the decision of the Office of the Director General of the IPO.

[10] *Id.* at 133.

The Court of Appeals adopted the findings of the Office of the Director General and ruled that the latter correctly set aside the cancellation by the Director of the Bureau of Legal Affairs of Harvard University's trademark registration under Class 25. The Court of Appeals ruled that Harvard University was able to substantiate that it appropriated and used the marks "Harvard" and "Harvard Veritas Shield Symbol" in Class 25 way ahead of Fredco and its predecessor New York Garments. The Court of Appeals also ruled that the records failed to disclose any explanation for Fredco's use of the name and mark "Harvard" and the words "USA," "Established 1936," and "Cambridge, Massachusetts" within an oblong device, "US Legend" and "Europe's No. 1 Brand." Citing *Shangri-La International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*,[11] the Court of Appeals ruled:

> One who has imitated the trademark of another cannot bring an action for infringement, particularly against the true owner of the mark, because he would be coming to court with unclean hands. Priority is of no avail to the bad faith plaintiff. Good faith is required in order to ensure that a second user may not merely take advantage of the goodwill established by the true owner.[12]

The dispositive portion of the decision of the Court of Appeals reads:

> WHEREFORE, premises considered, the petition for review is DENIED. The Decision dated April 21, 2008 of the Director General of the IPO in Appeal No. 14-07-09 Inter Partes Case No. 14-2005-00094 is hereby AFFIRMED.
>
> SO ORDERED.[13]

Fredco filed a motion for reconsideration.

In its Resolution promulgated on 8 January 2009, the Court of Appeals denied the motion for lack of merit.

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[11] G.R. No. 159938, 31 March 2006, 486 SCRA 405.

[12] *Rollo*, p. 114.

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

Hence, this petition before the Court.

The Issue

The issue in this case is whether the Court of Appeals committed a reversible error in affirming the decision of the Office of the Director General of the IPO.

The Ruling of this Court

The petition has no merit.

There is no dispute that the mark "Harvard" used by Fredco is the same as the mark "Harvard" in the "Harvard Veritas Shield Symbol" of Harvard University. It is also not disputed that Harvard University was named Harvard College in 1639 and that then, as now, Harvard University is located in Cambridge, Massachusetts, U.S.A. It is also unrefuted that Harvard University has been using the mark "Harvard" in commerce since 1872. It is also established that Harvard University has been using the marks "Harvard" and "Harvard Veritas Shield Symbol" for Class 25 goods in the United States since 1953. Further, there is no dispute that Harvard University has registered the name and mark "Harvard" in at least 50 countries.

On the other hand, Fredco's predecessor-in-interest, New York Garments, started using the mark "Harvard" in the Philippines only in 1982. New York Garments filed an application with the Philippine Patent Office in 1985 to register the mark "Harvard," which application was approved in 1988. Fredco insists that the date of actual use in the Philippines should prevail on the issue of who has the better right to register the marks.

Under Section 2 of Republic Act No. 166,[14] as amended (R.A. No. 166), before a trademark can be registered, it must have been actually used in commerce for not less than two months in the Philippines prior to the filing of an application for its registration. While Harvard University had actual prior

[14] An Act to Provide for the Registration and Protection of Trade-Marks, Trade-Names and Service- Marks, Defining Unfair Competition and False Markings and Providing Remedies Against the Same, and For Other Purposes.

use of its marks abroad for a long time, it did not have actual prior use in the Philippines of the mark "Harvard Veritas Shield Symbol" before its application for registration of the mark "Harvard" with the then Philippine Patents Office. However, Harvard University's registration of the name "Harvard" is based on home registration which is allowed under Section 37 of R.A. No. 166.[15] As pointed out by Harvard University in its Comment:

> Although Section 2 of the Trademark law (R.A. 166) requires for the registration of trademark that the applicant thereof must prove that the same has been actually in use in commerce or services for not less than two (2) months in the Philippines before the application for registration is filed, where the trademark sought to be registered has already been registered in a foreign country that is a member of the Paris Convention, the requirement of proof of use in the commerce in the Philippines for the said period is not necessary. An applicant for registration based on home certificate of registration need not even have used the mark or trade name in this country.[16]

Indeed, in its Petition for Cancellation of Registration No. 56561, Fredco alleged that Harvard University's registration "is based on 'home registration' for the mark 'Harvard Veritas Shield' for Class 25."[17]

In any event, under Section 239.2 of Republic Act No. 8293 (R.A. No. 8293),[18] "[m]arks registered under Republic Act No. 166 shall remain in force **but shall be deemed to have been granted under this Act** x x x," which does not require actual prior use of the mark in the Philippines. Since the mark "Harvard Veritas Shield Symbol" is now deemed granted under R.A. No. 8293, any alleged defect arising from the absence of actual prior use in the Philippines has been cured by Section 239.2.[19]

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[15] Decision of the Bureau of Legal Affairs, *rollo*, p. 154; Decision of the Director General, *rollo*, p. 122.

[16] *Id.* at 157.

[17] *Id.* at 122.

[18] Intellectual Property Code.

[19] Harvard University filed Affidavits of Use for the 5th and 10th Anniversaries of Registration No. 56561. Decision of the Director General, *rollo*, p. 132.

In addition, Fredco's registration was already cancelled on 30 July 1998 when it failed to file the required affidavit of use/non-use for the fifth anniversary of the mark's registration. Hence, at the time of Fredco's filing of the Petition for Cancellation before the Bureau of Legal Affairs of the IPO, Fredco was no longer the registrant or presumptive owner of the mark "Harvard."

There are two compelling reasons why Fredco's petition must fail.

First, Fredco's registration of the mark "Harvard" and its identification of origin as "Cambridge, Massachusetts" falsely suggest that Fredco or its goods are connected with Harvard University, which uses the same mark "Harvard" and is also located in Cambridge, Massachusetts. This can easily be gleaned from the following oblong logo of Fredco that it attaches to its clothing line:

Fredco's registration of the mark "Harvard" should not have been allowed because Section 4(a) of R.A. No. 166 prohibits the registration of a mark "which may disparage or **falsely suggest a connection with** persons, living or dead, **institutions**, beliefs x x x." Section 4(a) of R.A. No. 166 provides:

Section 4. *Registration of trade-marks, trade-names and service-marks on the principal register*. There is hereby established a register of trade-mark, trade-names and service-marks which shall be known as the principal register. The owner of a trade-mark, a trade-name or service-mark used to distinguish his goods, business or services

from the goods, business or services of others shall have the right to register the same on the principal register, unless it:

(a) Consists of or comprises immoral, deceptive or scandalous manner, or matter which may disparage or **falsely suggest a connection with** persons, living or dead, **institutions**, beliefs, or national symbols, or bring them into contempt or disrepute;

(b) x x x (emphasis supplied)

Fredco's use of the mark "Harvard," coupled with its claimed origin in Cambridge, Massachusetts, obviously suggests a false connection with Harvard University. On this ground alone, Fredco's registration of the mark "Harvard" should have been disallowed.

Indisputably, Fredco does not have any affiliation or connection with Harvard University, or even with Cambridge, Massachusetts. Fredco or its predecessor New York Garments was not established in 1936, or in the U.S.A. as indicated by Fredco in its oblong logo. Fredco offered no explanation to the Court of Appeals or to the IPO why it used the mark "Harvard" on its oblong logo with the words "Cambridge, Massachusetts," "Established in 1936," and "USA." Fredco now claims before this Court that it used these words "to evoke a 'lifestyle' or suggest a 'desirable aura' of petitioner's clothing lines." Fredco's belated justification merely confirms that it sought to connect or associate its products with Harvard University, riding on the prestige and popularity of Harvard University, and thus appropriating part of Harvard University's goodwill without the latter's consent.

Section 4(a) of R.A. No. 166 is identical to Section 2(a) of the Lanham Act,[20] the trademark law of the United States. These provisions are intended to protect the *right of publicity* of famous individuals and institutions from commercial exploitation of their goodwill by others.[21] What Fredco has done in using the mark

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[20] Roger E. Schechter and John R.Thomas, *INTELLECTUAL PROPERTY: THE LAW OF COPYRIGHTS, PATENTS AND TRADEMARKS* (2003), p. 603.

[21] *Id.* at 263.

"Harvard" and the words "Cambridge, Massachusetts," "USA" to evoke a "desirable aura" to its products is precisely to exploit commercially the goodwill of Harvard University without the latter's consent. This is a clear violation of Section 4(a) of R.A. No. 166. Under Section 17(c)[22] of R.A. No. 166, such violation is a ground for cancellation of Fredco's registration of the mark "Harvard" because the registration was obtained in violation of Section 4 of R.A. No. 166.

Second, the Philippines and the United States of America are both signatories to the Paris Convention for the Protection of Industrial Property (Paris Convention). The Philippines became a signatory to the Paris Convention on 27 September 1965. Articles 6*bis* and 8 of the Paris Convention state:

ARTICLE 6*bis*

(i) The countries of the Union undertake either administratively if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration and to prohibit the use of a trademark which constitutes a reproduction, imitation or translation, liable to create confusion or a mark considered by the competent authority of the country as being **already the mark of a person entitled to the benefits of the present Convention and used for identical or similar goods**. **These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith**.

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[22] Section 17(c) of R.A. No. 166, as amended, provides: "Grounds for cancellation. — Any person, who believes that he is or will be damaged by the registration of a mark or trade-name, may, upon the payment of the prescribed fee, apply to cancel said registration upon any of the following grounds:

(a) x x x

x x x x x x x x x

(c) That the registration was **obtained** fraudulently or **contrary to the provisions of section four, Chapter II hereof**;

x x x. (Emphasis supplied)

ARTICLE 8

A trade name shall be protected in all the countries of the Union **without the obligation of filing or registration**, whether or not it forms part of a trademark. (Emphasis supplied)

Thus, this Court has ruled that the Philippines is obligated to assure nationals of countries of the Paris Convention that they are afforded an effective protection against violation of their intellectual property rights in the Philippines in the same way that their own countries are obligated to accord similar protection to Philippine nationals.[23]

Article 8 of the Paris Convention has been incorporated in Section 37 of R.A. No. 166, as follows:

Section 37. *Rights of foreign registrants*. — Persons who are nationals of, domiciled in, or have a bona fide or effective business or commercial establishment in any foreign country, which is a party to any international convention or treaty relating to marks or trade-names, or the repression of unfair competition to which the Philippines may be a party, shall be entitled to the benefits and subject to the provisions of this Act to the extent and under the conditions essential to give effect to any such convention and treaties so long as the Philippines shall continue to be a party thereto, except as provided in the following paragraphs of this section.

x x x x x x x x x

Trade-names of persons described in the first paragraph of this section shall be protected without the obligation of filing or registration whether or not they form parts of marks.[24]

x x x (Emphasis supplied)

Thus, under Philippine law, a trade name of a national of a State that is a party to the Paris Convention, whether or not the trade name forms part of a trademark, is protected "without the obligation of filing or registration."

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[23] See *La Chemise Lacoste, S.A. v. Hon. Fernandez, etc., et al.*, 214 Phil. 332 (1984).

[24] The original version of R.A. No. 166 already contains this provision.

"Harvard" is the trade name of the world famous Harvard University, and it is also a trademark of Harvard University. Under Article 8 of the Paris Convention, as well as Section 37 of R.A. No. 166, Harvard University is entitled to protection in the Philippines of its trade name "Harvard" even without registration of such trade name in the Philippines. This means that no educational entity in the Philippines can use the trade name "Harvard" without the consent of Harvard University. Likewise, no entity in the Philippines can claim, expressly or impliedly through the use of the name and mark "Harvard," that its products or services are authorized, approved, or licensed by, or sourced from, Harvard University without the latter's consent.

Article 6*bis* of the Paris Convention has been administratively implemented in the Philippines through two directives of the then Ministry (now Department) of Trade, which directives were upheld by this Court in several cases.[25] On 20 November 1980, then Minister of Trade Secretary Luis Villafuerte issued a Memorandum directing the Director of Patents to reject, pursuant to the Paris Convention, all pending applications for Philippine registration of signature and other world-famous trademarks by applicants other than their original owners.[26] The Memorandum states:

> Pursuant to the Paris Convention for the Protection of Industrial Property to which the Philippines is a signatory, you are hereby directed to reject all pending applications for Philippine registration of signature and other world-famous trademarks by applicants other than its original owners or users.
>
> The conflicting claims over internationally known trademarks involve such name brands as Lacoste, Jordache, Vanderbilt, Sasson, Fila, Pierre Cardin, Gucci, Christian Dior, Oscar de la Renta, Calvin Klein, Givenchy, Ralph Lauren, Geoffrey Beene, Lanvin and Ted Lapidus.

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[25] *Mirpuri v. Court of Appeals*, 376 Phil. 628 (1999); *Puma Sportschuhfabriken Rudolf Dassler, K.G. v. IAC*, 241 Phil. 1029 (1988); *La Chemise Lacoste, S.A. v. Hon. Fernandez, etc., et al., supra* note 23.

[26] *Mirpuri v. Court of Appeals, id.*

It is further directed that, in cases where warranted, Philippine registrants of such trademarks should be asked to surrender their certificates of registration, if any, to avoid suits for damages and other legal action by the trademarks' foreign or local owners or original users.

You are also required to submit to the undersigned a progress report on the matter.

For immediate compliance.[27]

In a Memorandum dated 25 October 1983, then Minister of Trade and Industry Roberto Ongpin affirmed the earlier Memorandum of Minister Villafuerte. Minister Ongpin directed the Director of Patents to implement measures necessary to comply with the Philippines' obligations under the Paris Convention, thus:

1. Whether the trademark under consideration is well-known in the Philippines or is a mark already belonging to a person entitled to the benefits of the CONVENTION, this should be established, pursuant to Philippine Patent Office procedures in inter partes and *ex parte* cases, according to **any of the following criteria** or any combination thereof:

(a) a declaration by the Minister of Trade and Industry that the trademark being considered is already well-known in the Philippines such that permission for its use by other than its original owner will constitute a reproduction, imitation, translation or other infringement;

(b) that the trademark is used in commerce internationally, supported by proof that goods bearing the trademark are sold on an international scale, advertisements, the establishment of factories, sales offices, distributorships, and the like, in different countries, including volume or other measure of international trade and commerce;

(c) **that the trademark is duly registered in the industrial property office(s) of another country or countries, taking into consideration the dates of such registration**;

(d) that the trademark has been long established and obtained goodwill and general international consumer recognition as belonging to one owner or source;

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[27] *Id.* at 656-657.

(e) that the trademark actually belongs to a party claiming ownership and has the right to registration under the provisions of the aforestated PARIS CONVENTION.

2. The word trademark, as used in this MEMORANDUM, shall include tradenames, service marks, logos, signs, emblems, insignia or other similar devices used for identification and recognition by consumers.

3. The Philippine Patent Office shall refuse all applications for, or cancel the registration of, trademarks which constitute a reproduction, translation or imitation of a trademark owned by a person, natural or corporate, who is a citizen of a country signatory to the PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY.

x x x[28] (Emphasis supplied)

In *Mirpuri*, the Court ruled that the essential requirement under Article 6*bis* of the Paris Convention is that the trademark to be protected must be "well-known" in the country where protection is sought.[29] The Court declared that the power to determine whether a trademark is well-known lies in the competent authority of the country of registration or use.[30] The Court then stated that the competent authority would either be the registering authority if it has the power to decide this, or the courts of the country in question if the issue comes before the courts.[31]

To be protected under the two directives of the Ministry of Trade, an internationally well-known mark need not be registered or used in the Philippines.[32] All that is required is that the mark is well-known internationally and in the Philippines for identical

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[28] *Id.* at 658-659. Also cited in *La Chemise Lacoste, S.A. v. Hon. Fernandez, etc., et al., supra* note 23.

[29] *Id.* at 656.

[30] *Id.*

[31] *Id.*

[32] *Sehwani, Incorporated v. In-N-Out Burger, Inc.*, G.R. No. 171053, 15 October 2007, 536 SCRA 225.

or similar goods, whether or not the mark is registered or used in the Philippines. The Court ruled in *Sehwani, Incorporated v. In-N-Out Burger, Inc.*:[33]

The fact that respondent's marks are neither registered nor used in the Philippines is of no moment. The scope of protection initially afforded by Article 6*bis* of the Paris Convention has been expanded in the 1999 *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks*, wherein the World Intellectual Property Organization (WIPO) General Assembly and the Paris Union agreed to a nonbinding recommendation that **a well-known mark should be protected in a country even if the mark is neither registered nor used in that country**. Part I, Article 2(3) thereof provides:

(3) [*Factors Which Shall Not Be Required*] (a) A Member State shall not require, as a condition for determining whether a mark is a well-known mark:

(i) *that the mark has been used in, or that the mark has been registered or that an application for registration of the mark has been filed in or in respect of, the Member State*:

(ii) that the mark is well known in, or that the mark has been registered or that an application for registration of the mark has been filed in or in respect of, any jurisdiction other than the Member State; or

(iii) that the mark is well known by the public at large in the Member State.[34] (Italics in the original decision; boldface supplied)

Indeed, Section 123.1(e) of R.A. No. 8293 now categorically states that "a mark which is considered by the competent authority of the Philippines to be **well-known internationally and in the Philippines, whether or not it is registered here**," cannot be registered by another in the Philippines. Section 123.1(e) does not require that the well-known mark be used in commerce in the Philippines but only that it be well-known in the Philippines. Moreover, Rule 102 of the Rules and Regulations on Trademarks,

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[33] *Id.*

[34] *Id.* at 240.

Service Marks, Trade Names and Marked or Stamped Containers, which implement R.A. No. 8293, provides:

> Rule 102. Criteria for determining whether a mark is well-known. In determining whether a mark is well-known, the following criteria or **any combination thereof** may be taken into account:
>
> (a) the duration, extent and geographical area of any use of the mark, in particular, the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies;
>
> (b) the market share, in the Philippines and in other countries, of the goods and/or services to which the mark applies;
>
> (c) the degree of the inherent or acquired distinction of the mark;
>
> (d) the quality-image or reputation acquired by the mark;
>
> (e) the extent to which the mark has been registered in the world;
>
> (f) the exclusivity of registration attained by the mark in the world;
>
> (g) the extent to which the mark has been used in the world;
>
> (h) the exclusivity of use attained by the mark in the world;
>
> (i) the commercial value attributed to the mark in the world;
>
> (j) the record of successful protection of the rights in the mark;
>
> (k) the outcome of litigations dealing with the issue of whether the mark is a well-known mark; and
>
> (l) the presence or absence of identical or similar marks validly registered for or used on identical or similar goods or services and owned by persons other than the person claiming that his mark is a well-known mark. (Emphasis supplied)

Since "**any combination**" of the foregoing criteria is sufficient to determine that a mark is well-known, it is clearly not necessary that the mark be used in commerce in the Philippines. Thus, while under the territoriality principle a mark must be used in commerce in the Philippines to be entitled to protection, internationally well-known marks are the exceptions to this rule.

In the assailed Decision of the Office of the Director General dated 21 April 2008, the Director General found that:

> Traced to its roots or origin, HARVARD is not an ordinary word. It refers to no other than Harvard University, a recognized and respected institution of higher learning located in Cambridge, Massachusetts, U.S.A. Initially referred to simply as "the new college," the institution was named "*Harvard College*" on 13 March 1639, after its first principal donor, a young clergyman named John Harvard. A graduate of Emmanuel College, Cambridge in England, John Harvard bequeathed about four hundred books in his will to form the basis of the college library collection, along with half his personal wealth worth several hundred pounds. The earliest known official reference to Harvard as a "university" rather than "college" occurred in the new Massachusetts Constitution of 1780.
>
> Records also show that the first use of the name HARVARD was in 1638 for educational services, policy courses of instructions and training at the university level. It has a Charter. Its first commercial use of the name or mark HARVARD for Class 25 was on 31 December 1953 covered by UPTON Reg. No. 2,119,339 and 2,101,295. Assuming *in arguendo,* that the Appellate may have used the mark HARVARD in the Philippines ahead of the Appellant, it still cannot be denied that the Appellant's use thereof was decades, even centuries, ahead of the Appellee's. More importantly, the name HARVARD was the name of a person whose deeds were considered to be a cornerstone of the university. The Appellant's logos, emblems or symbols are owned by Harvard University. The name HARVARD and the logos, emblems or symbols are endemic and cannot be separated from the institution.[35]

Finally, in its assailed Decision, the Court of Appeals ruled:

> Records show that Harvard University is the oldest and one of the foremost educational institutions in the United States, it being established in 1636. It is located primarily in Cambridge, Massachusetts and was named after John Harvard, a puritan minister who left to the college his books and half of his estate.
>
> The mark "Harvard College" was first used in commerce in the United States in 1638 for educational services, specifically, providing

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[35] *Rollo,* pp. 129-130.

courses of instruction and training at the university level (Class 41). Its application for registration with the United States Patent and Trademark Office was filed on September 20, 2000 and it was registered on October 16, 2001. The marks "Harvard" and "Harvard Ve ri tas 'Shield' Symbol" were first used in commerce in the the United States on December 31, 1953 for athletic uniforms, boxer shorts, briefs, caps, coats, leather coats, sports coats, gym shorts, infant jackets, leather jackets, night shirts, shirts, socks, sweat pants, sweatshirts, sweaters and underwear (Class 25). The applications for registration with the USPTO were filed on September 9, 1996, the mark "Harvard" was registered on December 9, 1997 and the mark "Harvard Ve ri tas 'Shield' Symbol" was registered on September 30, 1997.[36]

We also note that in a Decision[37] dated 18 December 2008 involving a separate case between Harvard University and Streetward International, Inc.,[38] the Bureau of Legal Affairs of the IPO ruled that the mark "Harvard" is a "well-known mark." This Decision, which cites among others the numerous trademark registrations of Harvard University in various countries, has become final and executory.

There is no question then, and this Court so declares, that "Harvard" is a well-known name and mark not only in the United States but also internationally, including the Philippines. The mark "Harvard" is rated as one of the most famous marks in the world. It has been registered in at least 50 countries. It has been used and promoted extensively in numerous publications worldwide. It has established a considerable goodwill worldwide since the founding of Harvard University more than 350 years ago. It is easily recognizable as the trade name and mark of Harvard University of Cambridge, Massachusetts, U.S.A., internationally known as one of the leading educational institutions in the world. As such, even before Harvard University applied

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[36] *Id.* at 112-113.

[37] *Id.* at 1251-1263. Penned by Bureau of Legal Affairs Director Estrellita Beltran-Abelardo.

[38] IPC No. 14-2008-00107; Decision No. 2008-232.

for registration of the mark "Harvard" in the Philippines, the mark was already protected under Article 6*bis* and Article 8 of the Paris Convention. Again, even without applying the Paris Convention, Harvard University can invoke Section 4(a) of R.A. No. 166 which prohibits the registration of a mark "which may disparage or **falsely suggest a connection with** persons, living or dead, **institutions**, beliefs x x x."

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 24 October 2008 Decision and 8 January 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 103394.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 186465. June 1, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LORIE VILLAHERMOSA *y* LECO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— Essentially, in a prosecution for illegal sale of dangerous drugs, like *shabu* in this case, the following elements must concur: (1) the identity of the buyer and the seller, the object and the consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. The commission of the offense of illegal sale of prohibited drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. Thus,

what is material to a prosecution for illegal sale of dangerous drugs is proof that the illicit transaction took place, coupled with the presentation in court of the *corpus delicti* or the illicit drug as evidence. Such proof is present in this case.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— In a prosecution for illegal possession of dangerous drugs, *e.g.*, *shabu*, x x x it must be shown that: (1) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. These circumstances of illegal possession are obtaining in the present case.

3. ID.; ID.; ID.; THE POSSESSION OF DANGEROUS DRUGS CONSTITUTES *PRIMA FACIE* EVIDENCE OF KNOWLEDGE OR *ANIMUS POSSIDENDI* SUFFICIENT TO CONVICT AN ACCUSED IN THE ABSENCE OF A SATISFACTORY EXPLANATION OF SUCH POSSESSION.— It has been jurisprudentially settled that possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of a satisfactory explanation of such possession. Hence, the burden of evidence is shifted to the accused to explain the absence of knowledge or *animus possidendi*. In this case, appellant miserably failed to explain her absence of knowledge or *animus possidendi* of the *shabu* recovered from her.

4. ID.; ID.; ILLEGAL POSSESSION OF DRUG PARAPHERNALIA; DULY ESTABLISHED IN CASE AT BAR.— [I]t cannot be denied that on the occasion of [the appellant's] arrest for having been caught in *flagrante delicto* selling *shabu*, a plastic bag was also recovered in her possession containing the following drug paraphernalia, to wit: 14 pieces of unused transparent plastic sachets, three disposable lighters, an improvised *tooter* and five strips of aluminum foil. Possession of the same was in clear violation of Section 12, Article II of Republic Act No. 9165. It bears stressing that violation of Section 12, Article II of Republic Act No. 9165 was already consummated the moment appellant was found in possession of the said articles without the necessary license

or prescription. **What is primordial is the proof of the illegal drugs and paraphernalia recovered from the petitioner**.

5. REMEDIAL LAW; EVIDENCE; DENIAL; MUST BE SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE TO MERIT CONSIDERATION.— Time and again, this Court held that the defense of denial, like *alibi*, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most cases involving violation of the Dangerous Drugs Act. To merit consideration, it has to be substantiated by clear and convincing evidence, which appellant failed to do.

6. ID.; ID.; CREDIBILITY OF WITNESSES; NOT ADVERSELY AFFECTED BY INCONSISTENCIES AND DISCREPANCIES IN THE TESTIMONY REFERRING TO MINOR DETAILS AND NOT UPON THE BASIC ASPECT OF THE CRIME.— It has been established that where the inconsistency is not an essential element of the crime, such inconsistency is insignificant and cannot have any bearing on the essential fact testified to. **Inconsistencies and discrepancies in the testimony referring to minor details and not upon the basic aspect of the crime do not diminish the witnesses' credibility**. **More so, an inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction**.

7. CRIMINAL LAW; ENTRAPMENT OR BUY-BUST OPERATION; PRIOR SURVEILLANCE IS NOT A PREREQUISITE FOR THE VALIDITY THEREOF.— [T]here is no requirement that prior surveillance should be conducted before a buy-bust operation can be undertaken. **Prior surveillance is not a prerequisite for the validity of an entrapment or a buy-bust operation**, there being no fixed or textbook method for conducting one. It is enough that the elements of the crime are proven by credible witnesses and other pieces of evidence.

8. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY THE TRIAL COURT ARE GENERALLY ENTITLED TO GREAT RESPECT ON APPEAL.— [T]he rule has been settled that the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect because the trial courts

have the advantage of observing the demeanor of witnesses as they testify. This Court will not usually disturb said findings of the trial court in assessing the credibility of the witnesses, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted by the trial court. This arises from the fact that the lower courts are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals as in this case.

9. ID.; ID.; PRESUMPTIONS; IN DRUG CASES, LAW ENFORCERS ARE PRESUMED TO HAVE REGULARLY PERFORMED THEIR DUTY IN THE ABSENCE OF PROOF TO THE CONTRARY.— [I]t may be noted that there is nothing on record to indicate that the prosecution witnesses harbored ill-motives against appellant. In several drug cases, this Court has consistently held that in the absence of proof to the contrary, law enforcers are presumed to have regularly performed their duty.

10. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; PENALTY IN CASE AT BAR.— Section 5, Article II of Republic Act No. 9165 explicitly provides the penalty for the illegal sale of dangerous drugs, like *shabu* x x x. [T]he sale of any dangerous drug, like *shabu*, notwithstanding its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. In light, however, of the effectivity of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been proscribed. Ergo, the penalty applicable to appellant shall only be life imprisonment and fine without eligibility for parole. This Court, thus, sustains the penalty of imprisonment and fine imposed upon appellant by the trial court, which later on affirmed by the Court of Appeals, in Criminal Case No. 02-3170 for illegal sale of *shabu* in violation of Section 5, Article II of Republic Act No. 9165.

11. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; PENALTY IN CASE AT BAR.— Illegal possession of

dangerous drugs, like *shabu* x x x is penalized under Section 11, Article II of Republic Act No. 9165 x x x. [I]llegal possession of less than five grams of *shabu*, a dangerous drug, is penalized with imprisonment of 12 years and 1 day to 20 years and a fine ranging from ₱300,000.00 to ₱400,000.00. The evidence adduced by the prosecution in Criminal Case No. 02-3171 established beyond reasonable doubt that appellant, without any legal authority, had in his possession 0.67 grams of *shabu* or less than five grams thereof. Applying the Indeterminate Sentence Law, the minimum period of the imposable penalty shall not fall below the minimum period set by the law; the maximum period shall not exceed the maximum period allowed under the law. With this, the penalty of 12 years and 1 day to 14 years and 1 day and fine of ₱300,000.00 imposed by the trial court and affirmed by the appellate court is proper.

12. ID.; ID.; ILLEGAL POSSESSION OF DRUG PARAPHERNALIA; PENALTY IN CASE AT BAR.— The penalty for illegal possession of drug paraphernalia is provided for under Section 12, Article II of Republic Act No. 9165 x x x. [P]ossession of drug paraphernalia without any authority is punishable by imprisonment ranging from 6 months and 1 day to 4 years and a fine of ₱10,000.00 to ₱50,000.00. x x x [A]pplying the Indeterminate Sentence Law, the penalty of 6 months and 1 day to 4 years and a fine of ₱10,000.00 imposed upon appellant by both lower courts in Criminal Case No. 02-3172 is likewise correct.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

On appeal is the Decision[1] dated 23 April 2008 of the Court of Appeals in CA-G.R. CR HC No. 02598, affirming *in toto*

[1] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Lucenito N. Tagle and Monina Arevalo Zenarosa, concurring. *Rollo*, pp. 2-13.

the Decision[2] dated 3 October 2006 of the Regional Trial Court (RTC) of Makati City, Branch 65, in Criminal Case Nos. 02-3170 to 02-3172, finding herein appellant Lorie Villahermosa *y* Leco guilty beyond reasonable doubt of violating Sections 5,[3] 11[4] and 12,[5] Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

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[2] Penned by Pairing Judge Delia H. Panganiban. CA *rollo*, pp. 20-31.

[3] **SEC. 5.** ***Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*** – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute[,] dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[4] **SEC. 11.** ***Possession of Dangerous Drugs.*** – 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) x x x x x x x x x

(2) x x x x x x x x x

(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 opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[5] **SEC 12.** ***Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.*** – The penalty of imprisonment ranging

In three separate Informations[6] all dated 4 November 2002, appellant Lorie Villahermosa *y* Leco was charged with violation of Sections 5, 11 and 12, Article II of Republic Act No. 9165, which were respectively docketed as Criminal Case No. 02-3170, Criminal Case No. 02-3171 and Criminal Case No. 02-3172. The Informations read as follows:

Criminal Case No. 02-3170

That on or about the 31st day of October, 2002, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named [appellant], did then and there willfully, unlawfully and feloniously **without being authorized by law, sell, distribute and transport** zero point zero gram (sic) (0.06) and zero point zero three gram (0.03) or **a total of zero point zero nine gram (0.09) of Methamphetamine Hydrochloride (*shabu*)** a dangerous drug, in violation of the above-cited law.[7] [Emphasis supplied].

Criminal Case No. 02-3171

That on or about the 31st day of October, 2002, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named [appellant], **not being lawfully authorized**

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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) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: *Provided*, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be *prima facie* evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

[6] CA *rollo*, pp. 10-12.

[7] *Id.* at 10.

to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his (sic) possession, direct custody and control Methylamphetamine Hydrochloride (*shabu*) weighing zero point fifty four gram (0.54), zero point zero two gram (0.02), zero point zero five gram (0.05), zero point zero three gram (0.03), traces and zero point zero three gram (0.03) or **a total of zero point sixty seven gram (0.67) which is a dangerous drug**, in violation of the above-cited law.[8] [Emphasis supplied].

Criminal Case No. 02-3172

That on or about the 31st day of October, 2002, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named [appellant], **not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously use and possess one (1) improvised glass tooter, five (5) strips of aluminum foil, fourteen (14) pieces of transparent plastic sachets and three (3) pieces disposable lighters,** in violation of the aforesaid law.[9] [Emphasis supplied].

Upon arraignment, appellant, assisted by counsel *de oficio*, pleaded **NOT GUILTY** to all charges.[10]

By agreement of the parties, the pre-trial was terminated for their failure to agree to any stipulation.[11] Trial on the merits thereafter followed.

The prosecution presented the testimonies of the following witnesses: **Police Inspector Miladenia O. Tapan (P/Insp. Tapan)**, forensic chemical officer assigned at the Philippine National Police Headquarters, Philippine National Police (PNP) Crime Laboratory, Camp Crame, Quezon City; **Amado Silverio**

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[8] *Id.* at 11.

[9] *Id.* at 12.

[10] As evidenced by a Certificate of Arraignment dated 3 December 2002. Records, p. 27.

[11] RTC Order dated 6 February 2003. *Id.* at 31.

(Silverio), Makati Anti Drug Abuse Council (MADAC) operative who acted as the *poseur*-buyer in the buy-bust operation against appellant; **Police Officer 2 Rolando Tizon (PO2 Tizon)**, member of the Philippine Drug Enforcement Agency (PDEA) who served as the arresting officer of the buy-bust operation against appellant; and **Police Senior Inspector Helson B. Walin (P/Sr. Insp. Walin)**, assigned with the Special Enforcement Group of the Metro Manila Regional Office of PDEA and the team leader of the buy-bust team formed against appellant.

The facts as culled from the records and testimonies of the aforesaid prosecution witnesses are as follows:

On or about 5:00 p.m. of 31 October 2002, PDEA received a telephone call from a concerned citizen that a certain *Tomboy*,[12] whose name was later known to be Lorie Villahermosa *y* Leco, the herein appellant,[13] was engaged in the rampant selling of illegal drugs inside the Manila South Cemetery in *Barangay* Sta. Cruz, Makati City.[14] On the strength of that information, P/Sr. Insp. Walin and PO2 Tizon of PDEA proceeded to MADAC Cluster 3 Office at the *barangay* hall of *Barangay* Sta. Cruz, Makati City, to seek assistance in the conduct of their buy-bust operation against appellant.[15]

Upon arrival thereat at around 5:30 p.m., P/Sr. Insp. Walin talked to MADAC Cluster 3 Head, *Barangay* Chairman Vic Del Prado (*Brgy*. Chairman Del Prado) and requested the latter if PDEA can utilize one of the MADAC Cluster 3 operatives to act as the *poseur*-buyer in the buy-bust operation that they will be conducting against appellant, who was reportedly selling illegal

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[12] Testimony of PO2 Rolando L. Tizon, TSN, 1 February 2005, p. 6 and TSN, 13 April 2005, p. 26.

[13] Testimony of Amado Silverio, TSN, 11 March 2004, p. 15; Testimony of P/Sr. Insp. Helson B. Walin, TSN, 18 January 2006, p. 6.

[14] Testimony of PO2 Rolando L. Tizon, TSN, 1 February 2005, p. 6 and TSN, 13 April 2005, p. 26.

[15] Testimony of Amado Silverio, TSN, 3 April 2003, p. 4 and TSN, 11 March 2004, p. 14.

drugs inside the Manila South Cemetery. Silverio, one of the MADAC Cluster 3 operatives was volunteered by *Brgy*. Chairman Del Prado to act as the *poseur*-buyer in the planned buy-bust operation.[16]

Thereafter, P/Sr. Insp. Walin formed a buy-bust team composed of himself, PO2 Tizon, Silverio, *Brgy*. Chairman Del Prado and the other members of MADAC Cluster 3.[17] A briefing on how to carry out their buy-bust operation against appellant was then conducted by P/Sr. Insp. Walin, being the team leader thereof. In the said briefing, Silverio and PO2 Tizon were designated as the *poseur*-buyer and arresting officer, respectively, while the rest of the buy-bust team will serve as back-up. Their pre-arranged signal would be the taking off of Silverio's hat.[18] The buy-bust money consisting of four pieces of ₱100 peso bills[19] was also prepared with markings "ASSJR" placed thereon by Silverio. The latter marked the same while the buy-bust team was still at the office of MADAC Cluster 3 at the *barangay* hall of *Barangay* Sta. Cruz, Makati City. The markings of the buy-bust money were witnessed by P/Sr. Insp. Walin and PO2 Tizon, both of whom were just beside Silverio while the latter was putting the markings thereon.[20]

After the briefing, at around 6:20 p.m. of 31 October 2002, the buy-bust team headed on to the target area, *i.e.*, Manila

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[16] *Id.* and *id.* at 13-15.

[17] *Id.* and *id.* at 15-17; Testimony of PO2 Rolando L. Tizon, TSN, 1 February 2005, p. 6; Testimony of P/Sr. Insp. Helson B. Walin, TSN, 18 January 2006, p. 12.

[18] *Id.* at 4-6 and *id.* at 15-18; Testimony of PO2 Rolando L. Tizon, *id.* at 7-8; Testimony of Rolando L. Tizon, TSN, 13 April 2005, p. 5; Testimony of P/Sr. Insp. Helson B. Walin, *id.* at 12-13.

[19] With Serial Nos. CX839476, DF 922642, DM524105 and HB182496 and have been respectively marked as Exhibits "U", "V", "W" and "X". Records, p. 125.

[20] Testimony of Amado Silverio, TSN, 3 April 2003, p. 4 and pp. 8-9; Testimony of PO2 Rolando L. Tizon, TSN, 13 April 2005, p. 11; Testimony of P/Sr. Insp. Walin. TSN, 18 January 2006, p. 14.

South Cemetery in *Barangay* Sta. Cruz, Makati City. Upon arrival, Silverio already spotted appellant beside a store located inside the Manila South Cemetery. Silverio immediately recognized appellant because of the latter's picture provided him by PDEA during the briefing. Once inside the Manila South Cemetery, the other members of the buy-bust team positioned themselves strategically within the vicinity of the target area by hiding themselves among the niches.[21] Silverio, on the other hand, immediately approached appellant in a casual manner. At this juncture, the rest of the members of the buy-bust team, particularly P/Sr. Insp. Walin and PO2 Tizon, were only 10 to 15 meters away from appellant. Silverio then asked appellant, "*pare meron ka bang bato*?" Appellant replied, "*ilan ba ang kukunin mo*?" Silverio, in turn, responded, "*kwatro lang*," which means ₱400.00 worth of *shabu*.[22] Appellant then took out two small plastic sachets from her pocket containing white crystalline substance and handed the same to Silverio. Silverio, in turn, handed to appellant the amount agreed upon, *i.e.*, ₱400.00, which consists of four pieces of ₱100 peso bills marked money.[23]

After the consummation of the sale, Silverio gave their pre-arranged signal, which is the taking off of his hat. PO2 Tizon subsequently approached appellant. The other members of the buy-bust team followed thereafter. PO2 Tizon then introduced himself to appellant as PDEA officer and subsequently effected her arrest for selling prohibited drugs. He also apprised appellant of her constitutional rights and, thereafter, frisked her for she might be carrying a deadly weapon. PO2 Tizon similarly ordered appellant to empty her pockets, as well as the plastic bag she was carrying at that moment. PO2 Tizon then recovered from appellant six (6) more small plastic sachets containing white

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[21] *Id.* at 4-5 and 17; *Id.* at 4; *Id.* at 17-18.

[22] *Id.* at 5-6; Testimony Amado Silverio, TSN, 11 March 2004, p. 18; Testimony of PO2 Rolando L. Tizon, *id.* at 4; Testimony of P/Sr. Insp. Helson B. Walin, *id.* at 18-19.

[23] Testimony of Amado Silverio, TSN, 3 April 2003, pp. 5-6; Testimony of PO2 Rolando L. Tizon, *id.* at 5.

crystalline substance, the buy-bust money consisting of four pieces of ₱100.00 peso bills amounting to ₱400.00 and the following drug paraphernalia that were inside the plastic bag appellant was carrying at the time of her arrest, to wit: 14 pieces of unused transparent plastic sachets, three disposable lighters, an improvised *tooter* and five strips of aluminum foil.[24]

Afterwards, appellant was brought to MADAC Cluster 3 Office at the *barangay* hall of *Barangay* Sta. Cruz, Makati City, for investigation. The items recovered from appellant were all marked by PO2 Tizon at the MADAC Cluster 3 Office as the same cannot be done at the place of appellant's arrest, *i.e.*, at the nearby Manila South Cemetery, due to the number of people visiting thereat in light of the upcoming celebration of the All Saints Day. PO2 Tizon marked the two (2) plastic sachets containing white crystalline substance, which was the subject of the sale in the buy-bust operation against appellant, by placing thereon the initials of the *poseur*-buyer, *i.e.*, ASSJR. PO2 Tizon likewise marked the recovered six (6) more small plastic sachets containing white crystalline substance from appellant with the initials of the *poseur*-buyer, as well as the date of the buy-bust operation, *i.e.*, ASSJR 31 Oct. '02. The recovered drug paraphernalia was correspondingly marked by PO2 Tizon with the initials of the *poseur*-buyer, *i.e.*, ASSJR.[25]

After all the items seized from appellant were marked, a video of the same was taken by Jose Quibro and Susan Enriquez, both of whom were cameraman and reporter, respectively, of GMA-7. An inventory[26] of the same was also prepared by PO2 Tizon at MADAC Cluster 3 Office in the presence of all MADAC Cluster 3 operatives, including Silverio, P/Sr. Insp. Walin, Jose

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[24] *Id.* at 6-7; Testimony of Amado Silverio, TSN, 11 March 2004, p. 20; Testimony of PO2 Rolando L. Tizon, *id.* at 5-21; Testimony of P/Sr. Insp. Helson B. Walin, TSN, 18 January 2006, pp. 20-25.

[25] Testimony of Amado Silverio, *id.* at 7; Testimony of PO2 Rolando L. Tizon, *id.* at 7; Testimony of PO2 Rolando L. Tizon, TSN, 11 March 2004, pp. 4-7; Testimony of P/Sr. Insp. Helson B. Walin, *id.* at 25.

[26] As evidenced by an Inventory of the Property Seized Report dated 31 October 2002, which was marked as Exhibit "Z". Records, p. 127.

Quibro and Susan Enriquez of GMA-7, MADAC Cluster 3 Head, *Brgy*. Chairman Del Prado, and the Chief of MADAC Pedro Opoc. The MADAC Cluster 3 operatives likewise photographed the items seized from appellant, which was done also at the *barangay* hall of *Barangay* Sta. Cruz, Makati City.[27]

Appellant was, thereafter, brought by the members of the buy-bust team to the PNP Crime Laboratory at Camp Crame for drug testing,[28] as well as for physical and medical examinations.[29] PO2 Tizon, on the other hand, brought the seized items[30] also to the PNP Crime Laboratory for examination.[31]

The results of appellant's drug test[32] yielded positive result while her physical examination[33] revealed that she has not been forced as there was no sign of bruises on her body. As regards the items seized from appellant, they were all found positive[34] for methamphetamine hydrochloride or *shabu*.[35]

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[27] Testimony of Amado Silverio, TSN, 11 March 2004, pp. 11-13 and 22; Testimony of PO2 Rolando L. Tizon, TSN, 13 April 2005, p. 33; Testimony of P/Sr. Insp. Helson B. Walin, 18 January 2006, p. 26.

[28] As evidenced by Request for Drug Test dated 31 October 2002. Records, p. 20.

[29] As evidenced by Request for Medical/Physical Examination dated 31 October 2002. *Id.* at 19.

[30] As evidenced by Request for Laboratory Examination dated 31 October 2002, *id.* at 120; Testimony of P/Insp. Miladenia O. Tapan, TSN, 6 February 2003, p. 6.

[31] Testimony of Amado Silverio, TSN, 3 April 2003, p. 7 and TSN, 11 March 2004, p. 10; Testimony of PO2 Rolando L. Tizon, TSN, 13 April 2005, p. 8; Testimony of P/Sr. Insp. Helson B. Walin, TSN, 18 January 2006, p. 31

[32] As evidenced by Chemistry Report No. DT-341-02 dated 1 November 2002. Records, p. 124.

[33] As evidenced by Physical Examination Report dated 1 November 2002. *Id.* at 129.

[34] As evidenced by Chemistry Report No. D-599-02 dated 1 November 2002, *id.* at 122; Testimony of P/Insp. Miladenia O. Tapan, TSN, 6 February 2003, p. 14.

[35] Testimony of PO2 Rolando L. Tizon, TSN, 13 April 2005, pp. 8-9; Testimony of P/Sr. Insp. Helson B. Walin, TSN, 18 January 2006, pp. 31-32.

For its part, the defense presented the lone testimony of the appellant who offered a different version of what transpired on the day of her arrest.

Appellant denied all the charges against her. She claimed that prior to her arrest, she was a caretaker of certain niches at the Manila South Cemetery in *Barangay* Sta. Cruz, Makati City. As such caretaker, she was the one responsible for the cleaning and painting of the tombs. In doing so, she carried with her a "*karet*," which is a bladed instrument used in cleaning the niches. She was being paid regularly on a monthly basis by the relatives of the deceased.[36]

Appellant recounted that on 31 October 2002, eve of All Saints Day, at around 6:30 p.m., while she was inside the Manila South Cemetery painting one of the niches therein; a man suddenly tapped her shoulder from behind. She then asked him if there was any niche he wanted her to clean up or paint. But the man simply told her that she has to go with him to the *barangay* hall. When she asked for the reason therefor, the man just told her that she has to explain something at the *barangay* hall. She then thought that she was being taken for carrying a "*karet*" at that time.[37]

At the *barangay* hall, appellant was asked what her name is and was then informed her that she has a case. However, she was not informed about the charge or charges against her. Appellant was then brought to an office where she was forced to urinate. When she failed to do so, she was ordered to scoop some water from the toilet bowl to which she acceded. She gave it to the person who directed her to urinate and the same was submitted as her urine sample. Appellant was detained thereafter.[38]

After a meticulous evaluation of all the documentary, as well as testimonial evidence offered by both parties, the trial court

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[36] Testimony of appellant Lorie Villahermosa, TSN, 23 August 2006, pp. 3-4 and 8.

[37] *Id.* at 4-6.

[38] *Id.* at 6-8.

concluded that the prosecution has sufficiently proven all the elements of the offenses charged against appellant. Thus, in its Decision dated 3 October 2006, the trial court held appellant guilty beyond reasonable doubt of violating Sections 5, 11 and 12, Article II of Republic Act No. 9165. The trial court disposed of the case as follows:

WHEREFORE, in view of the foregoing, judgment is rendered as follows:

1. In **Criminal Case No. 02-3170**, the Court finds [appellant] LORIE VILLAHERMOSA *y* LECO **GUILTY** of the charge for **violation of [Section] 5, [Article] II, [Republic Act No.] 9165** and **sentences her to suffer LIFE imprisonment and to pay a fine of Five Hundred Thousand (₱500,000.00) pesos**;

2. In **Criminal Case No. 02-3171**, the Court finds [appellant] LORIE VILLAHERMOSA *y* LECO **GUILTY** of the charge for **violation of [Section] 11, [Article] II, [Republic Act No.] 9165** and **sentences her to suffer the indeterminate sentence of Twelve (12) years and one (1) day as minimum to Fourteen (14) years and (1) day as maximum and to pay a fine of Three Hundred Thousand (₱300,000.00)**;

3. In **Criminal Case No. 02-3172**, the Court finds [appellant] LORIE VILLAHERMOSA *y* LECO **GUILTY** of the charge for **violation of [Section] 12, [Article] II, [Republic Act No.] 9165** and **sentences her to suffer the indeterminate sentence of Six (6) months [and] one (1) day as minimum to Four (4) years as maximum and to pay a fine of Ten Thousan** (sic) **(₱10,000.00) pesos**.

In all cases, the period during which the [appellant] was under detention shall be considered in her favor pursuant to existing rules.

The Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the zero point zero six gram (0.06), zero point zero three (0.03), zero point fifty four (0.54), zero point zero two (0.02) gram, zero point zero five (0.05) gram, zero point zero three gram (0.03), traces

and zero point zero three (0.03) gram or a combined weight of zero point seventy six gram (0.76) of Methamphetamine Hydrochloride, one (1) improvised glass tooter, five (5) strips of aluminum foil, fourteen (14) pieces of transparent plastic sachets and three (3) pieces of disposable lighters subject matter of Criminal Cases Nos. 02-3170, 02-3171, 02-3172 for said agency's appropriate disposition.[39] [Emphasis supplied].

Aggrieved, appellant appealed the aforesaid 3 October 2006 Decision of the trial court to the Court of Appeals *via* Notice of Appeal.[40]

In her brief, appellant's lone assignment of error was: *the trial court gravely erred in convicting the [appellant] of the crimes charged notwithstanding the failure of the prosecution to prove her guilt beyond reasonable doubt*.[41]

After a thorough study of the records, the Court of Appeals rendered its assailed Decision dated 23 April 2008, affirming *in toto* appellant's conviction for violation of Sections 5, 11 and 12, Article II of Republic Act No. 9165. The decretal portion reads:

> WHEREFORE, the Decision of the Regional Trial Court of Makati City, Branch 65 in Criminal Cases Nos. 02-3170-72, finding appellant Lorie Villahermosa *y* Leco, guilty beyond reasonable doubt of violation of Sections 5, 11 and 12, Article II of [Republic Act No.] 9165 is hereby **AFFIRMED *in toto***.[42]

Appellant appealed to this Court contending that the trial court gravely erred in giving credence to the testimonies of the prosecution witnesses, *i.e.*, as to when they received the information regarding the alleged selling of *shabu* inside the Manila South Cemetery and whether surveillance was conducted

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[39] CA *rollo*, pp. 30-31.

[40] *Id.* at 32.

[41] Brief for the Accused-Appellant. *Id.* at 39.

[42] *Rollo*, p. 12.

prior to the actual buy-bust operation against appellant, which are replete with material inconsistencies and discrepancies. As such, their testimonies should not be given any weight or credit.

Appellant further argues that the pieces of evidence obtained from her were planted and this was bolstered by the fact that when she was brought to an office she was forced to urinate or gave urine samples.

Appellant finally asserts that she was denied the right to counsel during her investigation at the *barangay* hall, which is in clear violation of the provisions of Republic Act No. 7438.[43]

This Court finds no merit in appellant's contentions.

Essentially, in a prosecution for illegal sale of dangerous drugs, like *shabu* in this case, the following elements must concur: (1) the identity of the buyer and the seller, the object and the consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.[44] The commission of the offense of illegal sale of prohibited drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller.[45] Thus, **what is material to a prosecution for illegal sale of dangerous drugs is proof that the illicit transaction took place, coupled with the presentation in court of the *corpus delicti* or the illicit drug as evidence**.[46] Such proof is present in this case.

Silverio, the *poseur*-buyer, positively identified appellant,[47] who was caught in *flagrante delicto*, to be the same person

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[43] "An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof." This was approved on 27 April 1992.

[44] *People v. Uy*, 392 Phil. 773, 783 (2000).

[45] *People v. Julian-Fernandez*, 423 Phil. 895, 911-912 (2001); *People v. Bandang*, G.R. No. 151314, 3 June 2004, 430 SCRA 570, 579.

[46] *People v. Astudillo*, 440 Phil. 203, 224 (2002); *People v. Concepcion*, 414 Phil. 247, 264 (2001); *People v. Domingcil*, 464 Phil. 342, 351 (2004).

[47] Testimony of Amado Silverio, TSN, 3 April 2003, p. 8.

whom he saw and approached beside a store inside the Manila South Cemetery in *Barangay* Sta. Cruz, Makati City, and who later on sold to him two (2) small plastic sachets containing white crystalline substance for a consideration of ₱400.00. Such white crystalline substance contained inside the two (2) small plastic sachets handed to Silverio by appellant was confirmed to be methamphetamine hydrochloride or *shabu* per Chemistry Report No. D-599-02 dated 1 November 2002 issued by the PNP Crime Laboratory. During trial, the two (2) small plastic sachets containing white crystalline substance were presented in court, which Silverio identified to be the same object sold to him by appellant as shown by the markings found thereon representing his initials written by PO2 Tizon in his presence. Silverio also identified in court the recovered buy-bust money from appellant, which consists of four (4) pieces of ₱100 peso bills in the total amount of ₱400.00 with markings "ASSJR" on the right collar of former President Manuel A. Roxas.[48]

Furthermore, the testimony of Silverio clearly established in detail how his transaction with appellant came about commencing from the moment he approached appellant and expressed his intention of buying the goods appellant was selling, *i.e.*, *shabu*, until the time appellant handed him the two (2) small plastic sachets containing white crystalline substance, which upon examination yielded positive results to the presence of methamphetamine hydrochloride or *shabu*, and in exchange to that he handed appellant four (4) pieces of ₱100.00 peso bills marked money amounting to ₱400.00 that consummated the sale transaction between him and appellant.

Beyond cavil, the prosecution clearly established beyond reasonable doubt appellant's guilt for the offense of illegal sale of *shabu*, a dangerous drug, in violation of Section 5, Article II of Republic Act No. 9165.

In a prosecution for illegal possession of dangerous drugs, *e.g.*, *shabu*, on the other hand, it must be shown that: (1) the

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[48] *Id.* at 8-10; Testimony of Amado Silverio, TSN, 11 March 2004, p. 7.

accused is in possession of an item or an object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. These circumstances of illegal possession are obtaining in the present case.[49]

The aforesaid elements were undeniably substantiated by the prosecution. Incident to her lawful arrest resulting from the buy-bust operation, appellant was further found to have in her possession six (6) more small plastic sachets of *shabu* with a total weight of 0.67 gram, which were the same kind of dangerous drug she was caught selling in *flagrante delicto*. The said six (6) small plastic sachets of *shabu* were similarly presented in court, which Silverio and PO2 Tizon both identified to be the same objects recovered from appellant while she was being frisked by PO2 Tizon on the occasion of her arrest for illegally selling *shabu*.

In addition, the record is bereft of any evidence to show that appellant had the legal authority to possess the six (6) small plastic sachets of *shabu* recovered from her. It has been jurisprudentially settled that possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of a satisfactory explanation of such possession. Hence, the burden of evidence is shifted to the accused to explain the absence of knowledge or *animus possidendi*.[50] In this case, appellant miserably failed to explain her absence of knowledge or *animus possidendi* of the *shabu* recovered from her.

Thus, appellant's guilt for the crime of illegal possession of *shabu*, a dangerous drug, in clear violation of Section 11, Article II of Republic Act No. 9165, has also been duly proven by the prosecution beyond reasonable doubt.

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[49] *People v. Concepcion, supra* note 46 at 255; *People v. Khor*, 366 Phil. 762, 795 (1995).

[50] *People v. Pendatun*, 478 Phil. 201, 212 (2004).

In the same vein, it cannot be denied that on the occasion of her arrest for having been caught in *flagrante delicto* selling *shabu*, a plastic bag was also recovered in her possession containing the following drug paraphernalia, to wit: 14 pieces of unused transparent plastic sachets, three disposable lighters, an improvised *tooter* and five strips of aluminum foil. Possession of the same was in clear violation of Section 12, Article II of Republic Act No. 9165.

It bears stressing that violation of Section 12, Article II of Republic Act No. 9165 was already consummated the moment appellant was found in possession of the said articles without the necessary license or prescription. **What is primordial is the proof of the illegal drugs and paraphernalia recovered from the petitioner**.[51]

Along with the charges against her, supported by the proof of the prosecution, all that appellant could offer was the defense of bare denial. Time and again, this Court held that the defense of denial, like *alibi*, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most cases involving violation of the Dangerous Drugs Act. To merit consideration, it has to be substantiated by clear and convincing evidence, which appellant failed to do.[52]

As regards appellant's contention that the testimonies of the prosecution witnesses, particularly PO2 Tizon and P/Sr. Insp. Walin, should not be given any weight or credit since their testimonies were replete with inconsistencies, this Court finds the same to be not well-founded.

The inconsistencies referred to by appellant in the testimonies of PO2 Tizon and P/Sr. Insp. Walin, were: (1) as to when they received the information regarding the alleged selling of *shabu* by appellant inside the Manila South Cemetery; and (2) whether

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[51] *Arcilla v. Court of Appeals*, 463 Phil. 914, 926 (2003).

[52] *People v. Libnao*, 443 Phil. 506, 520 (2003).

surveillance was conducted prior to the actual buy-bust operation against appellant.

PO2 Tizon testified that they received the information regarding appellant's illegal activity, *i.e.*, selling of *shabu* inside the Manila South Cemetery, on 31 October 2002. P/Sr. Insp. Walin, on the other hand, stated that their office received such information three days before 31 October 2002. P/Sr. Insp. Walin likewise claimed that they conducted surveillance against appellant but, PO2 Tizon denied the same.

As the Court of Appeals had observed, the aforesaid inconsistencies are more apparent than real. Such inconsistencies are merely trivial, minor and immaterial. They refer only to irrelevant and collateral matters, which have nothing to do with the elements of the crime.[53] It has been established that where the inconsistency is not an essential element of the crime, such inconsistency is insignificant and cannot have any bearing on the essential fact testified to. **Inconsistencies and discrepancies in the testimony referring to minor details and not upon the basic aspect of the crime do not diminish the witnesses' credibility**.[54] **More so, an inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction**.[55]

Moreover, there is no requirement that prior surveillance should be conducted before a buy-bust operation can be undertaken. **Prior surveillance is not a prerequisite for the validity of an entrapment or a buy-bust operation**, there being no fixed or textbook method for conducting one.[56] It is enough that the elements of the crime are proven by credible witnesses and other pieces of evidence.[57]

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[53] *People v. Ignas*, 458 Phil. 965, 987-988 (2003).

[54] *People v. Sabardan*, G.R. No. 132135, 21 May 2004, 429 SCRA 9, 19 citing *People v. Monieva*, G.R. No. 123912, 8 June 2000, 333 SCRA 244, 252.

[55] *People v. Ignas*, *supra* note 53 at 988.

[56] *People v. Eugenio*, 443 Phil. 411, 422-423 (2003).

[57] *Id*.

As such, though there are inconsistencies or discrepancies in the testimonies of P/Sr. Insp. Walin and that of PO2 Tizon on the matter of when they received the information concerning appellant's illegal activity inside the Manila South Cemetery, as well as the existence of a prior surveillance on her, the same cannot affect the credibility of their testimonies since those inconsistencies have nothing to do with the elements of any of the offense charged against appellant. Despite the presence of those inconsistencies, the fact still remains that there was indeed, a consummated sale of illegal drugs, *i.e.*, *shabu*, between appellant and Silverio, the *poseur*-buyer, for which appellant was arrested. And, on the occasion of appellant's arrest thereof, she was similarly found to have been in possession of six (6) more small plastic sachets of *shabu*, as well as drug paraphernalia. To reiterate, all the elements of illegal sale of *shabu*, illegal possession of *shabu* and illegal possession of drug paraphernalia had been satisfactorily proven by the prosecution. Thus, the inconsistencies pointed to by appellant cannot and will not in any way discredit the testimonies of the prosecution witnesses' above-mentioned. The same cannot cause her acquittal of the charges against her.

Besides, the rule has been settled that the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect because the trial courts have the advantage of observing the demeanor of witnesses as they testify. This Court will not usually disturb said findings of the trial court in assessing the credibility of the witnesses, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted by the trial court. This arises from the fact that the lower courts are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals as in this case.[58]

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[58] *People v. Campomanes*, G.R. No. 187741, 9 August 2010, 627 SCRA 494, 504.

Moreover, it may be noted that there is nothing on record to indicate that the prosecution witnesses harbored ill-motives against appellant. In several drug cases, this Court has consistently held that in the absence of proof to the contrary, law enforcers are presumed to have regularly performed their duty.[59]

In appellant's effort to exonerate herself from the charges against her, she similarly claimed that the pieces of evidence obtained from her were planted, bolstered by the fact that when she was brought to an office she was forced to urinate or gave urine samples. This assertion cannot be accepted.

Noticeably, appellant's testimony remained uncorroborated. She never adduced any evidence to support her self-serving allegation. Indeed, as noted by the Court of Appeals in its decision, the result of appellant's urine samples was not even considered by the trial court in determining her guilt for violation of the provisions of Republic Act No. 9165. Otherwise stated, even without her urine samples, she can still be convicted of the charges against her, *i.e.*, illegal sale of *shabu* (violation of Section 5, Article II of Republic Act No. 9165), illegal possession of *shabu* (violation of Section 11, Article II of Republic Act No. 9165) and illegal possession of drug paraphernalia (violation of Section 12, Article II of Republic Act No. 9165). The result of appellant's urine samples is not an element of any of the offense charged against her. As such, the result of the same is not necessary for her conviction.

Appellant's final assertion that she was denied the right to counsel during her investigation at the *barangay* hall, which is in violation of the provisions of Republic Act No. 7438 deserves scant consideration. Here, we quote with conformity appellate court's pronouncement on this matter:

Likewise, **appellant's late assertion that she was allegedly denied the right to counsel during the time when she was inside the *barangay* hall is not an issue in the present case**. As correctly

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[59] *People v. Sy Bing Yok*, 368 Phil. 326, 340 (1999).

pointed by the People, **no extrajudicial statement was taken from her, hence her right to counsel was not violated**. The trial court relied on the testimonies of the prosecution witnesses and not on any extrajudicial statement in the determination of appellant's culpability of the charges against her.[60] [Emphasis supplied].

This Court will now determine the imposable penalties upon appellant.

Section 5, Article II of Republic Act No. 9165 explicitly provides the penalty for the illegal sale of dangerous drugs, like *shabu*, *viz*.:

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. [Emphasis supplied].

It is clear from the afore-quoted provision of law that the sale of any dangerous drug, like *shabu*, notwithstanding its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00.[61] In light, however, of the effectivity of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been proscribed.[62] Ergo, the penalty applicable to

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[60] *Rollo*, p. 12.

[61] *People v. Sembrano*, G.R. No. 185848, 16 August 2010, 628 SCRA 328, 343-344 citing *People v. Serrano*, G.R. No. 179038, 6 May 2010, 620 SCRA 327, 345.

[62] *People v. Sembrano*, *id.* at 344.

appellant shall only be life imprisonment and fine without eligibility for parole. This Court, thus, sustains the penalty of imprisonment and fine imposed upon appellant by the trial court, which later on affirmed by the Court of Appeals, in Criminal Case No. 02-3170 for illegal sale of *shabu* in violation of Section 5, Article II of Republic Act No. 9165.

Illegal possession of dangerous drugs, like *shabu*, on the other hand, is penalized under Section 11, Article II of Republic Act No. 9165, to wit:

SEC. 11. ***Possession of Dangerous Drugs***. – 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) x x x x x x x x x

(2) x x x x x x x x x

(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 opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana. [Emphasis supplied].

The afore-quoted provision unequivocally states that illegal possession of less than five grams of *shabu*, a dangerous drug, is penalized with imprisonment of 12 years and 1 day to 20 years and a fine ranging from ₱300,000.00 to ₱400,000.00.[63]

The evidence adduced by the prosecution in Criminal Case No. 02-3171 established beyond reasonable doubt that appellant, without any legal authority, had in his possession 0.67 grams of *shabu* or less than five grams thereof.

Applying the Indeterminate Sentence Law, the minimum period of the imposable penalty shall not fall below the minimum period set by the law; the maximum period shall not exceed the maximum period allowed under the law.[64] With this, the penalty of 12 years and 1 day to 14 years and 1 day and fine of ₱300,000.00 imposed by the trial court and affirmed by the appellate court is proper.

The penalty for illegal possession of drug paraphernalia is provided for under Section 12, Article II of Republic Act No. 9165, thus:

SEC 12. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs*. – **The 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) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body**: *Provided*, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof. [Emphasis supplied].

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[63] *Id.* at 345.

[64] *Id.*

On the basis of the foregoing provision, possession of drug paraphernalia without any authority is punishable by imprisonment ranging from 6 months and 1 day to 4 years and a fine of ₱10,000.00 to ₱50,000.00.

Again, applying the Indeterminate Sentence Law, the penalty of 6 months and 1 day to 4 years and a fine of ₱10,000.00 imposed upon appellant by both lower courts in Criminal Case No. 02-3172 is likewise correct.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR HC No. 02598 dated 23 April 2008 finding herein appellant guilty beyond reasonable doubt of violation of Sections 5, 11 and 12, Article II of Republic Act No. 9165 is hereby *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 188064. June 1, 2011]

MILA A. REYES, *petitioner*, *vs.* **VICTORIA T. TUPARAN,** *respondent.*

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[*] Per Special Order No. 994, Associate Justice Diosdado M. Peralta is designated as Additional Member of the First Division in place of Associate Justice Mariano C. Del Castillo who is on official leave.

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT TO SELL; ESTABLISHED IN CASE AT BAR.— The Court agrees with the ruling of the courts below that the subject Deed of Conditional Sale with Assumption of Mortgage entered into by and among the two parties and FSL Bank on November 26, 1990 is a contract to sell and not a contract of sale. x x x [T]he title and ownership of the subject properties remains with the petitioner until the respondent fully pays the balance of the purchase price and the assumed mortgage obligation. Thereafter, FSL Bank shall then issue the corresponding deed of cancellation of mortgage and the petitioner shall execute the corresponding deed of absolute sale in favor of the respondent. Accordingly, the petitioner's obligation to sell the subject properties becomes demandable only upon the happening of the positive suspensive condition, which is the respondent's full payment of the purchase price. Without respondent's full payment, there can be no breach of contract to speak of because petitioner has no obligation yet to turn over the title. Respondent's failure to pay in full the purchase price is not the breach of contract contemplated under Article 1191 of the New Civil Code but rather just an event that prevents the petitioner from being bound to convey title to the respondent.

2. ID.; CONTRACTS; RESCISSION OF CONTRACTS; UNLESS THE PARTIES STIPULATED IT, RESCISSION IS ALLOWED ONLY WHEN THE BREACH OF THE CONTRACT IS SUBSTANTIAL AND FUNDAMENTAL TO THE FULFILLMENT OF THE OBLIGATION; CASE AT BAR.— Unless the parties stipulated it, rescission is allowed only when the breach of the contract is substantial and fundamental to the fulfillment of the obligation. Whether the breach is slight or substantial is largely determined by the attendant circumstances. x x x From the records, it cannot be denied that respondent paid to FSL Bank petitioner's mortgage obligation in the amount of ₱2,278,078.13, which formed part of the purchase price of the subject property. Likewise, it is not disputed that respondent paid directly to petitioner the amount of ₱721,921.87 representing the additional payment for the purchase of the subject property. Clearly, out of the

total price of ₱4,200,000.00, respondent was able to pay the total amount of ₱3,000,000.00, leaving a balance of ₱1,200,000.00 payable in three (3) installments. Out of the ₱1,200,000.00 remaining balance, respondent paid on several dates the first and second installments of ₱200,000.00 each. She, however, failed to pay the third and last installment of ₱800,000.00 due on December 31, 1991. Nevertheless, on August 31, 1992, respondent, through counsel, offered to pay the amount of ₱751,000.00, which was rejected by petitioner for the reason that the actual balance was ₱805,000.00 excluding the interest charges. Considering that out of the total purchase price of ₱4,200,000.00, respondent has already paid the substantial amount of ₱3,400,000.00, more or less, leaving an unpaid balance of only ₱805,000.00, it is right and just to allow her to settle, within a reasonable period of time, the balance of the unpaid purchase price. The Court agrees with the courts below that the respondent showed her sincerity and willingness to comply with her obligation when she offered to pay the petitioner the amount of ₱751,000.00.

3. ID.; DAMAGES; THE NON-IMPOSITION OF DAMAGES AND ATTORNEY'S FEES IS JUSTIFIED WHERE THERE IS NOT ENOUGH EVIDENCE TO PROVE THAT THE DEFENDANT ACTED FRAUDULENTLY AND MALICIOUSLY AGAINST THE PLAINTIFF.— [T]he Court upholds the ruling of the courts below regarding the non-imposition of damages and attorney's fees. Aside from petitioner's self-serving statements, there is not enough evidence on record to prove that respondent acted fraudulently and maliciously against the petitioner.

APPEARANCES OF COUNSEL

Venustiano S. Roxas & Associates Law Office for petitioner.
Alentajan Law Office and *Aireen D. Sison* for respondent.

D E C I S I O N

MENDOZA, *J.*:

Subject of this petition for review is the February 13, 2009 Decision[1] of the Court of Appeals *(CA)* which affirmed with modification the February 22, 2006 Decision[2] of the Regional Trial Court, Branch 172, Valenzuela City *(RTC)*, in Civil Case No. 3945-V-92, an action for Rescission of Contract with Damages.

On September 10, 1992, Mila A. Reyes *(petitioner)* filed a complaint for Rescission of Contract with Damages against Victoria T. Tuparan *(respondent)* before the RTC. In her Complaint, petitioner alleged, among others, that she was the registered owner of a 1,274 square meter residential and commercial lot located in Karuhatan, Valenzuela City, and covered by TCT No. V-4130; that on that property, she put up a three-storey commercial building known as RBJ Building and a residential apartment building; that since 1990, she had been operating a drugstore and cosmetics store on the ground floor of RBJ Building where she also had been residing while the other areas of the buildings including the sidewalks were being leased and occupied by tenants and street vendors.

In December 1989, respondent leased from petitioner a space on the ground floor of the RBJ Building for her pawnshop business for a monthly rental of ₱4,000.00. A close friendship developed between the two which led to the respondent investing thousands of pesos in petitioner's financing/lending business from February 7, 1990 to May 27, 1990, with interest at the rate of 6% a month.

On June 20, 1988, petitioner mortgaged the subject real properties to the Farmers Savings Bank and Loan Bank, Inc.

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[1] *Rollo*, pp. 72-102; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Normandie B. Pizarro.

[2] *Id.* at 147-162.

(FSL Bank) to secure a loan of ₱2,000,000.00 payable in installments. On November 15, 1990, petitioner's outstanding account on the mortgage reached ₱2,278,078.13. Petitioner then decided to sell her real properties for at least ₱6,500,000.00 so she could liquidate her bank loan and finance her businesses. As a gesture of friendship, respondent verbally offered to conditionally buy petitioner's real properties for ₱4,200,000.00 payable on installment basis without interest and to assume the bank loan. To induce the petitioner to accept her offer, respondent offered the following conditions/concessions:

1. That the conditional sale will be cancelled if the plaintiff (*petitioner*) can find a buyer of said properties for the amount of ₱6,500,000.00 within the next three (3) months provided all amounts received by the plaintiff from the defendant (*respondent*) including payments actually made by defendant to Farmers Savings and Loan Bank would be refunded to the defendant with additional interest of six (6%) monthly;

2. That the plaintiff would continue using the space occupied by her and drugstore and cosmetics store without any rentals for the duration of the installment payments;

3. That there will be a lease for fifteen (15) years in favor of the plaintiff over the space for drugstore and cosmetics store at a monthly rental of only ₱8,000.00 after full payment of the stipulated installment payments are made by the defendant;

4. That the defendant will undertake the renewal and payment of the fire insurance policies on the two (2) subject buildings following the expiration of the then existing fire insurance policy of the plaintiff up to the time that plaintiff is fully paid of the total purchase price of ₱4,200,000.00.[3]

After petitioner's verbal acceptance of all the conditions/concessions, both parties worked together to obtain FSL Bank's approval for respondent to assume her (petitioner's) outstanding bank account. The assumption would be part of respondent's purchase price for petitioner's mortgaged real properties. FSL

[3] Paragraph 11 of the Complaint, *id.* at 176.

Bank approved their proposal on the condition that petitioner would sign or remain as co-maker for the mortgage obligation assumed by respondent.

On November 26, 1990, the parties and FSL Bank executed the corresponding Deed of Conditional Sale of Real Properties with Assumption of Mortgage. Due to their close personal friendship and business relationship, both parties chose not to reduce into writing the other terms of their agreement mentioned in paragraph 11 of the complaint. Besides, FSL Bank did not want to incorporate in the Deed of Conditional Sale of Real Properties with Assumption of Mortgage any other side agreement between petitioner and respondent.

Under the Deed of Conditional Sale of Real Properties with Assumption of Mortgage, respondent was bound to pay the petitioner a lump sum of ₱1.2 million pesos without interest as part of the purchase price in three (3) fixed installments as follows:

a) ₱200,000.00 – due January 31, 1991

b) ₱200,000.00 – due June 30, 1991

c) ₱800,000.00 – due December 31, 1991

Respondent, however, defaulted in the payment of her obligations on their due dates. Instead of paying the amounts due in lump sum on their respective maturity dates, respondent paid petitioner in small amounts from time to time. To compensate for her delayed payments, respondent agreed to pay petitioner an interest of 6% a month. As of August 31, 1992, respondent had only paid ₱395,000.00, leaving a balance of ₱805,000.00 as principal on the unpaid installments and ₱466,893.25 as unpaid accumulated interest.

Petitioner further averred that despite her success in finding a prospective buyer for the subject real properties within the 3-month period agreed upon, respondent reneged on her promise to allow the cancellation of their deed of conditional sale. Instead, respondent became interested in owning the subject real properties

and even wanted to convert the entire property into a modern commercial complex. Nonetheless, she consented because respondent repeatedly professed friendship and assured her that all their verbal side agreement would be honored as shown by the fact that since December 1990, she (respondent) had not collected any rentals from the petitioner for the space occupied by her drugstore and cosmetics store.

On March 19, 1992, the residential building was gutted by fire which caused the petitioner to lose rental income in the amount of ₱8,000.00 a month since April 1992. Respondent neglected to renew the fire insurance policy on the subject buildings.

Since December 1990, respondent had taken possession of the subject real properties and had been continuously collecting and receiving monthly rental income from the tenants of the buildings and vendors of the sidewalk fronting the RBJ building without sharing it with petitioner.

On September 2, 1992, respondent offered the amount of ₱751,000.00 only payable on September 7, 1992, as full payment of the purchase price of the subject real properties and demanded the simultaneous execution of the corresponding deed of absolute sale.

Respondent's Answer

Respondent countered, among others, that the tripartite agreement erroneously designated by the petitioner as a Deed of Conditional Sale of Real Property with Assumption of Mortgage was actually a pure and absolute contract of sale with a term period. It could not be considered a conditional sale because the acquisition of contractual rights and the performance of the obligation therein did not depend upon a future and uncertain event. Moreover, the capital gains and documentary stamps and other miscellaneous expenses and real estate taxes up to 1990 were supposed to be paid by petitioner but she failed to do so.

Respondent further averred that she successfully rescued the properties from a definite foreclosure by paying the assumed mortgage in the amount of ₱2,278,078.13 plus interest and other finance charges. Because of her payment, she was able to obtain a deed of cancellation of mortgage and secure a release of mortgage on the subject real properties including petitioner's ancestral residential property in Sta. Maria, Bulacan.

Petitioner's claim for the balance of the purchase price of the subject real properties was baseless and unwarranted because the full amount of the purchase price had already been paid, as she did pay more than ₱4,200,000.00, the agreed purchase price of the subject real properties, and she had even introduced improvements thereon worth more than ₱4,800,000.00. As the parties could no longer be restored to their original positions, rescission could not be resorted to.

Respondent added that as a result of their business relationship, petitioner was able to obtain from her a loan in the amount of ₱400,000.00 with interest and took several pieces of jewelry worth ₱120,000.00. Petitioner also failed and refused to pay the monthly rental of ₱20,000.00 since November 16, 1990 up to the present for the use and occupancy of the ground floor of the building on the subject real property, thus, accumulating arrearages in the amount of ₱470,000.00 as of October 1992.

Ruling of the RTC

On February 22, 2006, the RTC handed down its decision finding that respondent failed to pay in full the ₱4.2 million total purchase price of the subject real properties leaving a balance of ₱805,000.00. It stated that the checks and receipts presented by respondent refer to her payments of the mortgage obligation with FSL Bank and not the payment of the balance of ₱1,200,000.00. The RTC also considered the Deed of Conditional Sale of Real Property with Assumption of Mortgage executed by and among the two parties and FSL Bank a contract to sell, and not a contract of sale. It was of the opinion that although the petitioner was entitled to a rescission of the contract, it could not be permitted because her non-payment in full of the

purchase price "may not be considered as substantial and fundamental breach of the contract as to defeat the object of the parties in entering into the contract."[4] The RTC believed that the respondent's offer stated in her counsel's letter dated September 2, 1992 to settle what she thought was her unpaid balance of ₱751,000.00 showed her sincerity and willingness to settle her obligation. Hence, it would be more equitable to give respondent a chance to pay the balance plus interest within a given period of time.

Finally, the RTC stated that there was no factual or legal basis to award damages and attorney's fees because there was no proof that either party acted fraudulently or in bad faith.

Thus, the dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered as follows:

1. Allowing the defendant to pay the plaintiff within thirty (30) days from the finality hereof the amount of ₱805,000.00, representing the unpaid purchase price of the subject property, with interest thereon at 2% a month from January 1, 1992 until fully paid. Failure of the defendant to pay said amount within the said period shall cause the automatic rescission of the contract (Deed of Conditional Sale of Real Property with Assumption of Mortgage) and the plaintiff and the defendant shall be restored to their former positions relative to the subject property with each returning to the other whatever benefits each derived from the transaction;

2. Directing the defendant to allow the plaintiff to continue using the space occupied by her for drugstore and cosmetic store without any rental pending payment of the aforesaid balance of the purchase price.

3. Ordering the defendant, upon her full payment of the purchase price together with interest, to execute a contract of lease for fifteen (15) years in favor of the plaintiff over the space for the drugstore and cosmetic store at a fixed monthly rental of ₱8,000.00; and

4. Directing the plaintiff, upon full payment to her by the defendant of the purchase price together with interest, to execute the necessary

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[4] *Id.* at 160.

deed of sale, as well as to pay the Capital Gains Tax, documentary stamps and other miscellaneous expenses necessary for securing the BIR Clearance, and to pay the real estate taxes due on the subject property up to 1990, all necessary to transfer ownership of the subject property to the defendant.

No pronouncement as to damages, attorney's fees and costs.

SO ORDERED.[5]

Ruling of the CA

On February 13, 2009, the CA rendered its decision affirming with modification the RTC Decision. The CA agreed with the RTC that the contract entered into by the parties is a contract to sell but ruled that the remedy of rescission could not apply because the respondent's failure to pay the petitioner the balance of the purchase price in the total amount of ₱805,000.00 was not a breach of contract, but merely an event that prevented the seller (petitioner) from conveying title to the purchaser (respondent). It reasoned that out of the total purchase price of the subject property in the amount of ₱4,200,000.00, respondent's remaining unpaid balance was only ₱805,000.00. Since respondent had already paid a substantial amount of the purchase price, it was but right and just to allow her to pay the unpaid balance of the purchase price plus interest. Thus, the decretal portion of the CA Decision reads:

WHEREFORE, premises considered, the Decision dated 22 February 2006 and Order dated 22 December 2006 of the Regional Trial Court of Valenzuela City, Branch 172 in Civil Case No. 3945-V-92 are AFFIRMED with MODIFICATION in that defendant-appellant Victoria T. Tuparan is hereby ORDERED to pay plaintiff-appellee/appellant Mila A. Reyes, within 30 days from finality of this Decision, the amount of ₱805,000.00 representing the unpaid balance of the purchase price of the subject property, plus interest thereon at the rate of 6% per annum from 11 September 1992 up to finality of this Decision and, thereafter, at the rate of 12% per annum until full payment. The ruling of the trial court on the automatic

[5] *Id.* at 162.

rescission of the Deed of Conditional Sale with Assumption of Mortgage is hereby DELETED. Subject to the foregoing, the dispositive portion of the trial court's decision is AFFIRMED in all other respects.

SO ORDERED.[6]

After the denial of petitioner's motion for reconsideration and respondent's motion for partial reconsideration, petitioner filed the subject petition for review praying for the reversal and setting aside of the CA Decision anchored on the following

ASSIGNMENT OF ERRORS

A. THE COURT OF APPEALS SERIOUSLY ERRED AND ABUSED ITS DISCRETION IN DISALLOWING THE OUTRIGHT RESCISSION OF THE SUBJECT DEED OF CONDITIONAL SALE OF REAL PROPERTIES WITH ASSUMPTION OF MORTGAGE ON THE GROUND THAT RESPONDENT TUPARAN'S FAILURE TO PAY PETITIONER REYES THE BALANCE OF THE PURCHASE PRICE OF ₱805,000.00 IS NOT A BREACH OF CONTRACT DESPITE ITS OWN FINDINGS THAT PETITIONER STILL RETAINS OWNERSHIP AND TITLE OVER THE SUBJECT REAL PROPERTIES DUE TO RESPONDENT'S REFUSAL TO PAY THE BALANCE OF THE TOTAL PURCHASE PRICE OF ₱805,000.00 WHICH IS EQUAL TO 20% OF THE TOTAL PURCHASE PRICE OF ₱4,200,000.00 OR 66% OF THE STIPULATED LAST INSTALLMENT OF ₱1,200,000.00 PLUS THE INTEREST THEREON. IN EFFECT, THE COURT OF APPEALS AFFIRMED AND ADOPTED THE TRIAL COURT'S CONCLUSION THAT THE RESPONDENT'S NON-PAYMENT OF THE ₱805,000.00 IS ONLY A SLIGHT OR CASUAL BREACH OF CONTRACT.

B. THE COURT OF APPEALS SERIOUSLY ERRED AND ABUSED ITS DISCRETION IN DISREGARDING AS GROUND FOR THE RESCISSION OF THE SUBJECT CONTRACT THE OTHER FRAUDULENT AND MALICIOUS ACTS COMMITTED BY THE RESPONDENT AGAINST THE PETITIONER WHICH

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[6] *Id.* at 101-102.

BY THEMSELVES SUFFICIENTLY JUSTIFY A DENIAL OF A GRACE PERIOD OF THIRTY (30) DAYS TO THE RESPONDENT WITHIN WHICH TO PAY TO THE PETITIONER THE ₱805,000.00 PLUS INTEREST THEREON.

C. EVEN ASSUMING *ARGUENDO* THAT PETITIONER IS NOT ENTITLED TO THE RESCISSION OF THE SUBJECT CONTRACT, THE COURT OF APPEALS STILL SERIOUSLY ERRED AND ABUSED ITS DISCRETION IN REDUCING THE INTEREST ON THE ₱805,000.00 TO ONLY "6% PER ANNUM STARTING FROM THE DATE OF FILING OF THE COMPLAINT ON SEPTEMBER 11, 1992" DESPITE THE PERSONAL COMMITMENT OF THE RESPONDENT AND AGREEMENT BETWEEN THE PARTIES THAT RESPONDENT WILL PAY INTEREST ON THE ₱805,000.00 AT THE RATE OF 6% MONTHLY STARTING THE DATE OF DELINQUENCY ON DECEMBER 31, 1991.

D. THE COURT OF APPEALS SERIOUSLY ERRED AND ABUSED ITS DISCRETION IN THE APPRECIATION AND/OR MISAPPRECIATION OF FACTS RESULTING INTO THE DENIAL OF THE CLAIM OF PETITIONER REYES FOR ACTUAL DAMAGES WHICH CORRESPOND TO THE MILLIONS OF PESOS OF RENTALS/FRUITS OF THE SUBJECT REAL PROPERTIES WHICH RESPONDENT TUPARAN COLLECTED CONTINUOUSLY SINCE DECEMBER 1990, EVEN WITH THE UNPAID BALANCE OF ₱805,000.00 AND DESPITE THE FACT THAT RESPONDENT DID NOT CONTROVERT SUCH CLAIM OF THE PETITIONER AS CONTAINED IN HER AMENDED COMPLAINT DATED APRIL 22, 2006.

E. THE COURT OF APPEALS SERIOUSLY ERRED AND ABUSED ITS DISCRETION IN THE APPRECIATION OF FACTS RESULTING INTO THE DENIAL OF THE CLAIM OF PETITIONER REYES FOR THE ₱29,609.00 BACK RENTALS THAT WERE COLLECTED BY RESPONDENT TUPARAN FROM THE OLD TENANTS OF THE PETITIONER.

F. THE COURT OF APPEALS SERIOUSLY ERRED AND ABUSED ITS DISCRETION IN DENYING THE PETITIONER'S EARLIER "URGENT MOTION FOR ISSUANCE OF A PRELIMINARY MANDATORY AND PROHIBITORY INJUNCTION" DATED JULY 7, 2008 AND THE

"SUPPLEMENT" THERETO DATED AUGUST 4, 2008 THEREBY CONDONING THE UNJUSTIFIABLE FAILURE/ REFUSAL OF JUDGE FLORO ALEJO TO RESOLVE WITHIN ELEVEN (11) YEARS THE PETITIONER'S THREE (3) SEPARATE "MOTIONS FOR PRELIMINARY INJUNCTION/ TEMPORARY RESTRAINING ORDER, ACCOUNTING AND DEPOSIT OF RENTAL INCOME" DATED MARCH 17, 1995, AUGUST 19, 1996 AND JANUARY 7, 2006 THEREBY PERMITTING THE RESPONDENT TO UNJUSTLY ENRICH HERSELF BY CONTINUOUSLY COLLECTING ALL THE RENTALS/FRUITS OF THE SUBJECT REAL PROPERTIES WITHOUT ANY ACCOUNTING AND COURT DEPOSIT OF THE COLLECTED RENTALS/FRUITS AND THE PETITIONERS "URGENT MOTION TO DIRECT DEFENDANT VICTORIA TUPARAN TO PAY THE ACCUMULATED UNPAID REAL ESTATE TAXES AND SEF TAXES ON THE SUBJECT REAL PROPERTIES" DATED JANUARY 13, 2007 THEREBY EXPOSING THE SUBJECT REAL PROPERTIES TO IMMINENT AUCTION SALE BY THE CITY TREASURER OF VALENZUELA CITY.

G. THE COURT OF APPEALS SERIOUSLY ERRED AND ABUSED ITS DISCRETION IN DENYING THE PETITIONER'S CLAIM FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES AGAINST THE RESPONDENT.

In sum, the crucial issue that needs to be resolved is whether or not the CA was correct in ruling that there was no legal basis for the rescission of the Deed of Conditional Sale with Assumption of Mortgage.

Position of the Petitioner

The petitioner basically argues that the CA should have granted the rescission of the subject Deed of Conditional Sale of Real Properties with Assumption of Mortgage for the following reasons:

1. The subject deed of conditional sale is a reciprocal obligation whose outstanding characteristic is reciprocity arising from identity of cause by virtue of which one obligation is correlative of the other.

2. The petitioner was rescinding – not enforcing – the subject Deed of Conditional Sale pursuant to Article 1191 of the Civil Code because of the respondent's failure/refusal to pay the ₱805,000.00 balance of the total purchase price of the petitioner's properties within the stipulated period ending December 31, 1991.

3. There was no slight or casual breach on the part of the respondent because she (respondent) deliberately failed to comply with her contractual obligations with the petitioner by violating the terms or manner of payment of the ₱1,200,000.00 balance and unjustly enriched herself at the expense of the petitioner by collecting all rental payments for her personal benefit and enjoyment.

Furthermore, the petitioner claims that the respondent is liable to pay interest at the rate of 6% per month on her unpaid installment of ₱805,000.00 from the date of the delinquency, December 31, 1991, because she obligated herself to do so.

Finally, the petitioner asserts that her claim for damages or lost income as well as for the back rentals in the amount of ₱29,609.00 has been fully substantiated and, therefore, should have been granted by the CA. Her claim for moral and exemplary damages and attorney's fees has been likewise substantiated.

Position of the Respondent

The respondent counters that the subject Deed of Conditional Sale with Assumption of Mortgage entered into between the parties is a contract to sell and not a contract of sale because the title of the subject properties still remains with the petitioner as she failed to pay the installment payments in accordance with their agreement.

Respondent echoes the RTC position that her inability to pay the full balance on the purchase price may not be considered as a substantial and fundamental breach of the subject contract and it would be more equitable if she would be allowed to pay the balance including interest within a certain period of time. She claims that as early as 1992, she has shown her sincerity

by offering to pay a certain amount which was, however, rejected by the petitioner.

Finally, respondent states that the subject deed of conditional sale explicitly provides that the installment payments shall not bear any interest. Moreover, petitioner failed to prove that she was entitled to back rentals.

The Court's Ruling

The petition lacks merit.

The Court agrees with the ruling of the courts below that the subject Deed of Conditional Sale with Assumption of Mortgage entered into by and among the two parties and FSL Bank on November 26, 1990 is a contract to sell and not a contract of sale. The subject contract was correctly classified as a contract to sell based on the following pertinent stipulations:

> 8. That the title and ownership of the subject real properties shall remain with the First Party until the full payment of the Second Party of the balance of the purchase price and liquidation of the mortgage obligation of ₱2,000,000.00. Pending payment of the balance of the purchase price and liquidation of the mortgage obligation that was assumed by the Second Party, the Second Party shall not sell, transfer and convey and otherwise encumber the subject real properties without the written consent of the First and Third Party.
>
> 9. That upon full payment by the Second Party of the full balance of the purchase price and the assumed mortgage obligation herein mentioned the Third Party shall issue the corresponding Deed of Cancellation of Mortgage and the First Party shall execute the corresponding Deed of Absolute Sale in favor of the Second Party.[7]

Based on the above provisions, the title and ownership of the subject properties remains with the petitioner until the respondent fully pays the balance of the purchase price and the assumed mortgage obligation. Thereafter, FSL Bank shall then issue the corresponding deed of cancellation of mortgage and the petitioner shall execute the corresponding deed of absolute sale in favor of the respondent.

[7] Memorandum for Respondent, *id.* at 395.

Accordingly, the petitioner's obligation to sell the subject properties becomes demandable only upon the happening of the positive suspensive condition, which is the respondent's full payment of the purchase price. Without respondent's full payment, there can be no breach of contract to speak of because petitioner has no obligation yet to turn over the title. Respondent's failure to pay in full the purchase price is not the breach of contract contemplated under Article 1191 of the New Civil Code but rather just an event that prevents the petitioner from being bound to convey title to the respondent. The 2009 case of *Nabus v. Joaquin & Julia Pacson*[8] is enlightening:

> The Court holds that the contract entered into by the Spouses Nabus and respondents was a contract to sell, not a contract of sale.
>
> A contract of sale is defined in Article 1458 of the Civil Code, thus:
>
> Art. 1458. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.
>
> x x x x x x x x x
>
> Sale, by its very nature, is a consensual contract because it is perfected by mere consent. The essential elements of a contract of sale are the following:
>
> a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price;
> b) Determinate subject matter; and
> c) Price certain in money or its equivalent.
>
> Under this definition, a Contract to Sell may not be considered as a Contract of Sale because the first essential element is lacking. In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment

[8] G.R. No. 161318, November 25, 2009, 605 SCRA 334, 348-353.

of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and, thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.

x x x x x x x x x

Stated positively, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, the prospective seller's obligation to sell the subject property by entering into a contract of sale with the prospective buyer becomes demandable as provided in Article 1479 of the Civil Code which states:

Art. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

A contract to sell may thus be defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.

A contract to sell as defined hereinabove, may not even be considered as a conditional contract of sale where the seller may likewise reserve title to the property subject of the sale until the fulfillment of a suspensive condition, because in a conditional contract of sale, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur. If the suspensive condition is not fulfilled, the perfection of the contract of sale is completely abated. However, if the suspensive condition is fulfilled, the contract of sale is thereby perfected, such that if there had already been previous delivery of the property subject of the sale to the buyer, ownership thereto automatically transfers to the buyer by operation of law without any further act having to be performed by the seller.

In a contract to sell, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, ownership will not automatically transfer to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.

Further, *Chua v. Court of Appeals*, cited this distinction between a contract of sale and a contract to sell:

> In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; in a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a contract of sale, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas, in a contract to sell, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.

It is not the title of the contract, but its express terms or stipulations that determine the kind of contract entered into by the parties. In this case, the contract entitled "Deed of Conditional Sale" is actually a contract to sell. The contract stipulated that "as soon as the full consideration of the sale has been paid by the vendee, the corresponding transfer documents shall be executed by the vendor to the vendee for the portion sold." Where the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price, the contract is only a contract to sell." The aforecited stipulation shows that the vendors reserved title to the subject property until full payment of the purchase price.

x x x x x x x x x

Unfortunately for the Spouses Pacson, since the Deed of Conditional Sale executed in their favor was merely a contract to sell, the obligation of the seller to sell becomes demandable only upon the happening of the suspensive condition. The full payment of the purchase price is the positive suspensive condition, the failure of which is **not** a breach of contract, but simply **an event that prevented the obligation of the vendor to convey title from**

acquiring binding force. Thus, for its non-fulfilment, there is no contract to speak of, the obligor having failed to perform the suspensive condition which enforces a juridical relation. With this circumstance, there can be **no rescission** or fulfillment of an obligation that is still non-existent, the suspensive condition not having occurred as yet. Emphasis should be made that **the breach contemplated in Article 1191 of the New Civil Code is the obligor's failure to comply with an obligation already extant, not a failure of a condition to render binding that obligation.** [Emphases and underscoring supplied]

Consistently, the Court handed down a similar ruling in the 2010 case of *Heirs of Atienza v. Espidol*,[9] where it was written:

Regarding the right to cancel the contract for non-payment of an installment, there is need to initially determine if what the parties had was a contract of sale or a contract to sell. In a contract of sale, the title to the property passes to the buyer upon the delivery of the thing sold. In a contract to sell, on the other hand, the ownership is, by agreement, retained by the seller and is not to pass to the vendee until full payment of the purchase price. In the contract of sale, the buyer's non-payment of the price is a negative resolutory condition; in the contract to sell, the buyer's full payment of the price is a positive suspensive condition to the coming into effect of the agreement. In the first case, the seller has lost and cannot recover the ownership of the property unless he takes action to set aside the contract of sale. In the second case, the title simply remains in the seller if the buyer does not comply with the condition precedent of making payment at the time specified in the contract. Here, it is quite evident that the contract involved was one of a contract to sell since the Atienzas, as sellers, were to retain title of ownership to the land until respondent Espidol, the buyer, has paid the agreed price. Indeed, there seems no question that the parties understood this to be the case.

Admittedly, Espidol was unable to pay the second installment of ₱1,750,000.00 that fell due in December 2002. That payment, said both the RTC and the CA, was a positive suspensive condition failure of which was **not** regarded a breach in the sense that **there can be no rescission of an obligation (to turn over title) that did not**

[9] G.R. No. 180665, August 11, 2010, 628 SCRA 256, 262-263.

yet exist since the suspensive condition had not taken place. x x x. [Emphases and underscoring supplied]

Thus, the Court fully agrees with the CA when it resolved: "Considering, however, that the Deed of Conditional Sale was not cancelled by Vendor Reyes (petitioner) and that out of the total purchase price of the subject property in the amount of ₱4,200,000.00, the remaining unpaid balance of Tuparan (respondent) is only ₱805,000.00, a substantial amount of the purchase price has already been paid. It is only right and just to allow Tuparan to pay the said unpaid balance of the purchase price to Reyes."[10]

Granting that a rescission can be permitted under Article 1191, the Court still cannot allow it for the reason that, considering the circumstances, there was only a slight or casual breach in the fulfillment of the obligation.

Unless the parties stipulated it, rescission is allowed only when the breach of the contract is substantial and fundamental to the fulfillment of the obligation. Whether the breach is slight or substantial is largely determined by the attendant circumstances.[11] In the case at bench, the subject contract stipulated the following important provisions:

2. That the purchase price of ₱4,200,000.00 shall be paid as follows:

a) ₱278,078.13 received in cash by the First Party but directly paid to the Third Party as partial payment of the mortgage obligation of the First Party in order to reduce the amount to ₱2,000,000.00 only as of November 15, 1990;

b) ₱721,921.87 received in cash by the First Party as additional payment of the Second Party;

c) ₱1,200,000.00 to be paid in installments as follows:

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[10] CA Decision, *rollo,* p. 100.

[11] *GG Sportswear Mfg. Corp. v. World Class Properties, Inc.*, G.R. No. 182720, March 2, 2010, 614 SCRA 75, 87.

1. ₱200,000.00 payable on or before January 31, 1991;
2. ₱200,000.00 payable on or before June 30, 1991;
3. ₱800,000.00 payable on or before December 31, 1991;

Note: All the installments shall not bear any interest.

d) ₱2,000,000.00 outstanding balance of the mortgage obligation as of November 15, 1990 which is hereby assumed by the Second Party.

x x x x x x x x x

3. That the Third Party hereby acknowledges receipts from the Second Party ₱278,078.13 as partial payment of the loan obligation of First Party in order to reduce the account to only ₱2,000,000.00 as of November 15, 1990 to be assumed by the Second Party effective November 15, 1990.[12]

From the records, it cannot be denied that respondent paid to FSL Bank petitioner's mortgage obligation in the amount of ₱2,278,078.13, which formed part of the purchase price of the subject property. Likewise, it is not disputed that respondent paid directly to petitioner the amount of ₱721,921.87 representing the additional payment for the purchase of the subject property. Clearly, out of the total price of ₱4,200,000.00, respondent was able to pay the total amount of ₱3,000,000.00, leaving a balance of ₱1,200,000.00 payable in three (3) installments.

Out of the ₱1,200,000.00 remaining balance, respondent paid on several dates the first and second installments of ₱200,000.00 each. She, however, failed to pay the third and last installment of ₱800,000.00 due on December 31, 1991. Nevertheless, on August 31, 1992, respondent, through counsel, offered to pay the amount of ₱751,000.00, which was rejected by petitioner for the reason that the actual balance was ₱805,000.00 excluding the interest charges.

Considering that out of the total purchase price of ₱4,200,000.00, respondent has already paid the substantial amount of

[12] *Rollo*, pp. 25-26.

₱3,400,000.00, more or less, leaving an unpaid balance of only ₱805,000.00, it is right and just to allow her to settle, within a reasonable period of time, the balance of the unpaid purchase price. The Court agrees with the courts below that the respondent showed her sincerity and willingness to comply with her obligation when she offered to pay the petitioner the amount of ₱751,000.00.

On the issue of interest, petitioner failed to substantiate her claim that respondent made a personal commitment to pay a 6% monthly interest on the ₱805,000.00 from the date of delinquency, December 31, 1991. As can be gleaned from the contract, there was a stipulation stating that: "All the installments shall not bear interest." The CA was, however, correct in imposing interest at the rate of 6% per annum starting from the filing of the complaint on September 11, 1992.

Finally, the Court upholds the ruling of the courts below regarding the non-imposition of damages and attorney's fees. Aside from petitioner's self-serving statements, there is not enough evidence on record to prove that respondent acted fraudulently and maliciously against the petitioner. In the case of *Heirs of Atienza v. Espidol*,[13] it was stated:

> Respondents are not entitled to moral damages because contracts are not referred to in Article 2219 of the Civil Code, which enumerates the cases when moral damages may be recovered. Article 2220 of the Civil Code allows the recovery of moral damages in breaches of contract where the defendant acted fraudulently or in bad faith. However, this case involves a contract to sell, wherein full payment of the purchase price is a positive suspensive condition, the non-fulfillment of which is not a breach of contract, but merely an event that prevents the seller from conveying title to the purchaser. Since there is no breach of contract in this case, respondents are not entitled to moral damages.
>
> In the absence of moral, temperate, liquidated or compensatory damages, exemplary damages cannot be granted for they are allowed only in addition to any of the four kinds of damages mentioned.

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[13] *Supra* note 9.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 193902. June 1, 2011]

ATTY. MARIETTA D. ZAMORANOS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and SAMSON R. PACASUM, SR.,** *respondents.*

[G.R. No. 193908. June 1, 2011]

ATTY. MARIETTA D. ZAMORANOS, *petitioner, vs.* **SAMSON R. PACASUM, SR.,** *respondent.*

[G.R. No. 194075. June 1, 2011]

SAMSON R. PACASUM, SR., *petitioner, vs.* **ATTY. MARIETTA D. ZAMORANOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN PROPER.— As a rule, *certiorari* lies when: (1) a tribunal, board, or officer exercises judicial or quasi-judicial functions; (2) the tribunal, board, or officer has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. The writ

of *certiorari* serves to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess or lack of jurisdiction, or to relieve parties from arbitrary acts of courts—acts which courts have no power or authority in law to perform.

2. ID.; ID.; *CERTIORARI* OR PROHIBITION; NOT THE PROPER REMEDY TO ASSAIL AN INTERLOCUTORY ORDER; EXCEPTIONS.— The denial of a motion to quash, as in the case at bar, is not appealable. It is an interlocutory order which cannot be the subject of an appeal. Moreover, it is settled that a special civil action for *certiorari* and prohibition is not the proper remedy to assail the denial of a motion to quash an information. The established rule is that, when such an adverse interlocutory order is rendered, the remedy is not to resort forthwith to *certiorari* or prohibition, but to continue with the case in due course and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law. However, on a number of occasions, we have recognized that in certain situations, *certiorari* is considered an appropriate remedy to assail an interlocutory order, specifically the denial of a motion to quash. We have recognized the propriety of the following exceptions: (a) when the court issued the order without or in excess of jurisdiction or with grave abuse of discretion; (b) when the interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief; (c) in the interest of a "more enlightened and substantial justice"; (d) to promote public welfare and public policy; and (e) when the cases "have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof." The first four of the foregoing exceptions occur in this instance.

3. ID.; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA* OR BAR BY PRIOR JUDGMENT; REQUISITES.— The requisites for *res judicata* or bar by prior judgment are: "(1) The former judgment or order must be final; (2) It must be a judgment on the merits; (3) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) There must be between the first and second actions, identity of parties, subject matter, and cause of action."

4. ID.; ACTIONS; JURISDICTION; IN CRIMINAL CASES, THE TRIAL COURT MUST HAVE JURISDICTION OVER THE SUBJECT MATTER OF THE OFFENSE; CASE AT BAR.— [I]t is evident that Zamoranos is a Muslim who married another Muslim, De Guzman, under Islamic rites. Accordingly, the nature, consequences, and incidents of such marriage are governed by P.D. No. 1083. True, the Shari'a Circuit Court is not vested with jurisdiction over offenses penalized under the RPC. x x x Nonetheless, it must be pointed out that even in criminal cases, the trial court must have jurisdiction over the subject matter of the offense. In this case, the charge of Bigamy hinges on Pacasum's claim that Zamoranos is not a Muslim, and her marriage to De Guzman was governed by civil law. This is obviously far from the truth, and the fact of Zamoranos' Muslim status should have been apparent to both lower courts, the RTC, Branch 6, Iligan City, and the CA. The subject matter of the offense of Bigamy dwells on the accused contracting a second marriage while a prior valid one still subsists and has yet to be dissolved. At the very least, the RTC, Branch 6, Iligan City, should have suspended the proceedings until Pacasum had litigated the validity of Zamoranos and De Guzman's marriage before the Shari'a Circuit Court and had successfully shown that it had not been dissolved despite the divorce by *talaq* entered into by Zamoranos and De Guzman. Zamoranos was correct in filing the petition for *certiorari* before the CA when her liberty was already in jeopardy with the continuation of the criminal proceedings against her.

5. CIVIL LAW; PRESIDENTIAL DECREE NO. 1083 (THE CODE OF MUSLIM PERSONAL LAWS); APPLIED IN CASE AT BAR.— In a pluralist society such as that which exists in the Philippines, P.D. No. 1083, or the Code of Muslim Personal Laws, was enacted to "promote the advancement and effective participation of the National Cultural Communities x x x, [and] the State shall consider their customs, traditions, beliefs and interests in the formulation and implementation of its policies." Trying Zamoranos for Bigamy simply because the regular criminal courts have jurisdiction over the offense defeats the purpose for the enactment of the Code of Muslim Personal Laws and the equal recognition bestowed by the State on Muslim Filipinos. x x x [T]wo experts, x x x unequivocally state that

one of the effects of irrevocable *talaq*, as well as other kinds of divorce, refers to severance of matrimonial bond, **entitling one to remarry**. It stands to reason therefore that Zamoranos' divorce from De Guzman, as confirmed by an *Ustadz* and Judge Jainul of the Shari'a Circuit Court, and attested to by Judge Usman, was valid, and, thus, entitled her to remarry Pacasum in 1989. Consequently, the RTC, Branch 6, Iligan City, is without jurisdiction to try Zamoranos for the crime of Bigamy.

APPEARANCES OF COUNSEL

Law Firm of Bagabuyo & Partners and *Pizarras & Associates Law Office* for Atty. Marietta D. Zamoranos.

Voltaire Rovira for Samson R. Pacasum, Sr.

D E C I S I O N

NACHURA, *J.*:

These are three (3) consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated July 30, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 03525-MIN, dismissing the petition for *certiorari* filed by petitioner Atty. Marietta D. Zamoranos (Zamoranos) in G.R. No. 193902, thus, affirming the Order[2] of the Regional Trial Court (RTC), Branch 6, Lanao del Norte, in Criminal Case No. 06-12305 for Bigamy filed by petitioner Samson R. Pacasum, Sr. in G.R. No. 194075.

Before anything else, we disentangle the facts.

On May 3, 1982, Zamoranos wed Jesus de Guzman, a Muslim convert, in Islamic rites. Prior thereto, Zamoranos was a Roman Catholic who had converted to Islam on April 28, 1982. Subsequently, on July 30, 1982, the two wed again, this time,

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[1] Penned by Associate Justice Angelita A. Gacutan, with Associate Justices Rodrigo F. Lim, Jr. and Leoncia R. Dimagiba, concurring; *rollo* (G.R. No. 194075), pp. 34-62.

[2] Issued by Judge Oscar V. Badelles; *id.* at 176-177.

in civil rites before Judge Perfecto Laguio (Laguio) of the RTC, Quezon City.

A little after a year, on December 18, 1983, Zamoranos and De Guzman obtained a divorce by *talaq.* The dissolution of their marriage was confirmed by the Shari'a Circuit District Court, 1st Circuit, 3rd District, Isabela, Basilan, which issued a Decree of Divorce on June 18, 1992, as follows:

DECREE OF DIVORCE

This is a case for divorce filed by the herein complainant Marietta (Mariam) D. Zamoranos de Guzman against her husband, the herein respondent, on the ground that the wife, herein complainant, was previously given by her husband the authority to exercise Talaq, as provided for and, in accordance with Presidential Decree No. 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines.

When this case was called for hearing[,] both parties appeared and herein respondent, Jesus (Mohamad) de Guzman[,] interposes no objection to confirm their divorce, which they have freely entered into on December 18, 1983.

This Court, after evaluating the testimonies of the herein parties is fully convinced that both the complainant and the respondent have been duly converted to the faith of Islam prior to their Muslim wedding and finding that there is no more possibility of reconciliation by and between them, hereby issues this decree of divorce.

WHEREFORE, premises considered and pursuant to the provisions of the Code of Muslim Personal Laws of the Philippines, this petition is hereby granted. Consequently, the marriage between Marietta (Mariam) D. Zamoranos de Guzman and Jesus (Mohamad) de Guzman is hereby confirmed dissolved.

Issued this 18th day of June, 1992, at Isabela, Basilan Province, Philippines.

(signed)
HON. KAUDRI L. JAINUL
Presiding Judge[3]

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[3] *Id.* at 343-344.

Now it came to pass that Zamoranos married anew on December 20, 1989. As she had previously done in her first nuptial to De Guzman, Zamoranos wed Samson Pacasum, Sr. (Pacasum), her subordinate at the Bureau of Customs where she worked, under Islamic rites in Balo-i, Lanao del Norte. Thereafter, on December 28, 1992, in order to strengthen the ties of their marriage, Zamoranos and Pacasum renewed their marriage vows in a civil ceremony before Judge Valerio Salazar of the RTC, Iligan City. However, unlike in Zamoranos' first marriage to De Guzman, the union between her and Pacasum was blessed with progeny, namely: Samson, Jr., Sam Jean, and Sam Joon.

Despite their three children, the relationship between Zamoranos and Pacasum turned sour and, in 1998, the two were *de facto* separated. The volatile relationship of Zamoranos and Pacasum escalated into a bitter battle for custody of their minor children. Eventually, on October 18, 1999, Zamoranos and Pacasum arrived at a compromise agreement which vested primary custody of the children in the former, with the latter retaining visitorial rights thereto.

As it turned out, the agreement rankled on Pacasum. He filed a flurry of cases against Zamoranos, to wit:

1. Petition for Annulment of Marriage filed on March 31, 2003 before the RTC, Branch 2, Iligan City, docketed as Civil Case No. 6249. Subsequently, on May 31, 2004, Pacasum amended the petition into one for Declaration of a Void Marriage, alleging, among other things, that: (a) Zamoranos, at the time of her marriage to Pacasum, was already previously married to De Guzman on July 30, 1982; (b) Zamoranos' first marriage, solemnized before the RTC, Quezon City, presided over by Judge Laguio, subsisted at the time of the celebration of Zamoranos and Pacasum's marriage; (c) Zamoranos and Pacasum's marriage was bigamous and void *ab initio*; and (d) thus, Zamoranos, as the guilty spouse, should forfeit: (i) custody of her minor children to their father, who should have sole and exclusive custody; (ii) her share in the community property in favor of the children;

and (iii) her inheritance from Pacasum by testate or intestate succession.

2. Criminal complaint for Bigamy under Article 349 of the Revised Penal Code (RPC), filed on October 25, 2004.

3. Separate administrative cases for Zamoranos' dismissal from service and disbarment before the Civil Service Commission (CSC), the Integrated Bar of the Philippines, and the Bureau of Finance Revenue Integrity Protection Service, respectively. Parenthetically, the administrative cases were dismissed in due course. However, as of the date of the assailed CA Decision, Pacasum's appeal from the CSC's dismissal of the administrative case was still pending resolution.

Quite ironically, soon after amending his petition in Civil Case No. 6249, Pacasum contracted a second marriage with Catherine Ang Dignos on July 18, 2004.[4]

Meanwhile, on the criminal litigation front, the Office of the City Prosecutor, through Prosecutor Leonor Quiñones, issued a resolution dated February 2, 2005, finding *prima facie* evidence to hold Zamoranos liable for Bigamy.[5] Consequently, on February 22, 2006, an Information for Bigamy was filed against Zamoranos before the RTC, Branch 6, Iligan City, docketed as Criminal Case No. 06-12305.[6]

Zamoranos filed a motion for reconsideration of the City Prosecutor's February 2, 2005 resolution. As a result, the proceedings before the RTC, Branch 6, Iligan City, were temporarily suspended. On April 29, 2005, the City Prosecutor of Ozamis City, the acting City Prosecutor of Iligan City at the time, issued a resolution granting Zamoranos' motion for reconsideration and dismissing the charge of Bigamy against Zamoranos.[7]

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[4] *Id.* at 38.

[5] *Id.* at 39.

[6] *Id.*

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

Not unexpectedly, Pacasum moved for reconsideration of the April 29, 2005 resolution of the City Prosecutor, which was denied in a resolution dated August 15, 2005.[8] Posthaste, Pacasum filed a Petition for Review before the Office of the Secretary of Justice, assailing the dismissal of his criminal complaint for Bigamy against Zamoranos.[9]

In yet another turn of events, the Secretary of Justice, on February 7, 2006, issued a resolution granting Pacasum's Petition for Review and reversed the February 2, 2005 and April 29, 2005 resolutions of the City Prosecutor.[10] Zamoranos immediately filed an Omnibus Motion and Supplement to the Urgent Omnibus Motion: (1) for Reconsideration; (2) to Hold in Abeyance Filing of the Instant Case; and (3) to Hold in Abeyance or Quash Warrant of Arrest, respectively dated February 20, 2006 and February 24, 2006, before the Secretary of Justice.[11] Unfortunately for Zamoranos, her twin motions were denied by the Secretary of Justice in a resolution dated May 17, 2006.[12]

Zamoranos' second motion for reconsideration, as with her previous motions, was likewise denied.

On the other civil litigation front on the Declaration of a Void Marriage, docketed as Civil Case No. 6249, the RTC, Branch 2, Iligan City, rendered a decision in favor of Zamoranos, dismissing the petition of Pacasum for lack of jurisdiction. The RTC, Branch 2, Iligan City, found that Zamoranos and De Guzman are Muslims, and were such at the time of their marriage, whose marital relationship was governed by Presidential Decree (P.D.) No. 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines:

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[8] *Id.* at 43.

[9] *Id.*

[10] *Id.*

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

[12] *Id.* at 44.

From the foregoing uncontroverted facts, the Court finds that the allegation of [Pacasum] to the effect that his marriage with [Zamoranos] on December 28, 1992 is a bigamous marriage due to the alleged subsisting previous marriage between [Zamoranos] and Jesus de Guzman is misplaced. The previous marriage between Jesus de Guzman and [Zamoranos] has long been terminated [and] has gone with the wind. The fact that divorce by *Talaq* was entered into by [Zamoranos] and her first husband in accordance with PD 1083, x x x their marriage is dissolved and consequently thereof, [Zamoranos] and Jesus de Guzman can re-marry. Moreover, the second marriage entered into by [Zamoranos] and her first husband Jesus de Guzman under the Family Code on July 30, 1982 is merely ceremonial, being unnecessary, it does not modify/alter or change the validity of the first marriage entered into by them under PD 1083.

Likewise, in the case of [Pacasum] and [Zamoranos], their second marriage on December 28, 1992 under the Family Code does not in any way modify, alter or change the validity of the first marriage on December 20, 1989 entered into by [Pacasum] and [Zamoranos] under PD 1083, as amended. In fact, according to Ghazali, one of the renowned Muslim author and jurist in Islamic Law and Jurisprudence and concurred in by retired Justice Ra[s]ul of the Court of Appeals and also a Professor on Islamic Law and Jurisprudence, in the case of combined marriage[s], the first marriage is to be considered valid and effective as between the parties while the second marriage is merely ceremonial, being a surplusage and unnecessary. Therefore, the divorce by *Talaq* dissolved the marriage between [Zamoranos] and her first husband[,de Guzman,] being governed by PD 1083, x x x.

Article 13, Chapter I, Title II of the Code of Muslim Personal Laws, provides x x x:

"Application

> The provisions of this title shall apply to marriage and divorce wherein both parties are Muslims[,] or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines."

Accordingly, matters relating to the marriages and divorce of [Zamoranos] and her first husband, Jesus de Guzman[,] shall be governed by the Muslim Code and divorce proceedings shall be

properly within the exclusive original jurisdiction of the Shari'a Circuit Court.

Art. 155, Chapter 2, Title II, Book 4 of the Muslim code, provides x x x:

> "Jurisdiction – The Shari'a Circuit Courts shall have exclusive original jurisdiction over:
>
> x x x x x x x x x
>
> 2. All civil actions and proceedings between parties who are Muslims or have been married in accordance with Article 13 involving disputes relating to:
>
> a) Marriage;
>
> b) Divorce recognized under this Code;
>
> x x x x x x x x x"

The above provision of law clearly shows no concurrent jurisdiction with any civil courts or other courts of law. And any divorce proceeding undertaken before the Shari'[a] Court is valid, recognized, binding and sufficient divorce proceedings.

Moreover, the instant case is one of the several cases filed by [Pacasum] against [Zamoranos] such as complaints for disbarment, for immorality, for bigamy and misconduct before the Integrated Bar of the Philippines (IBP) and in the Civil Service Commission which were all similar or [based on] the same set of facts. A pure and simple harassment.

In the light of the foregoing findings, the Court is of the considered view and so hold that this Court has no jurisdiction to hear and decide the above-entitled case for annulment of marriage entered into under PD 1083, x x x. It is the Shari'a Circuit Court that has the exclusive original jurisdiction.

WHEREFORE, premises considered, the affirmative defenses which are in the nature of motion to dismiss is hereby granted.

The above-entitled case is hereby dismissed for lack of jurisdiction.

SO ORDERED.[13]

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[13] *Id.* at 48-50.

On separate appeals, the CA and the Supreme Court affirmed the dismissal of Civil Case No. 6249 by the RTC, Branch 2, Iligan City. On April 3, 2009, the denial by the Supreme Court of Pacasum's appeal became final and executory and was recorded in the Book of Entries of Judgments.[14]

In the meantime, on August 7, 2009, the RTC, Branch 6, Iligan City, upon motion of Pacasum, issued an Order reinstating Criminal Case No. 06-12305 for Bigamy against Zamoranos.[15]

Not surprisingly, Zamoranos filed a Motion to Quash the Information, arguing that the RTC, Branch 6, Iligan City, had no jurisdiction over her person and over the offense charged. Zamoranos asseverated, in the main, that the decision of the RTC, Branch 2, Iligan City, in Civil Case No. 6249 categorically declared her and Pacasum as Muslims, resulting in the mootness of Criminal Case No. 06-12305 and the inapplicability of the RPC provision on Bigamy to her marriage to Pacasum. In all, Zamoranos claimed that Criminal Case No. 06-12305 ought to be dismissed.[16]

On December 21, 2009, the RTC, Branch 6, Iligan City, denied Zamoranos' Motion to Quash the Information. Zamoranos' motion for reconsideration thereof was likewise denied.[17]

Undaunted, Zamoranos filed a petition for *certiorari* for the nullification and reversal of the December 21, 2009 Order of the RTC, Branch 6, Iligan City. As previously adverted to, the CA dismissed Zamoranos' petition. The CA dwelt on the propriety of a petition for *certiorari* to assail the denial of a Motion to Quash the Information:

A petition for *certiorari* alleging grave abuse of discretion is an extraordinary remedy. As such, it is confined to extraordinary cases

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[14] *Rollo* (G.R. No. 193902), p. 245.

[15] *Rollo* (G.R. No. 194075), p. 51.

[16] *Id.*

[17] *Id.* at 52.

wherein the action of the inferior court is wholly void. The aim of *certiorari* is to keep the inferior court within the parameters of its jurisdiction. Hence, no grave abuse of discretion may be imputed to a court on the basis alone of an alleged misappreciation of facts and evidence. To prosper, a petition for *certiorari* must clearly demonstrate that the lower court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.

Simply put, in a petition for *certiorari*, the jurisdiction of the appellate court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions or issues beyond its competence, such as an error of judgment which is defined as one in which the court or quasi-judicial body may commit in the exercise of its jurisdiction; as opposed to an error of jurisdiction where the acts complained of were issued without or in excess of jurisdiction.

x x x x x x x x x

In the present case, [w]e have circumspectly examined [Zamoranos'] Motion to Quash Information and the action taken by the [RTC, Branch 6, Iligan City] in respect thereto, and [w]e found nothing that may constitute as grave abuse of discretion on the part of the [RTC, Branch 6, Iligan City]. The Order dated December 21, 2009, which first denied [Zamoranos'] [M]otion to [Q]uash Information meticulously explained the factual and legal basis for the denial of the issues raised by [Zamoranos] in said motion. We find the [RTC, Branch 6, Iligan City's] stance in upholding the sufficiency of the Information for bigamy and taking cognizance of Criminal Case No. 06-12305 to be well within the bounds of its jurisdiction. Even assuming *arguendo* that the denial of petitioner's motion to quash is erroneous, such error was, at worst, an error of judgment and not of jurisdiction.[18]

Interestingly, even Pacasum was not satisfied with the CA's dismissal of Zamoranos' petition for *certiorari*. Hence, these separate appeals by Zamoranos and Pacasum.

We note that Zamoranos is petitioner in two separate cases, filed by her two counsels, docketed as G.R. Nos. 193902 and

[18] *Id.* at 58-60.

193908, respectively, which assail the same CA Decision. However, upon motion of counsel for Zamoranos, to obviate confusion and superfluity, we have allowed Zamoranos to withdraw her petition in G.R. No. 193908 and for her earlier petition in G.R. No. 193902 to remain.

Zamoranos posits that it was grievous error for the CA to ignore the conclusions made by the RTC, Branch 2, Iligan City, and affirmed by the CA and this Court, to wit:

1. Zamoranos is a Muslim and was validly married to another Muslim, De Guzman, under Islamic rites;

2. Zamoranos and De Guzman's marriage ceremony under civil rites before Judge Laguio did not remove their marriage from the ambit of P.D. No. 1083;

3. Corollary to paragraph 1, Zamoranos' divorce by *talaq* to De Guzman severed their marriage ties;

4. "Accordingly, matters relating to the marriages and divorce of [Zamoranos] and her first husband, Jesus de Guzman[, are] governed by the Muslim Code and [the] divorce proceedings properly within the exclusive original jurisdiction of the Shari'a Circuit Court."

5. Zamoranos remarried Pacasum, another Muslim, under Islamic rites; and

6. On the whole, regular courts, in particular, RTC, Branch 6, Iligan City, have no jurisdiction to hear and decide the case for declaration of nullity of marriage entered into under P.D. No. 1083 because it is the Shari'a Circuit Court that has original jurisdiction over the subject matter.

For his part, Pacasum, although he agrees with the dismissal of Zamoranos' petition, raises a quarrel with the aforementioned conclusions of the CA. Pacasum vehemently denies that Zamoranos is a Muslim, who was previously married and divorced under Islamic rites, and who entered into a second marriage with him, likewise under Islamic rites.

We impale the foregoing issues into the following:

1. Whether the CA correctly dismissed Zamoranos' petition for *certiorari*; and

2. Whether the RTC's, Branch 2, Iligan City and the CA's separate factual findings that Zamoranos is a Muslim are correct.

As a rule, *certiorari* lies when: (1) a tribunal, board, or officer exercises judicial or quasi-judicial functions; (2) the tribunal, board, or officer has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[19]

The writ of *certiorari* serves to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess or lack of jurisdiction, or to relieve parties from arbitrary acts of courts—acts which courts have no power or authority in law to perform.[20]

The denial of a motion to quash, as in the case at bar, is not appealable. It is an interlocutory order which cannot be the subject of an appeal.[21]

Moreover, it is settled that a special civil action for *certiorari* and prohibition is not the proper remedy to assail the denial of a motion to quash an information. The established rule is that, when such an adverse interlocutory order is rendered, the remedy is not to resort forthwith to *certiorari* or prohibition, but to continue with the case in due course and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law.[22]

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[19] RULES OF COURT, Rule 65, Sec. 1.

[20] *Silverio v. Court of Appeals*, 225 Phil. 459, 471-472 (1986).

[21] RULES OF COURT, Rule 41, Sec. 1.

[22] *Madarang v. Court of Appeals*, G.R. No. 143044, July 14, 2005, 463 SCRA 318, 327.

However, on a number of occasions, we have recognized that in certain situations, *certiorari* is considered an appropriate remedy to assail an interlocutory order, specifically the denial of a motion to quash. We have recognized the propriety of the following exceptions: (a) when the court issued the order without or in excess of jurisdiction or with grave abuse of discretion; (b) when the interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief; (c) in the interest of a "more enlightened and substantial justice";[23] (d) to promote public welfare and public policy;[24] and (e) when the cases "have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof."[25] The first four of the foregoing exceptions occur in this instance.

Contrary to the asseverations of the CA, the RTC, Branch 6, Iligan City, committed an error of jurisdiction, not simply an error of judgment, in denying Zamoranos' motion to quash.

First, we dispose of the peripheral issue raised by Zamoranos on the conclusiveness of judgment made by the RTC, Branch 2, Iligan City, which heard the petition for declaration of nullity of marriage filed by Pacasum on the ground that his marriage to Zamoranos was a bigamous marriage. In that case, the decision of which is already final and executory, the RTC, Branch 2, Iligan City, dismissed the petition for declaration of nullity of marriage for lack of jurisdiction over the subject matter by the regular civil courts. The RTC, Branch 2, Iligan City, declared that it was the Shari'a Circuit Court which had jurisdiction over the subject matter thereof.

Section 47, Rule 39 of the Rules of Court provides for the principle of *res judicata*. The provision reads:

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[23] *Santos v. People*, G.R. No. 173176, August 26, 2008, 563 SCRA 341, 361, citing *Mead v. Hon. Argel, etc., et al.*, 200 Phil. 650, 656 (1982).

[24] *Id.*

[25] *Id.*

SEC. 47. *Effect of judgments or final orders.* – The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

> (a) In case of a judgment or final order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, **or in respect to the personal, political, or legal condition or status of a particular person or his relationship to another**, **the judgment or final order is conclusive** upon the title to the thing, the will or administration, or the condition, **status or relationship of the person**; however, the probate of a will or granting of letters of administration shall only be *prima facie* evidence of the death of the testator or intestate. (Empphasis suppied.)

The requisites for *res judicata* or bar by prior judgment are:

(1) The former judgment or order must be final;

(2) It must be a judgment on the merits;

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

(4) There must be between the first and second actions, identity of parties, subject matter, and cause of action.[26]

The second and fourth elements of *res judicata* are not present in this case. Suffice it to state that the judgment rendered by RTC, Branch 2, Iligan City, was not a judgment on the merits. The lower court simply dismissed the petition for declaration of nullity of marriage since it found that the Shari'a Circuit Court had jurisdiction to hear the dissolution of the marriage of Muslims who wed under Islamic rites.

Nonetheless, the RTC, Branch 6, Iligan City, which heard the case for Bigamy, should have taken cognizance of the categorical declaration of the RTC, Branch 2, Iligan City, that

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[26] *The Estate of Don Filemon Y. Sotto v. Palicte*, G.R. No. 158642, September 22, 2008, 566 SCRA 142, 150.

Zamoranos is a Muslim, whose first marriage to another Muslim, De Guzman, was valid and recognized under Islamic law. In fact, the same court further declared that Zamoranos' divorce from De Guzman validly severed their marriage ties. Apart from that, Zamoranos presented the following evidence:

1. Affidavit of Confirmation[27] executed by the *Ustadz*, Abdullah Ha-Ja-Utto, who solemnized the marriage of Zamoranos and De Guzman under Islamic rites, declaring under oath that:

1. I am an *Ustadz*, in accordance with the Muslim laws and as such, authorized to solemnize the marriages among Muslims;

2. On May 3, 1982, after I was shown the documents attesting that both parties are believers of Islam, I solemnized the marriage of Jesus (Mohamad) de Guzman and Marietta (Mariam) Zamoranos in accordance with Muslim Personal Laws in Isabela, Basilan;

3. Sometime in 1992[,] Mr. Mohamad de Guzman and his former wife, Mariam Zamoranos came to see me and asked my assistance to have their marriage and the subsequent *Talaq* by the wife, which divorce became irrevocable pursuant to the provisions of Presidential Decree No. 1083; registered [by] the Shari'a Circuit Court in the province of Basilan; and, after I was convinced that their divorce was in order, I accompanied them to the [C]lerk of [C]ourt of the Shari'a Circuit Court;

4. Satisfied that their marriage and the subsequent divorce were in accordance with Muslim personal laws, the Clerk of Court registered their documents;

5. In June of 1993, the old Capitol building, where the Shari'a Circuit Court was housed, was razed to the ground; and, I found out later that all the records, effects and office equipments of the Shari'a Circuit Court were totally lost [in] the fire;

6. This is executed freely and voluntarily in order to establish the above statements of fact; and

7. This is issued upon the request of Mr. De Guzman for whatever legal purposes it may serve.

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[27] *Rollo* (G.R. No. 193902), p. 215.

2. Certification[28] issued by Judge Kaudri L. Jainul (Judge Jainul), which confirmed the divorce agreement between Zamoranos and De Guzman.

3. Affidavit[29] executed by Judge Uyag P. Usman (Judge Usman), former Clerk of Court of Judge Jainul at the time of the confirmation of Zamoranos and De Guzman's divorce agreement by the latter. Judge Usman's affidavit reads, in pertinent part:

> 1. I am the presiding Judge of the Sharia's Circuit Court in the City of Pagadian;
>
> 2. The first time that a Sharia's Circuit court was established in the Island Province of Basilan was in 1985, with the Honorable Kaudri L. Jainul, as the Presiding Judge, while I was then the First Clerk of Court of the Basilan Sharia's Circuit Court;
>
> 3. The Sharia's Circuit Council in the Island Province of Basilan was housed at the old Capitol Building, in the City of Isabela, Basilan, Philippines;
>
> 4. As the Clerk of Court of the Sharia's Circuit Court since 1985, I can recall that in 1992, Mr. Jesus (Mohamad) de Guzman, who is a province mate of mine in Basilan, and his former wife, Marietta (Mariam) Zamoranos, jointly asked for the confirmation of their *Talaq*, by the wife; which divorce became irrevocable pursuant to the provisions of Presidential Decree No. 1083;
>
> 5. In June of 1993, all the records of the Sharia's Circuit Court were lost by reason of the fire that gutted down the old Capitol Building in the City of Isabela;
>
> 6. This is executed freely and voluntarily in order to establish the above statements of fact.

From the foregoing declarations of all three persons in authority, two of whom are officers of the court, it is evident

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[28] *Id.* at 213.

[29] *Id.* at 214.

that Zamoranos is a Muslim who married another Muslim, De Guzman, under Islamic rites. Accordingly, the nature, consequences, and incidents of such marriage are governed by P.D. No. 1083.

True, the Shari'a Circuit Court is not vested with jurisdiction over offenses penalized under the RPC. Certainly, the RTC, Branch 6, Iligan City, is correct when it declared that:

> The Regional Trial Courts are vested the exclusive and original jurisdiction in all criminal cases not within the exclusive original jurisdiction of any court, tribunal, or body. [Sec. 20 (b), BP Blg. 129] The Code of Muslim Personal Laws (PD 1083) created the *Sharia* District Courts and *Sharia* Circuit Courts with limited jurisdiction. Neither court was vested jurisdiction over criminal prosecution of violations of the Revised Penal Code. There is nothing in PD 1083 that divested the Regional Trial Courts of its jurisdiction to try and decide cases of bigamy. Hence, this Court has jurisdiction over this case.[30]

Nonetheless, it must be pointed out that even in criminal cases, the trial court must have jurisdiction over the subject matter of the offense. In this case, the charge of Bigamy hinges on Pacasum's claim that Zamoranos is not a Muslim, and her marriage to De Guzman was governed by civil law. This is obviously far from the truth, and the fact of Zamoranos' Muslim status should have been apparent to both lower courts, the RTC, Branch 6, Iligan City, and the CA.

The subject matter of the offense of Bigamy dwells on the accused contracting a second marriage while a prior valid one still subsists and has yet to be dissolved. At the very least, the RTC, Branch 6, Iligan City, should have suspended the proceedings until Pacasum had litigated the validity of Zamoranos and De Guzman's marriage before the Shari'a Circuit Court and had successfully shown that it had not been dissolved despite the divorce by *talaq* entered into by Zamoranos and De Guzman.

Zamoranos was correct in filing the petition for *certiorari* before the CA when her liberty was already in jeopardy with the continuation of the criminal proceedings against her.

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[30] *Rollo* (G.R. No. 194075), p. 176.

In a pluralist society such as that which exists in the Philippines, P.D. No. 1083, or the Code of Muslim Personal Laws, was enacted to "promote the advancement and effective participation of the National Cultural Communities x x x, [and] the State shall consider their customs, traditions, beliefs and interests in the formulation and implementation of its policies."

Trying Zamoranos for Bigamy simply because the regular criminal courts have jurisdiction over the offense defeats the purpose for the enactment of the Code of Muslim Personal Laws and the equal recognition bestowed by the State on Muslim Filipinos.

Article 3, Title II, Book One of P.D. No. 1083 provides:

TITLE II.

CONSTRUCTION OF CODE AND DEFINITION OF TERMS

Article 3. *Conflict of provisions.*

(1) In case of conflict between any provision of this Code and laws of general application, the former shall prevail.

(2) Should the conflict be between any provision of this Code and special laws or laws of local application, the latter shall be liberally construed in order to carry out the former.

(3) The provisions of this Code shall be applicable only to Muslims and nothing herein shall be construed to operate to the prejudice of a non-Muslim.

In Justice Jainal Rasul and Dr. Ibrahim Ghazali's Commentaries and Jurisprudence on the Muslim Code of the Philippines, the two experts on the subject matter of Muslim personal laws expound thereon:

The first provision refers to a situation where in case of conflict between any provision of this Code and laws of general application, this Code shall prevail. For example, there is conflict between the provision on bigamy under the Revised Penal Code which is a law of general application and Article 27 of this Code, on subsequent marriage, the latter shall prevail, in the sense that as long as the subsequent marriage is solemnized "in accordance with" the Muslim

Code, the provision of the Revised Penal Code on bigamy will not apply. The second provision refers to a conflict between the provision of this Code which is a special law and another special law or laws of local application. The latter should be liberally construed to carry out the provision of the Muslim Code.[31]

On Marriage, Divorce, and Subsequent Marriages, P.D. No. 1083 provides:

TITLE II. MARRIAGE AND DIVORCE

Chapter One
APPLICABILITY CLAUSE

Article 13. *Application.* –

(1) The provisions of this Title shall apply to marriage and divorce wherein both parties are Muslims, or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines.

(2) In case of marriage between a Muslim and a non-Muslim, solemnized not in accordance with Muslim law or this Code, the Civil Code of the Philippines shall apply.

x x x x x x x x x

Chapter Two
MARRIAGE (NIKAH)

Section 1. *Requisites of Marriage.*

x x x x x x x x x

Section 3. *Subsequent Marriages*

x x x x x x x x x

Article 29. *By divorcee.*

(1) No woman shall contract a subsequent marriage unless she has observed an '*idda* of three monthly courses counted from the date of divorce. However, if she is pregnant at the time of the divorce, she may remarry only after delivery.

x x x x x x x x x

[31] 1984 ed., Central Lawbook Publishing Co., Inc., pp. 53-54.

Chapter Three
DIVORCE (*TALAQ*)

Section 1. *Nature and Form*

Article 45. *Definition and forms*. Divorce is the formal dissolution of the marriage bond in accordance with this Code to be granted only after the exhaustion of all possible means of reconciliation between the spouses. It may be effected by:

(a) Repudiation of the wife by the husband (*talaq*);

x x x x x x x x x

Article 46. *Divorce by talaq*.

(1) A divorce by *talaq* may be effected by the husband in a single repudiation of his wife during her non-menstrual period (*tuhr*) within which he has totally abstained from carnal relation with her. Any number of repudiations made during one *tular* shall constitute only one repudiation and shall become irrevocable after the expiration of the prescribed '*idda*.

(2) A husband who repudiates his wife, either for the first or second time, shall have the right to take her back (*ruju*) within the prescribed '*idda* by resumption of cohabitation without need of a new contract of marriage. Should he fail to do so, the repudiation shall become irrevocable (*talaq* bain *sugra*).

x x x x x x x x x

Article 54. *Effects of irrevocable talaq; or faskh*. A *talaq* or *faskh*, as soon as it becomes irrevocable, shall have the following effects:

(a) The marriage bond shall be severed and the spouses may contract another marriage in accordance with this Code;

(b) The spouses shall lose their mutual rights of inheritance;

(c) The custody of children shall be determined in accordance with Article 78 of this Code;

(d) The wife shall be entitled to recover from the husband her whole dower in case the *talaq* has been effected after the consummation of the marriage, or one-half thereof if effected before its consummation;

(e) The husband shall not be discharged from his obligation to give support in accordance with Article 67; and

(f) The conjugal partnership if stipulated in the marriage settlements, shall be dissolved and liquidated.

For our edification, we refer once again to Justice Rasul and Dr. Ghazali's Commentaries and Jurisprudence on the Muslim Code of the Philippines:

> If both parties are Muslims, there is a presumption that the Muslim Code or Muslim law is complied with. If together with it or in addition to it, the marriage is likewise solemnized in accordance with the Civil Code of the Philippines, in a so-called combined Muslim-Civil marriage rites whichever comes first is the validating rite and the second rite is merely ceremonial one. But, in this case, as long as both parties are Muslims, this Muslim Code will apply. In effect, two situations will arise, in the application of this Muslim Code or Muslim law, that is, when both parties are Muslims and when the male party is a Muslim and the marriage is solemnized in accordance with Muslim Code or Muslim law. A third situation occur[s] when the Civil Code of the Philippines will govern the marriage and divorce of the parties, if the male party is a Muslim and the marriage is solemnized in accordance with the Civil Code.[32]

Moreover, the two experts, in the same book, unequivocally state that one of the effects of irrevocable *talaq*, as well as other kinds of divorce, refers to severance of matrimonial bond, **entitling one to remarry**.[33]

It stands to reason therefore that Zamoranos' divorce from De Guzman, as confirmed by an *Ustadz* and Judge Jainul of the Shari'a Circuit Court, and attested to by Judge Usman, was valid, and, thus, entitled her to remarry Pacasum in 1989. Consequently, the RTC, Branch 6, Iligan City, is without jurisdiction to try Zamoranos for the crime of Bigamy.

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[32] *Id.* at 98.

[33] *Id.* at 175.

WHEREFORE, the petition in G.R. No. 193902 is *GRANTED*. The petition in G.R. No. 194075 is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 03525-MIN is *REVERSED* and *SET ASIDE*. Accordingly, the Motion to Quash the Information in Criminal Case No. 06-12305 for Bigamy is *GRANTED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 194379. June 1, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FELICIANO "SAYSOT" CIAS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN DETERMINING THE GUILT OR INNOCENCE OF THE ACCUSED IN RAPE CASES.— In determining the guilt or innocence of the accused in rape cases, the Court is guided by the following 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, though innocent, to disprove the charge; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence of 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."

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IF THE RAPE VICTIM'S TESTIMONY MEETS THE TEST OF CREDIBILITY, THE ACCUSED CAN BE CONVICTED ON THE BASIS OF THIS TESTIMONY.— Inasmuch as the crime of rape is essentially committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced sexual intercourse. Therefore, in a prosecution for rape, the credibility of the victim is almost always the single and most important issue to deal with. Thus, if the victim's testimony meets the test of credibility, the accused can justifiably be convicted on the basis of this testimony; otherwise, the accused should be acquitted of the crime.

3. ID.; ID.; ID.; FINDINGS OF TRIAL COURTS WITH REGARD TO THE ASSESSMENT THEREOF ARE NOT DISTURBED ON APPEAL; EXCEPTIONS.— [A]ppellate courts do not disturb the findings of the trial courts with regard to the assessment of the credibility of witnesses. The reason for this is that trial courts have the "unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination." The exceptions to this rule are when the trial court's findings of facts and conclusions are not supported by the evidence on record, or when certain facts of substance and value, likely to change the outcome of the case, have been overlooked by the trial court, or when the assailed decision is based on a misapprehension of facts. However, this Court finds none of these exceptions present in the instant case.

4. ID.; ID.; DEFENSES; SWEETHEART DEFENSE; MUST BE SUPPORTED BY CONVINCING PROOF.— [T]he theory that Cias and AAA were having an illicit affair is unsupported by evidence. As held in *People v. Cabanilla*, the sweetheart defense is an affirmative defense that must be supported by convincing proof. In the case at bar, accused-appellant relied solely on his testimony and that of his wife. He did not offer any other evidence—such as a love letter, a memento, or even a single photograph—to substantiate his claim that they had a romantic relationship. Besides, granting they had an illicit affair, this fact alone does not rule out rape as it does not necessarily mean that consent was present. As We held, "A love affair does

not justify rape for a man does not have an unbridled license to subject his beloved to his carnal desires against her will."

5. CRIMINAL LAW; RAPE; NOT NEGATED BY THE ABSENCE OF INJURY TO THE VICTIM.— [T]he contention of accused-appellant that the absence of any form of injury to AAA's neck or legs contradicts the charge of rape, is untenable. In *People v. Hacbang*, We ruled that absence of injury does not negate the charge of rape and destroy the credibility of the victim's testimony. What is important is the fact that the victim was made to submit to the will of the accused through force and intimidation.

6. ID.; ID.; ELEMENTS.— The elements needed to prove the crime of rape under paragraph 1(a) of Article 266-A of the Revised Penal Code (RPC) are: (1) the offender is a man; (2) the offender had carnal knowledge of a woman; and (3) the act is accomplished by using force or intimidation. All these elements were sufficiently proved by the prosecution. The testimony of AAA overwhelmingly proves that accused-appellant raped her with the use of force and intimidation. Accordingly, We find that the prosecution has discharged its burden of proving the guilt of the accused beyond reasonable doubt.

7. ID.; ID.; PENALTY.— Art. 266-B of the RPC provides that "[w]henever the rape is committed with the **use of a deadly weapon** x x x, the penalty shall be *reclusion perpetua* to death." Accordingly, in determining the proper imposable penalty, the Court is guided by the provisions of Art. 63 of the RPC x x x. In this case, the trial court appreciated not just one, but three (3) aggravating circumstances, namely: (a) the use of a deadly weapon; (b) the act was committed in the dwelling of the private complainant; and (c) entrance to the private complainant's dwelling was obtained by unlawful entry. The first two aggravating circumstances were sufficiently alleged in the criminal information and were also adequately proved by the prosecution during trial. The third aggravating circumstance, although not alleged in the criminal information, was amply proved during trial. x x x Thus, considering the presence of aggravating circumstances, the proper imposable penalty is death. However, due to Republic Act No. 9346, which prohibits the imposition of the death penalty, the CA correctly modified the penalty to *reclusion perpetua*.

8. ID.; AGGRAVATING CIRCUMSTANCES; AN AGGRAVATING CIRCUMSTANCE NOT ALLEGED IN THE INFORMATION MAY BE PROVED DURING TRIAL AND APPRECIATED IN IMPOSING THE SENTENCE.— In *People v. Mitra*, We ruled that "aggravating circumstance not alleged in the information may be proved during trial and appreciated in imposing the sentence. Evidence in support thereof merely forms part of the actual commission of the crime and its appreciation by the courts does not constitute a violation of the constitutional right of the accused to be informed of the nature and cause of the accusation against him."

9. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES, MORAL DAMAGES, AND 6% INTEREST PER ANNUM ON ALL DAMAGES; GRANTED IN CASE AT BAR.— [A]lthough the CA was correct in awarding PhP 30,000 as exemplary damages, the award of moral damages should be increased to PhP 75,000. There should also be an interest of six percent (6%) per annum on all damages awarded from the finality of judgment until fully paid, in line with prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the April 30, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00075, which affirmed the January 31, 2003 Decision in Criminal Case No. 14791[2] of the Regional Trial Court (RTC), Branch 37 in

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[1] *Rollo*, pp. 4-17. Penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Edwin D. Sorongon and Ramon A. Cruz.

[2] CA *rollo*, pp. 17-33. Penned by Judge Jenny Lind R. Aldecoa-Delorino.

Dumaguete City. The RTC convicted accused Feliciano "Saysot" Cias (Cias) of rape.

The Facts

The charge against the accused stemmed from the following Information:

> That at about nine o'clock in the evening of April 1, 2000 at [PPP],[3] Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat and intimidation, the accused holding a scythe and forcibly removed the panty of [AAA] who was then resting inside the house with her child and while her husband was away and did, then and there willfully, unlawfully and feloniously have succeeded a sexual intercourse with said [AAA] against her will and consent.
>
> Contrary to Articles 266-A and 266-B, Section 2 of RA 8353, otherwise known as the Anti-Rape Law of 1997, amending the Revised Penal Code.[4]

On January 29, 2001, Cias, with the assistance of his counsel, was arraigned, and he pleaded "not guilty" to the charge against him. After the pre-trial, trial on the merits ensued.

During the trial, the prosecution offered the testimonies of the private complainant; Dr. Stephen S. Estacion (Dr. Estacion), who conducted the medico-legal examination on AAA; and Senior Police Officer 3 Georgen Barot Sefe (SPO3 Sefe). On the other

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[3] Any information to establish or compromise the identity of the victim, as well as those of her immediate family or household members, shall be withheld, and fictitious initials are used, pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] Records, p. 1.

hand, the defense presented as witnesses accused Cias and his wife, Felina Cias.

The Prosecution's Version of Facts

AAA and her common-law husband lived together with her two children in PPP, Negros Oriental. For two years, they had been neighbors with Cias. Their houses were just 30 meters apart.[5]

In the evening of April 1, 2000, AAA and her children were already sleeping in their house.[6] Her husband was not there that night as he had gone to the *poblacion*[7] to look for work, while her father-in-law, who used to sleep in their house, was not around.[8]

At around 9:00 p.m., AAA was awakened from sleep by the feeling of hands covering her mouth. Upon waking up, she saw the accused kneeling on her legs. She was able to identify Cias clearly because the kerosene lamp in the bedroom shed light on his face.[9]

Cias then told her to be quiet or he would kill her and her children. All the while, Cias was holding a scythe in his right hand which he positioned close to her neck.[10]

With his right hand still holding the scythe to AAA's neck, Cias removed her panty with his left hand, tearing it and wounding her in the process. AAA tried her best to struggle and managed to kick Cias in the legs, but her efforts proved futile. Cias then had carnal knowledge with AAA, which AAA estimated to have

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[5] TSN, July 3, 2001, p. 5.

[6] *Id.* at 7.

[7] Literally "town" or "population" in Spanish; name commonly used for the central *barangay* or *barangay*s of a Philippine city or municipality.

[8] TSN, July 24, 2001, pp. 10-11.

[9] TSN, July 3, 2001, pp. 7-8.

[10] *Id.* at 8.

lasted for an hour.[11] Cias only stopped when he heard his wife, Felina Cias, shouting, "You are all pigs! You are a bitch!" Cias then stood up and left the house to confront his wife.

After Cias had left, AAA hugged her children while they could hear Cias and his wife arguing. AAA then ran to the living room to shout for help but changed her mind, afraid that Cias and his wife might harm her and her children. Once the argument stopped, AAA noticed that it was already 10:00 p.m. as reflected in the wall clock hanging in the living room.[12] She also noticed that the living room window had been forced open, thereby concluding that Cias must have entered through the said window.

The following day, AAA kept her silence. But on the second day, April 3, 2000, she decided to tell her common-law husband what had happened so she went to the *poblacion* to look for him. Upon finding him, AAA narrated the incident to him, after which, they proceeded to the police station to report it. Likewise, they informed policeman Alex Tizon (Tizon), who hired Cias to tend to his livestock, of the said incident. Tizon then advised AAA to see a physician and submit herself to a physical examination.[13]

AAA went to Dr. Estacion, the Municipal Health Officer of PPP, who conducted the medico-legal examination on her. His examination revealed the presence of white mucoid discharges in her vaginal opening which are normally produced when there is sexual contact or when a woman is nearing the ovulation phase of her menstrual cycle.[14] Further, the laboratory microscopic examination also revealed the absence of spermatozoa in AAA's cervical os.[15] However, Dr. Estacion clarified in his testimony

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

[12] TSN, July 24, 2001, p. 18.

[13] TSN, July 3, 2001, pp. 11-12.

[14] TSN, June 19, 2001, pp. 11-12.

[15] *Id.* at 15.

that even if there had been actual sexual contact during which sperm was deposited in the vagina, it would have degenerated already on the second day making it harder to find.[16] Similarly, he noted a linear abrasion at the left side of AAA's abdomen, which was probably caused by a blunt object or a fingernail, and not a scythe.[17] No other injury was noted on the body of AAA.

The final witness, SPO3 Sefe, corroborated AAA's testimony that on April 3, 2000, the couple arrived at the police station and reported an alleged rape. She also advised AAA to have herself examined by a doctor. SPO3 Sefe recorded the reported incident in the station's police blotter.[18]

Version of the Defense

Cias, on the other hand, denied the allegations and said that the sexual intercourse was consensual, to wit:

Cias testified that he and AAA had been carrying an illicit affair for about six months. He alleged that in all their previous assignations, she submitted herself to him voluntarily and willingly on each occasion that they had sexual intercourse.

In the evening of April 1, 2000, Cias and AAA had agreed to meet at AAA's house at 9:00 p.m. When he arrived, they talked for a while then engaged in sexual intercourse. They did the "69" position on the living room floor so as not to awaken the children sleeping in the bedroom.[19]

Their lovemaking was, however, interrupted by a voice coming from outside the house, screaming, "You have no pity, you are animals! You are pigs!" Cias then patted AAA's buttocks and told her that it was his wife shouting.[20] They hurriedly put their

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[16] *Id.* at 16.

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

[18] TSN, October 10, 2001, pp. 4-5.

[19] TSN, July 9, 2002, pp. 6-7.

[20] *Id.* at 8.

clothes on and Cias left to confront his wife. Cias and his wife argued for a while before proceeding to their own house.[21]

Cias' testimony was corroborated by his wife, Felina Cias. In her testimony, she stated that on April 1, 2000, Cias left their house at around 9:00 p.m. supposedly to get the carabao he was tending in a nearby pasture. When he did not return after an hour, she decided to look for him. On the way, she passed by the house of AAA and heard familiar voices emanating from it. As she drew closer, she recognized AAA's voice saying, "Let's go away," but she did not hear any reply.[22]

Curious, she peeped through a hole in the wall below the windows of the living room. To her great dismay, she saw Cias and AAA doing the "69" position. She screamed epithets at them and left. Cias followed her and, subsequently, asked for her forgiveness.[23]

Enraged by the events, Felina Cias went to the *poblacion* the next day to narrate the incident to AAA's common-law husband. When she told him what happened, he showed no visible reaction to her story. Instead, he requested her to bring food supplies to AAA and her children.[24] She later learned that the couple had filed the instant case against her husband.

Although she had suspected that her husband and AAA were having an affair, Felina was not really sure about it until she saw them that night. She further testified that Cias never went to AAA's house alone. This was the very first time. In the past, both she and Cias went over to AAA's house to listen to daytime drama programs on the radio. During these times, she would notice AAA give her husband penetrating looks but the two never spoke to each other in her presence.[25] Her suspicions were sufficiently aroused but she did not confide them to anyone.

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[21] *Id.* at 10.

[22] TSN, January 22, 2002, pp. 6-7.

[23] *Id.* at 8.

[24] *Id.* at 19.

[25] *Id.* at 11-13.

Ruling of the Trial Court

After trial, the RTC convicted the accused. The dispositive portion of its January 31, 2003 Decision reads:

> WHEREFORE, accused FELICIANO "Saysot" CIAS is hereby declared GUILTY beyond reasonable doubt of the crime of rape and sentenced to suffer the supreme penalty of DEATH; and he is directed to indemnify [AAA] the sum of Fifty Thousand (-₱- 50,000.00) Pesos as moral damages, Seventy-Five Thousand (-₱- 75,000.00) Pesos as civil indemnity, and to pay the costs.
>
> SO ORDERED.[26]

On appeal to the CA, the accused disputed the trial court's finding him guilty beyond reasonable doubt of the crime charged. He argued that the allegations of the private complainant are improbable and contrary to human experience, resulting in the failure of her case to meet the test of moral certainty required in order to prove his guilt beyond reasonable doubt.

Ruling of the Appellate Court

On April 30, 2010, the CA affirmed the judgment of the RTC. It found that the RTC's assessment of the credibility of the private complainant deserved respect. It also found AAA's testimony to be consistent and straightforward. Hence, it did not see any reason to deviate from the ruling of the trial court.

The dispositive portion of the CA Decision reads:

> WHEREFORE, the Decision of the Regional Trial Court of Dumaguete City, Branch 37, dated January 31, 2003, in Criminal Case No. 14791, finding appellant Feliciano Cias @ "Saysot" guilty beyond reasonable doubt of rape is **AFFIRMED with MODIFICATIONS** to the effect that he is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay private offended party [AAA] the amount of ₱30,000.00 as exemplary damages in addition to the amounts of ₱75,000.00 as civil indemnity and ₱50,000.00 as moral damages.
>
> SO ORDERED.[27]

[26] CA *rollo*, p. 33.

[27] *Rollo*, p. 17.

The Issue

Cias now comes before this Court with the lone assignment of error, contending that "[t]he court *a quo* erred in finding that the guilt of the accused-appellant for the crime [charged] has been proven beyond reasonable doubt."[28]

The Court's Ruling

We sustain accused-appellant's conviction.

In his *Brief*, accused-appellant argues that the trial court should not have received the lone testimony of the private complainant with precipitate credulity because it does not bear the stamp of truth and candor of a narration of actual events.

He points out three (3) alleged flaws in her testimony. *First*, private complainant's testimony stated that he used a scythe around her neck. In fact, she said that the scythe was already touching her neck. Accused-appellant argues that if such allegation were true, the private complainant would have sustained an injury in the neck area but none was found. *Second*, in her testimony, private complainant avers that she was not able to free herself from accused-appellant because, according to her, he was kneeling on her two legs. Again, accused-appellant points out that if this were true, private complainant would have sustained hematomas on her legs due to the pressure applied on them. However, the physical examination conducted on her did not show any. And *third*, accused-appellant cites numerous circumstances in private complainant's testimony, which would reveal several telltale signs that the sexual intercourse that transpired between them was consensual and pre-arranged. One such circumstance is the absence of both the common-law husband and the father-in-law.

The arguments are bereft of merit.

In determining the guilt or innocence of the accused in rape cases, the Court is guided by the following principles:

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[28] CA *rollo*, p. 51.

(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, though innocent, to disprove the charge; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence of 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.[29]

Inasmuch as the crime of rape is essentially committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced sexual intercourse. Therefore, in a prosecution for rape, the credibility of the victim is almost always the single and most important issue to deal with. Thus, if the victim's testimony meets the test of credibility, the accused can justifiably be convicted on the basis of this testimony; otherwise, the accused should be acquitted of the crime.[30]

More importantly, appellate courts do not disturb the findings of the trial courts with regard to the assessment of the credibility of witnesses.[31] The reason for this is that trial courts have the "unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination."[32]

The exceptions to this rule are when the trial court's findings of facts and conclusions are not supported by the evidence on record, or when certain facts of substance and value, likely to change the outcome of the case, have been overlooked by the trial court, or when the assailed decision is based on a

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[29] *People v. Malate*, G.R. No. 185724, June 5, 2009, 588 SCRA 817, 825.

[30] *People v. Lazaro*, G.R. No. 186379, August 19, 2009, 596 SCRA 587, 596.

[31] *People v. Malana*, G.R. No. 185716, September 29, 2010, 631 SCRA 676, 686.

[32] *People v. Malate*, *supra* note 29.

misapprehension of facts.[33] However, this Court finds none of these exceptions present in the instant case.

The private complainant testified in a steadfast and straightforward manner, to wit:

FISCAL JUDITHO AGAN:
Q And can you tell us if there was any unusual incident on April 1, 2000 at about 9:00 o'clock in the evening while you were in your house?
A It was Saysot whom I saw went up.

Q In what particular place of your house did Saysot Cias go?
A He went up thru the window.

Q And how did you know that Saysot went up thru the window?
A Because our door was closed.

Q And was Saysot Cias able to enter your house?
A Yes, he was able to get inside.

Q After Saysot Cias was inside your house, what happened, if any?
A He kneeled down on my two (2) legs and he covered my mouth.

Q How were you able to recognize Saysot Cias at that time?
A Because when he covered my mouth I was able to wake up.

Q And how were you able to see his face clearly after you woke up?
A Because there was a kerosene lamp.

Q And how far was the kerosene lamp to the place where you were lying down?
A Above our head.

Q When Saysot kneeled on your two (2) legs and covered your [mouth], did he say anything?
A He told me that "Just be silent ha" but there was a scythe around my neck.

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[33] *People v. Burgos*, G.R. No. 117451, September 29, 1997, 279 SCRA 697, 705.

Q How did Saysot Cias place the scythe?
A He placed it here. (The witness is indicating where the scythe was placed at the right neck.)

Q Was the scythe touching your neck already at that time?
A Yes, it was touching.

Q What did you do if any after Saysot Cias told you not to say anything while placing a scythe at your neck?
A He told me to be silent because if I am going to make a noise he will kill us.

x x x x x x x x x

Q And what were your children doing at that time when Saysot Cias was kneeling on your legs holding a scythe at your neck?
A The children were sleeping.

Q After that, what if any did Saysot Cias do?
A He raped me.

Q Were you not wearing a panty at that time?
A Yes.

Q How was he able to rape you when you were wearing a panty?
A He removed my panty.

Q How did Saysot Cias remove your panty?
A While he was holding the scythe around my neck the other hand removed my panty.

Q And what happened to your panty?
A It was torn.

x x x x x x x x x

Q After Saysot Cias was able to remove your panty, what happened next?
A He raped me.

Q Did you not shout or scream at that time?
A Because if I am going to shout he is going to kill me.

Q Did you not try to wake up your children?
A No, I did not because they were lying on one side.

Q How long was that when Saysot Cias was having sexual intercourse with you?
A [Maybe] about one (1) hour.

Q And during this one (1) hour, did you not struggle?
A I struggled.

Q And were you not able to release yourself?
A I cannot because he was kneeling on my two (2) legs.

Q After that, what happened next?
A After that he went down.

Q And what did you do if any after he went down?
A After he went down, his wife kept on shouting outside while I was crying.

Q Why were you crying?
A Because if I am going to tell anyone, he is going to kill me.[34]

Evidently, the above transcript shows that AAA's testimony was very coherent and candid.

The trial court likewise reached a similar conclusion after hearing the testimony of AAA, *viz*:

After a careful and thorough review of the evidence and a conscientious disquisition of the disputed issue in this case, this Court finds that the lone testimony of the private complainant passes the test of credibility and is, by itself, sufficient to sustain a conviction. x x x

x x x x x x x x x

On cross-examination, her narration of the events was unshaken. The defense attempted, but failed, to point out any contradictions or flaws in her recollection of the events. She remained consistent and spontaneously answered on even the minute details. Even her testimony on recall bore the badge of sincerity and truthfulness. Her forthright replies to rigorous questioning dispelled the initial doubts on matters which initially seemed, to the mind of the Court, as slight inconsistencies in her testimony. She successfully parried all questions in a frank and spontaneous manner that convinced this

[34] TSN, July 3, 2001, pp. 7-11.

Court that she did not fabricate this accusation against Saysot Cias. Consequently, her testimony must be given full faith and credit.[35]

Thus, this Court finds no reason to deviate from the time-honored doctrine that the trial court's assessment of the credibility of witnesses and their testimonies deserves great respect.

Further, the theory that Cias and AAA were having an illicit affair is unsupported by evidence. As held in *People v. Cabanilla*,[36] the sweetheart defense is an affirmative defense that must be supported by convincing proof. In the case at bar, accused-appellant relied solely on his testimony and that of his wife. He did not offer any other evidence—such as a love letter, a memento, or even a single photograph—to substantiate his claim that they had a romantic relationship.

Besides, granting they had an illicit affair, this fact alone does not rule out rape as it does not necessarily mean that consent was present. As We held, "A love affair does not justify rape for a man does not have an unbridled license to subject his beloved to his carnal desires against her will."[37]

Lastly, the contention of accused-appellant that the absence of any form of injury to AAA's neck or legs contradicts the charge of rape, is untenable. In *People v. Hacbang*, We ruled that absence of injury does not negate the charge of rape and destroy the credibility of the victim's testimony. What is important is the fact that the victim was made to submit to the will of the accused through force and intimidation.[38]

The elements needed to prove the crime of rape under paragraph 1(a) of Article 266-A of the Revised Penal Code (RPC) are: (1) the offender is a man; (2) the offender had carnal knowledge of a woman; and (3) the act is accomplished

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[35] CA *rollo*, pp. 21-24.

[36] G.R. No. 185839, November 17, 2010.

[37] *Id.*

[38] *People v. Lambid*, G.R. Nos. 133066-67, October 1, 2003, 412 SCRA 417, 431; *People v. Flores*, G.R. No. 141782, December 14, 2001, 372 SCRA 421, 430-431.

by using force or intimidation. All these elements were sufficiently proved by the prosecution. The testimony of AAA overwhelmingly proves that accused-appellant raped her with the use of force and intimidation.

Accordingly, We find that the prosecution has discharged its burden of proving the guilt of the accused beyond reasonable doubt.

As to the penalty, Art. 266-B of the RPC provides that "[w]henever the rape is committed with the **use of a deadly weapon** x x x, the penalty shall be *reclusion perpetua* to death (emphasis supplied)." Accordingly, in determining the proper imposable penalty, the Court is guided by the provisions of Art. 63 of the RPC, which reads:

> Article 63. *Rules for the application of indivisible penalties*. –
>
> x x x x x x x x x
>
> In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:
>
> 1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied. x x x

In this case, the trial court appreciated not just one, but three (3) aggravating circumstances, namely: (a) the use of a deadly weapon; (b) the act was committed in the dwelling of the private complainant;[39] and (c) entrance to the private complainant's dwelling was obtained by unlawful entry.[40] The first two aggravating circumstances were sufficiently alleged in the criminal information and were also adequately proved by the prosecution during trial. The third aggravating circumstance, although not alleged in the criminal information, was amply proved during trial. In *People v. Mitra*, We ruled that "aggravating circumstance not alleged in the information may be proved during trial and appreciated in imposing the sentence. Evidence in support thereof

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[39] RPC, Art. 14(3).

[40] *Id.*, Art. 14(18).

merely forms part of the actual commission of the crime and its appreciation by the courts does not constitute a violation of the constitutional right of the accused to be informed of the nature and cause of the accusation against him."[41]

Thus, considering the presence of aggravating circumstances, the proper imposable penalty is death. However, due to Republic Act No. 9346, which prohibits the imposition of the death penalty, the CA correctly modified the penalty to *reclusion perpetua*.

Finally, although the CA was correct in awarding PhP 30,000 as exemplary damages, the award of moral damages should be increased to PhP 75,000. There should also be an interest of six percent (6%) per annum on all damages awarded from the finality of judgment until fully paid, in line with prevailing jurisprudence.[42]

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 00075 finding accused-appellant Feliciano "Saysot" Cias guilty of the crime charged is *AFFIRMED* with *MODIFICATION*. As modified, the ruling of the CA should read as follows:

> WHEREFORE, the Decision of the Regional Trial Court of Dumaguete City, Branch 37, dated January 31, 2003, in Criminal Case No. 14791, finding appellant Feliciano Cias @ "Saysot" guilty beyond reasonable doubt of rape is **AFFIRMED with MODIFICATIONS** to the effect that he is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay private offended party [AAA] the amount of ₱30,000.00 as exemplary damages in addition to the amounts of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, with 6% interest per annum on all damages from finality of this Decision until fully paid.

SO ORDERED.

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

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[41] G.R. No. 130669, March 27, 2000, 328 SCRA 774, 792.

[42] *People v. Combate*, G.R. No. 189301, December 15, 2010.

[*] Additional member per Special Order No. 994 dated May 27, 2011.

FIRST DIVISION

[G.R. No. 142676. June 6, 2011]

EMERITA MUÑOZ, *petitioner, vs.* **ATTY. VICTORIANO R. YABUT, JR. and SAMUEL GO CHAN,** *respondents.*

[G.R. No. 146718. June 6, 2011]

EMERITA MUÑOZ, *petitioner, vs.* **SPOUSES SAMUEL GO CHAN and AIDA C. CHAN, and THE BANK OF THE PHILIPPINE ISLANDS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; RECONVEYANCE; AN ACTION FOR RECONVEYANCE IS AN ACTION *IN PERSONAM*.— The rule is that: (1) a judgment *in rem* is binding upon the whole world, such as a judgment in a land registration case or probate of a will; and (2) a judgment *in personam* is binding upon the parties and their successors-in-interest but not upon strangers. A judgment directing a party to deliver possession of a property to another is *in personam*; it is binding only against the parties and their successors-in-interest by title subsequent to the commencement of the action. An action for declaration of nullity of title and recovery of ownership of real property, or re-conveyance, is a real action but it is an action *in personam*, for it binds a particular individual only although it concerns the right to a tangible thing. Any judgment therein is binding only upon the parties properly impleaded.

2. ID.; ID.; JUDGMENTS; ONLY REAL PARTIES IN INTEREST IN AN ACTION ARE BOUND BY THE JUDGMENT THEREIN AND BY WRITS OF EXECUTION ISSUED PURSUANT THERETO.— Since they were not impleaded as parties and given the opportunity to participate in Civil Case No. Q-28580, the final judgment in said case cannot bind BPI Family and the spouses Chan. The effect of the said judgment cannot be extended to BPI Family and the spouses Chan by simply issuing an *alias* writ of execution against them. No

man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by any judgment rendered by the court. In the same manner, a writ of execution can be issued only against a party and not against one who did not have his day in court. Only real parties in interest in an action are bound by the judgment therein and by writs of execution issued pursuant thereto.

3. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); CERTIFICATES OF TITLE; SHALL NOT BE SUBJECT TO COLLATERAL ATTACK.— Section 48 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, clearly provides that "[a] certificate of title shall not be subject to collateral attack. It cannot be altered, modified or cancelled except in a direct proceeding in accordance with law." Herein, several Torrens titles were already issued after the cancellation of Muñoz's. Certificates of title had been successively issued to Emilia M. Ching, spouses Go, BPI Family, and spouses Chan. Civil Case No. Q-28580, in which a final judgment had already been rendered, specifically challenged the validity of the certificates of title of Emilia M. Ching and the spouses Go only. To have the present certificate of title of the spouses Chan cancelled, Muñoz must institute another case directly attacking the validity of the same. The fact that the titles to the subject property of Emilia M. Ching and the spouses Go were already declared null and void *ab initio* by final judgment in Civil Case No. Q-28580 is not enough, for it does not automatically make the subsequent titles of BPI Family and the spouses Chan correspondingly null and void *ab initio.*

4. ID.; ID.; ID.; ID.; A VOID TITLE MAY BECOME THE ROOT OF A VALID TITLE IF THE DERIVATIVE TITLE WAS OBTAINED IN GOOD FAITH AND FOR VALUE.— [A] void title may become the root of a valid title if the derivative title was obtained in good faith and for value. Following the principle of indefeasibility of a Torrens title, every person dealing with registered lands may safely rely on the correctness of the certificate of title of the vendor/transferor, and he is not required to go beyond the certificate and inquire into the circumstances culminating in the vendor's acquisition of the property. The rights of innocent third persons who relied on

the correctness of the certificate of title and acquired rights over the property covered thereby cannot be disregarded and the courts cannot order the cancellation of such certificate for that would impair or erode public confidence in the Torrens system of land registration.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; THE MAIN THING TO BE PROVEN THEREIN IS PRIOR POSSESSION AND THAT THE SAME WAS LOST THROUGH FORCE, INTIMIDATION, THREAT, STRATEGY, AND STEALTH.— There is forcible entry or *desahucio* when one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy or stealth. In such cases, the possession is illegal from the beginning and the **basic inquiry centers on who has the prior possession *de facto***. In filing forcible entry cases, the law tells us that two allegations are mandatory for the municipal court to acquire jurisdiction: first, the plaintiff must allege prior physical possession of the property, and second, he must also allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the Rules of Court, *i.e.*, by force, intimidation, threat, strategy, or stealth. It is also settled that in the resolution thereof, what is important is determining who is entitled to the physical possession of the property. Indeed, **any of the parties who can prove prior possession *de facto* may recover such possession even from the owner himself since such cases proceed independently of any claim of ownership** and the plaintiff needs merely to prove prior possession *de facto* and undue deprivation thereof. Title is never in issue in a forcible entry case, the court should base its decision on who had prior physical possession. The main thing to be proven in an action for forcible entry is prior possession and that same was lost through force, intimidation, threat, strategy, and stealth, so that it behooves the court to restore possession regardless of title or ownership.

6. ID.; REVISED RULE ON SUMMARY PROCEDURE; PROHIBITS PETITIONS FOR *CERTIORARI*; CASE AT BAR.— Civil Case No. 8286, a forcible entry case, is governed by the Revised Rule on Summary Procedure, Section 19 x x x. The purpose of the Rule on Summary Procedure is to achieve an expeditious and inexpensive determination of cases

without regard to technical rules. Pursuant to this objective, the Rule prohibits petitions for *certiorari*, like a number of other pleadings, in order to prevent unnecessary delays and to expedite the disposition of cases. x x x The prohibition in Section 19(g) of the Revised Rule on Summary Procedure is plain enough. Its further exposition is unnecessary verbiage. The petition for *certiorari* of Samuel Go Chan and Atty. Yabut in Civil Case No. Q-94-20632 is clearly covered by the said prohibition, thus, it should have been dismissed outright by the RTC-Branch 88. While the circumstances involved in Muñoz's forcible entry case against Samuel Go Chan and Atty. Yabut are admittedly very peculiar, these are insufficient to except the petition for *certiorari* of Samuel Go Chan and Atty. Yabut in Civil Case No. Q-94-20632 from the prohibition. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.

7. ID.; CIVIL PROCEDURE; INTERLOCUTORY ORDERS; REFER TO THOSE THAT DETERMINE INCIDENTAL MATTERS THAT DO NOT TOUCH ON THE MERITS OF THE CASE OR PUT AN END TO THE PROCEEDINGS.— Interlocutory orders are those that determine incidental matters that do not touch on the merits of the case or put an end to the proceedings. An order granting a preliminary injunction, whether mandatory or prohibitory, is interlocutory and unappealable.

APPEARANCES OF COUNSEL

Ricardo J.M. Rvera Law Office for petitioner.
Felix B. Lerio for Spouses Chan and Atty. V. Yabut.
Benedicto Verzosa Gealogo & Burkley for BPI.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before Us are the following consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court.

In **G.R. No. 142676**, Emerita Muñoz (Muñoz) is seeking the reversal, annulment, and setting aside of the Decision[1] dated July 21, 1995 and Resolution[2] dated March 9, 2000 of the Court of Appeals in CA-G.R. SP No. 35322, which affirmed the Orders[3] dated June 10, 1994 and August 5, 1994 of the Regional Trial Court, Branch 88 (RTC-Branch 88) of Quezon City in Civil Case No. Q-94-20632. The RTC dismissed Civil Case No. 8286, the forcible entry case instituted by Muñoz against Atty. Victoriano R. Yabut, Jr. (Atty. Yabut) and Samuel Go Chan before the Metropolitan Trial Court (MeTC), Branch 33 of Quezon City; and nullified the MeTC Order[4] dated May 16, 1994, granting Muñoz's prayer for the issuance of a writ of preliminary mandatory injunction which restored possession of the subject property to Muñoz.

In **G.R. No. 146718**, Muñoz is praying for the reversal, setting aside, and nullification of the Decision[5] dated September 29, 2000 and Resolution[6] dated January 5, 2001 of the Court of Appeals in CA-G.R. SP No. 40019, which affirmed the Orders[7]

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[1] *Rollo* (G.R. No. 142676), pp. 67-74; penned by Associate Justice Jainal D. Rasul with Associate Justices Eubulo G. Verzola and Eugenio S. Labitoria, concurring.

[2] *Id.* at 101.

[3] *Id.* at 75-94.

[4] *Id.* at 95-100.

[5] *Rollo* (G.R. No. 146718), pp. 61-72; penned by Associate Justice Eubulo G. Verzola with Associate Justices Marina L. Buzon and Edgardo P. Cruz, concurring.

[6] *Id.* at 73.

[7] *Id.* at 127-130.

dated August 21, 1995 and October 3, 1995 of the Quezon City RTC, Branch 95 (RTC-Branch 95) in Civil Case No. Q-28580 denying Muñoz's Motion for an *Alias* Writ of Execution and Application for Surrender of the Owner's Duplicate Copy of TCT No. 53297[8] against respondents Bank of the Philippine Islands (BPI) and the spouses Samuel Go Chan and Aida C. Chan (spouses Chan).

I

FACTS

The subject property is a house and lot at No. 48 Scout Madriñan St., Diliman, Quezon City, formerly owned by Yee L. Ching. Yee L. Ching is married to Emilia M. Ching (spouses Ching), Muñoz's sister. Muñoz lived at the subject property with the spouses Ching. As consideration for the valuable services rendered by Muñoz to the spouses Ching's family, Yee L. Ching agreed to have the subject property transferred to Muñoz. By virtue of a Deed of Absolute Sale, seemingly executed by Yee L. Ching in favor of Muñoz,[9] the latter acquired a Transfer Certificate of Title (TCT) No. 186306 covering the subject property in her name on December 22, 1972.[10] However, in a Deed of Absolute Sale dated December 28, 1972, Muñoz purportedly sold the subject property to her sister, Emilia M. Ching. As a result, TCT No. 186306 was cancelled and TCT No. 186366 was issued in Emilia M. Ching's name. Emilia M. Ching, in a Deed of Absolute Sale dated July 16, 1979, sold the subject property to spouses Go Song and Tan Sio Kien (spouses

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[8] *Id.* at 111-126.

[9] According to Yee L. Ching's Answer with Cross-Claim in Civil Case No. Q-28580, he was out of the country at the time he supposedly executed the Deed of Absolute Sale in Muñoz's favor. Emilia M. Ching was somehow able to make it appear that her husband, Yee L. Ching, signed the said Deed of Absolute Sale. When Yee L. Ching confronted Emilia M. Ching regarding the papers, Emilia M. Ching abandoned him. Nonetheless, Yee L. Ching ratified the transfer of the subject property to Muñoz (*Rollo* [G.R. No. 142676], pp. 111-112).

[10] *Rollo* (G.R. No. 142676), p. 102.

Go), hence, TCT No. 186366 was cancelled and replaced by TCT No. 258977 in the spouses Go's names.

On October 15, 1979, Muñoz registered her adverse claim to the subject property on TCT No. 258977 of the spouses Go. The next day, on October 16, 1979, Muñoz filed a complaint for the annulment of the deeds of absolute sale dated December 28, 1972 and July 16, 1979, the cancellation of TCT No. 258977 in the spouses Go's names, and the restoration and revival of TCT No. 186306 in Muñoz's name. The complaint was docketed as Civil Case No. Q-28580 and raffled to RTC-Branch 95. On October 17, 1979, Muñoz caused the annotation of a notice of *lis pendens* on TCT No. 258977 of the spouses Go. In an Order dated December 17, 1979, the RTC-Branch 95 granted the spouses Go's motion for the issuance of a writ of preliminary mandatory injunction and ordered the sheriff to put the spouses Go in possession of the subject property. The writ was implemented by the sheriff on March 26, 1980, driving Muñoz and her housemates away from the subject property.

Muñoz filed a petition for *certiorari* and prohibition before the Court of Appeals, assailing the issuance of the writ of preliminary mandatory injunction, which was docketed as CA-G.R. SP No. 10148. The appellate court dismissed Muñoz's petition on January 4, 1980. Yee L. Ching and his son Frederick M. Ching filed an urgent motion for leave to intervene in CA-G.R. SP No. 10148 and for the issuance of a temporary restraining order (TRO). The Court of Appeals issued a TRO. However, in a Resolution dated March 18, 1980, the appellate court denied the motion to intervene of Yee L. Ching and Frederick M. Ching, and cancelled the TRO previously issued. Yee L. Ching and Frederick M. Ching challenged before this Court, in G.R. No. 53463, the Resolution dated March 18, 1980 of the Court of Appeals. Eventually, in a Resolution dated June 3, 1981, the Court dismissed the petition in G.R. No. 53463, for lack of merit and failure of Yee L. Ching and Frederick M. Ching to substantially show that the RTC-Branch 95 and the Court of Appeals gravely abused their discretion. In a subsequent Resolution dated June 21, 1982, the Court clarified that its Resolution of

June 3, 1981 was without prejudice to the continuation of the litigation in Civil Case No. Q-28580 still pending before the trial court, "in order that proper and final adjudication may be made of whether or not the deed of sale by Emerita L. Muñoz in favor of Emilia M. Ching is a real, genuine and authentic transaction, thereby to settle once and for all the issue of ownership of the property herein in question."[11]

Trial in Civil Case No. Q-28580 proceeded before RTC-Branch 95.

In the meantime, Muñoz's adverse claim and notice of *lis pendens* on TCT No. 258977 was cancelled on October 28, 1982 on the basis of an alleged final judgment in favor of the spouses Go.[12] The spouses Go obtained a loan of ₱500,000.00 from BPI Family Savings Bank (BPI Family) and to secure the same, they constituted a mortgage on the subject property on November 23, 1982.[13] When the spouses Go defaulted on the payment of their loan, BPI Family foreclosed the mortgage. BPI Family was the highest bidder at the auction sale of the subject property. The spouses Go failed to exercise their right of redemption within the prescribed period, thus, BPI Family was finally able to register the subject property in its name on October 23, 1987 under TCT No. 370364.[14] Apparently, the original copy of TCT No. 370364 was among those razed in the fire at the Quezon City Register of Deeds on June 11, 1988. As a result of the administrative reconstitution of the lost title, TCT No. RT-54376 (370364) was issued to BPI Family. On December 3, 1990, BPI Family executed in favor of the spouses Samuel Go Chan and Aida C. Chan (spouses Chan) a Deed of Absolute Sale[15] covering the subject property for and in

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[11] *Id.* at 113.

[12] *Rollo* (G.R. No. 146718), p. 101.

[13] *Id.*

[14] *Id.* at 102-103.

[15] *Id.* at 104-105.

consideration of ₱3,350,000.00. Consequently, TCT No. RT-54376 (370364) in the name of BPI Family was cancelled and TCT No. 53297 was issued in the spouses Chan's names on January 28, 1991.[16] The spouses Chan obtained a loan from BPI Family on October 2, 1992 for the construction of a building on the subject property, and to secure the same, constituted a mortgage on the subject property in favor of BPI Family.[17]

On July 19, 1991, RTC-Branch 95 rendered its Decision[18] in Civil Case No. Q-28580, against Emilia M. Ching, Yee L. Ching, and the spouses Go (Emilia M. Ching, *et al.*). It found that Muñoz's signature on the Deed of Absolute Sale dated December 28, 1972 was forged; that Muñoz never sold the subject property to her sister, Emilia M. Ching; and that the spouses Go were not innocent purchasers for value of the subject property. The *fallo* of the said decision reads:

> WHEREFORE, judgment is hereby rendered dismissing for lack of merit [Emilia M. Ching, *et al.*'s] respective counterclaims, cross-claims, and counter-cross-claim, declaring as null and void <u>*ab initio*</u> the following documents, to wit: (a) Deed of Absolute Sale dated December 28, 1972, copy of which is marked in evidence as Exh. M; (b) TCT No. 186366 of the Registry of Deeds for Quezon City, copy of which is marked in evidence as Exh. N; (c) Deed of Absolute Sale dated July 16, 1979, copy of which is marked in evidence as Exh. 3; and, (d) TCT No. 258977 of the Registry of Deeds for Metro Manila District III, copy of which is marked in evidence as Exh. 4, and directing defendant Register of Deeds of Quezon City to cancel from the records of the subject property the registrations of all the said documents and to restore and revive, free from all liens and encumbrances, TCT No. 186306 of the Registry of Deeds for Quezon City, copy of which is marked in evidence as Exh. L, as well as ordering defendants Emilia M. Ching, Go Song and Tan Sio Kien jointly and severally to pay [Muñoz] the sum of ₱50,000.00 as and for attorney's fees and to pay the costs of suit. The court also hereby dismisses

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[16] *Id.* at 106-108.

[17] *Id.*

[18] *Rollo* (G.R. No. 142676), pp. 102-106.

the rest of the claims in [Muñoz's] complaint, there being no satisfactory warrant therefor.[19]

Emilia M. Ching, *et al.*'s, appeal of the foregoing judgment of the RTC-Branch 95 was docketed as CA-G.R. CV No. 33811 before the Court of Appeals. In its Decision[20] dated March 4, 1993, the appellate court not only affirmed the appealed judgment, but also ordered the spouses Go and their successors-in-interest and assigns and those acting on their behalf to vacate the subject property, to wit:

> WHEREFORE, premises considered, the decision appealed from is AFFIRMED, with costs against [Emilia M. Ching, *et al.*]. The writ of preliminary mandatory injunction issued on December 17, 1979 is hereby set aside and declared dissolved. Defendants-appellants Go and Tan, their successors-in-interest and assigns and those acting on their behalf, are ordered to vacate the disputed premises and to deliver the same to [Muñoz] immediately upon receipt of this decision.[21]

Emilia L. Ching, *et al.*, filed before this Court a motion for extension of time to file their petition for review, which was assigned the docket number G.R. No. 109260. However, they failed to file their intended petition within the extended period which expired on April 23, 1993. In a Resolution[22] dated July 12, 1993, the Court declared G.R. No. 109260 terminated. The Resolution dated July 12, 1993 of the Court in G.R. No. 109260 became final and executory on July 15, 1993 and was entered in the Book of Entries of Judgments on even date.[23]

More than two months later, on September 20, 1993, the RTC-Branch 95 issued a writ of execution to implement the judgment in Civil Case No. Q-28580.

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[19] *Id.* at 106.

[20] *Id.* at 107-123.

[21] *Id.* at 123.

[22] *Id.* at 124.

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

The spouses Chan, who bought the subject property from BPI Family, then came forward and filed before the RTC-Branch 95 on October 22, 1993 an Urgent Motion to Stop Execution as Against Spouses Samuel Go Chan and Aida Chan,[24] opposing the writ of execution issued in Civil Case No. Q-28580. The spouses Chan asserted ownership and possession of the subject property on the basis of a clean title registered in their names under TCT No. 53297. The spouses Chan further contended that the final judgment in Civil Case No. Q-28580 could not be executed against them since they were not parties to the said case; they were not successors-in-interest, assigns, or acting on behalf of the spouses Go; and they purchased the subject property from BPI Family without any notice of defect in the latter's title.

It was only at this point that Muñoz, upon her own inquiry, discovered the cancellation on October 28, 1982 of her adverse claim and notice of *lis pendens* annotated on the spouses Go's TCT No. 258977, and the subsequent events that led to the transfer and registration of the title to the subject property from the spouses Go, to BPI Family, and finally, to the spouses Chan.

In its Order[25] dated December 28, 1993, the RTC-Branch 95 denied the spouses Chan's urgent motion to stop the execution. According to the RTC-Branch 95, the photocopy of TCT No. 370364 in the name of BPI Family, submitted by the spouses Chan with their motion, could hardly be regarded as satisfactory proof that Muñoz's adverse claim and notice of *lis pendens* annotated therein were also missing from the original copy of said certificate of title. Muñoz's adverse claim and notice of *lis pendens* were annotated on TCT No. 258977 in the spouses Go's names as P.E.-8078 and P.E.-8178, respectively. So when TCT No. 258977 of the spouses Go was cancelled and TCT No. 370364 was issued to BPI Family, it could be presumed

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[24] *Rollo* (G.R. No. 146718), pp. 98-100.

[25] *Rollo* (G.R. No. 142676), p. 127.

that the Register of Deeds regularly performed his official duty by carrying over Muñoz's adverse claim and notice of *lis pendens* to TCT No. 370364. In addition, the RTC-Branch 95 pointed out that in this jurisdiction, the entry of the notice of *lis pendens* in the day book of the Register of Deeds was already sufficient notice to the whole world of the dispute over the subject property, and there was no more need to annotate the same on the owner's duplicate of the certificate of title. Finally, the RTC-Branch 95 held that TCT No. RT-54376 (370364) of BPI Family and TCT No. 53297 of the spouses Chan shall be subject to the reservation under Section 7 of Republic Act No. 26[26] "[t]hat certificates of title reconstituted extrajudicially, in the manner stated in sections five and six hereof, shall be without prejudice to any party whose right or interest in the property was duly noted in the original, at the time it was lost or destroyed, but entry or notation of which has not been made on the reconstituted certificate of title." Thus, the spouses Chan were deemed to have taken the disputed property subject to the final outcome of Civil Case No. Q-28580.

On January 3, 1994, the RTC-Branch 95 issued an *Alias* Writ of Execution.[27] On January 10, 1994, the writ was enforced, and possession of the subject property was taken from the spouses Chan and returned to Muñoz.[28] In its Orders dated April 8, 1994 and June 17, 1994, the RTC-Branch 95 denied the spouses Chan's motion for reconsideration and notice of appeal, respectively.[29]

G.R. No. 142676

Pending resolution by the RTC-Branch 95 of the spouses Chan's motion for reconsideration and notice of appeal in Civil Case No. Q-28580, Muñoz instituted before the MeTC on

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[26] An Act Providing a Special Procedure for the Reconstitution of Torrens Certificate of Title Lost or Destroyed.

[27] *Rollo* (G.R. No. 142676), pp. 128-129.

[28] *Id.* at 130-134.

[29] *Id.* at 185-186.

February 4, 1994 a Complaint for Forcible Entry with Prayer for Preliminary Mandatory Injunction[30] against Samuel Go Chan and Atty. Yabut, docketed as Civil Case No. 8286. Muñoz alleged in her complaint that she had been in actual and physical possession of the subject property since January 10, 1994. She hired a caretaker and two security guards for the said property. On February 2, 1994, Samuel Go Chan and Atty. Yabut, along with 20 other men, some of whom were armed, ousted Muñoz of possession of the subject property by stealth, threat, force, and intimidation. Muñoz prayed for the issuance of a writ of preliminary mandatory injunction directing Samuel Go Chan and Atty. Yabut and all persons claiming right under them to vacate the subject property. Muñoz additionally prayed for judgment making the mandatory injunction permanent and directing Samuel Go Chan and Atty. Yabut to pay Muñoz: (1) compensation for the unlawful occupation of the subject property in the amount of ₱50,000.00 per month, beginning February 2, 1994 until the said property is fully and completely turned over to Muñoz; (2) attorney's fees in the amount of ₱50,000.00, plus ₱1,500.00 per court appearance of Muñoz's counsel; and (3) costs of suit.

Samuel Go Chan and Atty. Yabut denied Muñoz's allegations, insisting that Samuel Go Chan is the valid, lawful, and true legal owner and possessor of the subject property. Samuel Go Chan and Atty. Yabut averred that the Turn-Over of Possession and Receipt of Possession dated January 10, 1994 – attached to Muñoz's complaint as proof that the subject property had been placed in her possession – is a falsified document. The Writ of Execution issued on September 20, 1993 in Civil Case No. Q-28580 had already expired and the Sheriff's Return on the Writ – another document purporting to show that possession of the subject property was turned-over to Muñoz on January 10, 1994 – was then being challenged in a complaint before the Office of Deputy Court Administrator Reynaldo L. Suarez of the Supreme Court. Samuel Go Chan's possession of the subject

[30] *Id.* at 137-145.

property has never been interrupted. His sister, Cely Chan, resided at the subject property and was never removed therefrom. On February 2, 1994, Atty. Yabut was at the subject property only to protect the rights and interest of his client, Samuel Go Chan, and since the latter's possession of the subject property had never been interrupted, Atty. Yabut entered the same peacefully, without intimidation, force, or stealth. The other people at the subject property on February 2, 1994 were there to attend the services at the Buddhist Temple which occupied the fourth floor of the building erected by the spouses Chan on the subject property. Samuel Go Chan and Atty. Yabut, thus, asked the MeTC to dismiss Muñoz's complaint for lack of merit and legal basis.[31]

The MeTC received evidence from the parties on whether a writ of preliminary injunction should be issued, as prayed for by Muñoz. In its Order dated May 16, 1994, the MeTC adjudged that the final judgment in Civil Case No. Q-28580 was already executed against the spouses Chan and there was, indeed, a turn-over of possession of the subject property to Muñoz. Accordingly, the MeTC granted Muñoz's prayer for the issuance of a writ of preliminary mandatory injunction, restoring possession of the subject property to Muñoz.

Samuel Go Chan and Atty. Yabut questioned the foregoing MeTC order through a Petition for *Certiorari* with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction[32] before the RTC-Branch 88, which was docketed as Civil Case No. Q-94-20632. They asserted that they were not bound by the execution of the final judgment of RTC-Branch 95 in Civil Case No. Q-28580 as they were not parties to the said case. Muñoz, on the other hand, argued that the MeTC Order of May 16, 1994 was an interlocutory order, and under Section 19 of the Rules of Summary Procedure, a petition for *certiorari* against an interlocutory order issued by the court is one of the prohibited pleadings and motions in summary proceedings.

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[31] *Id.* at 178-184.

[32] *Id.* at 146-156.

In its Order dated June 10, 1994, the RTC-Branch 88 issued a writ of preliminary injunction to enjoin the implementation of the MeTC Order dated May 16, 1994.

On August 5, 1994, the RTC-Branch 88 issued another Order resolving Muñoz's motion to dismiss the petition for *certiorari* in Civil Case No. Q-94-20632, motion for reconsideration of the Order dated June 10, 1994 of RTC-Branch 88 granting the issuance of a writ of preliminary injunction, and motion to resolve with additional grounds for dismissal. According to the RTC-Branch 88, the MeTC failed to distinguish the issue of finality of the judgment of the RTC-Branch 95 in Civil Case No. Q-28580 from the assertions of Samuel Go Chan and Atty. Yabut that the spouses Chan are not covered by said final judgment because they are not successors-in-interest, assigns, or privies of the spouses Go and they are purchasers of the subject property in good faith. The issue of whether the final judgment in Civil Case No. Q-28580 extended to the spouses Chan was then still being litigated in the same case before RTC-Branch 95, where the spouses Chan's motion for reconsideration of the denial of their notice of appeal was pending. The RTC-Branch 88 further found that the MeTC committed grave abuse of discretion in not dismissing Muñoz's complaint for forcible entry on the ground of "*lis pendens*," as the issue as to who between Muñoz and the spouses Chan had the better right to possession of the subject property was the subject of the pending proceeding in Civil Case No. Q-28580 before the RTC-Branch 95. In the end, the RTC-Branch 88 decreed:

WHEREFORE, premises considered, the Court renders judgment –

(a) Denying the motion to dismiss of respondent Muñoz for lack of merit;

(b) Denying the motion for reconsideration of respondent Muñoz for the recall and/or setting aside of the writ of preliminary injunction granted to petitioners;

(c) Declaring the Order dated May 16, 1994 of Public respondent Hon. Elsa de Guzman in Civil Case No. 8286 illegal and therefore null and void; and

(d) Dismissing the ejectment suit in Civil Case No. 8286 on ground of *lis pendens*.

Without pronouncement as to costs.[33]

Muñoz appealed the Orders dated June 10, 1994 and August 5, 1994 of RTC-Branch 88 before the Court of Appeals. Her appeal was docketed as CA-G.R. SP No. 35322. Aside from the nullification of the two orders, Muñoz additionally prayed for the dismissal from the service of the RTC-Branch 88 presiding judge and the disbarment of Atty. Yabut.

The Court of Appeals, in its Decision dated July 21, 1995, sustained the appealed orders of RTC-Branch 88. The Court of Appeals held that the MeTC should have dismissed the forcible entry case on the ground of "*lis pendens*"; that the spouses Chan were not parties in Civil Case No. Q-28580, and impleading them only in the execution stage of said case vitiated their right to due process; that the order of the RTC-Branch 95 involving the spouses Chan in Civil Case No. Q-28580 was null and void, considering that they are strangers to the case, and they are innocent purchasers for value of the subject property; that the notice of *lis pendens* was already cancelled from the spouses Go's certificate of title at the time they mortgaged the subject property to BPI Family; and that the title to the subject property was already free of any and all liens and encumbrances when the spouses Chan purchased the said property from BPI Family. The Court of Appeals, in its Resolution dated March 9, 2000, denied Muñoz's motion for reconsideration.

G.R. No. 146718

Meanwhile, Muñoz filed before the RTC-Branch 95 in Civil Case No. Q-28580 a Motion to Cite the Register of Deeds in Contempt of Court for the failure of the Register of Deeds to restore Muñoz's TCT No. 186306 despite having been served with a copy of the writ of execution on October 11, 1993. In its Judgment (on the Contempt Proceedings against the Register

[33] *Id.* at 94.

of Deeds of Quezon City Samuel C. Cleofe)[34] dated March 18, 1994, the RTC-Branch 95 denied Muñoz's motion, convinced that the Register of Deeds had a valid excuse for his inability to implement the served writ. The Register of Deeds could not cancel the spouses Chan's TCT No. 53297, the subsisting certificate of title over the subject property, absent any authority or directive for him to do so. The directive in the final judgment in Civil Case No. Q-28580 and the writ of execution for the same only pertained to the cancellation of the spouses Go's TCT No. 258977.

Thereafter, Muñoz filed a Motion for Contempt against the spouses Chan and a Second Motion for Contempt against Samuel Go Chan and Atty. Yabut. Muñoz also filed a Motion for an *Alias* Writ of Execution and Application for Surrender of the Owner's Duplicate Copy of TCT No. 53297,[35] in which she prayed for the issuance of an *alias* writ of execution directing the Register of Deeds not only to cancel TCT No. 258977 and all documents declared null and void *ab initio* in the dispositive portion of the Decision[36] dated July 19, 1991 of RTC-Branch 95 in Civil Case No. Q-28580, and to restore and revive, free from all liens and encumbrances Muñoz's TCT No. 186306, but likewise to cancel the present certificate of title covering the subject property, TCT No. 53297.

In its Order dated August 21, 1995, the RTC-Branch 95 denied all of Muñoz's aforementioned motions. The RTC-Branch 95 was of the view that Samuel Go Chan's title should be litigated in another forum, not in Civil Case No. Q-28580 where the judgment had already become final and executory. The RTC-Branch 95 also stressed that since the judgment in Civil Case No. Q-28580 had long become final and executory, it could no longer be changed or amended except for clerical error or mistake. Accordingly, the RTC-Branch 95 resolved as follows:

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[34] *Rollo* (G.R. No. 146718), p. 110.

[35] *Id.* at 111-126.

[36] *Rollo* (G.R. No. 142676), pp. 102-106.

1. Ordering, as it hereby orders, the denial of [Muñoz's] first and second motions for contempt and hereby absolves respondents Samuel Go Chan, Celia Chan, Atty. Victoriano R. Yabut, Jr., and several John Does of the Contempt Charges against them.

2. Ordering, as it hereby orders, the issuance of an *alias* writ of execution directing the Court's Deputy Sheriff:

(a) Defendants Go Song and Tan Sio Kien, their successors-in-interest and assigns and those acting on their behalf to vacate the disputed premises and deliver the same to [Muñoz];

(b) Defendant Register of Deeds of Quezon City to cancel from the records of the subject property the registration of all the following documents, to wit: (1) "Deed of Absolute Sale" dated December 28, 1972; (2) Transfer Certificate of Title (TCT) No. 186366 of the Register of Deeds of Quezon City; (3) "Deed of Absolute Sale" dated July 16, 1979; and (4) TCT No. 258977 of the Registry of Deeds for Metro Manila II, and to restore and revive, free from all liens and encumbrances TCT No. 186306 of the Registry of Deeds for Quezon City; and

(c) Defendants Emilia M. Ching, Go Song and Tan Sio Kien jointly and severally to pay [Muñoz] the sum of ₱50,000.00 as and for attorney's fees and to pay the cost of suit.[37]

Unrelenting, Muñoz filed a Motion for Clarificatory Order, pointing out that the spouses Chan are the present occupants of the subject property. The Order dated August 21, 1995 of the RTC-Branch 95 directed the deputy sheriff to deliver the subject property to Muñoz, and this could not be done unless the spouses Chan are evicted therefrom. Resultantly, Muñoz prayed that "a clarificatory order be made categorically stating that the spouses Samuel Go Chan and Aida C. Chan, and all persons claiming right under them, are likewise evicted from the subject premises pursuant to the Order of 21 August 1995."[38]

Once more, the RTC-Branch 95 denied Muñoz's motion in its Order dated October 3, 1995. The RTC-Branch 95 reiterated

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[37] *Rollo* (G.R. No. 146718), p. 128.

[38] *Id.* at 293.

the rule that after the judgment had become final, only clerical errors, as distinguished from substantial errors, can be amended by the court. Furthermore, when the decision or judgment sought to be amended is promulgated by an appellate court, it is beyond the power of the trial court to change, amplify, enlarge, alter, or modify. Ultimately, the RTC-Branch 95 pronounced that it was "restrained x x x to consider as mere clerical error the exclusion of spouses Samuel Go Chan and Aida C. Chan in the Decision of the Court dated July 19, 1991, a final judgment, which judgment cannot now be made to speak a different language."[39]

Attributing grave abuse of discretion on the part of the RTC-Branch 95 in issuing its Orders dated August 21, 1995 and October 3, 1995, Muñoz filed before this Court a Petition for *Certiorari* and *Mandamus*, which was remanded to the Court of Appeals in observance of the hierarchy of courts, where it was docketed as CA-G.R. SP No. 40019. The Court of Appeals promulgated its Decision on September 29, 2000 dismissing Muñoz's petition. The Court of Appeals agreed with the RTC-Branch 95 that the spouses Chan could not be covered by the *alias* writ of execution considering that they were not impleaded in Civil Case No. Q-28580. The cancellation of TCT No. 53297 in the spouses Chan's names could not be done apart from a separate action exclusively for that matter. The spouses Chan are deemed buyers in good faith and for value as the certificate of title delivered to them by BPI Family was free from any liens or encumbrances or any mark that would have raised the spouses Chan's suspicions. Every person dealing with registered lands may safely rely on the correctness of the certificate of title of the vendor/transferor, and he is not required to go beyond the certificate and inquire into the circumstances culminating in the vendor's acquisition of the property. The Court of Appeals denied Muñoz's motion for reconsideration in a Resolution dated January 5, 2001.

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[39] *Id.* at 130.

Muñoz comes before this Court via the present consolidated petitions.

Muñoz posits that the final judgment and writ of execution of RTC-Branch 95 in Civil Case No. Q-28580 bind not only Emilia M. Ching and the spouses Go, but also their successors-in-interest, assigns, or persons acting on their behalf, namely, BPI Family and spouses Chan. The spouses Chan cannot be deemed innocent purchasers for value of the property since the cancellation of the adverse claim and notice of *lis pendens* on the spouses Go's TCT No. 258977 is completely null and void.

Muñoz further argues that the MeTC Order dated May 16, 1994 in Civil Case No. 8286 correctly ordered the issuance of a writ of preliminary mandatory injunction restoring possession of the subject property to her, as she had already acquired prior possession of the said property upon the execution of the final judgment in Civil Case No. Q-28580. Also, the spouses Chan's petition for *certiorari* before the RTC-Branch 88, docketed as Civil Case No. Q-94-20632, challenging the Order dated May 16, 1994 of the MeTC in Civil Case No. 8286, is a prohibited pleading under the Rules of Summary Procedure; and the RTC-Branch 88 and the Court of Appeals should be faulted for giving due course to the said petition even in the absence of jurisdiction.

On the other hand, in their comments to the two petitions at bar, the spouses Chan, Atty. Yabut, and BPI Family assert that given the peculiar factual circumstances of the case, RTC-Branch 88 was justified in taking cognizance of Samuel Go Chan and Atty. Yabut's petition for *certiorari* in Civil Case No. Q-94-20632; that Muñoz is estopped from questioning the jurisdiction of RTC-Branch 88 after participating in the proceedings in Civil Case No. Q-94-20632; that the spouses Chan's title to the subject property is not affected by the final judgment of RTC-Branch 95 in Civil Case No. Q-28580, and the said judgment cannot be executed against the spouses Chan since they are neither parties to the case, nor are they the successors-in-interest, assigns, or persons acting on behalf of Emilia M. Ching or the spouses Go; that BPI Family and consequently, the spouses Chan, obtained

title to the subject property as innocent purchasers for value, there being no notice of any infirmity in said title; and that Muñoz is guilty of forum shopping for filing her petition in G.R. No. 146718 even while her petition in G.R. No. 142676 is still pending.

II

RULING

For the sake of expediency, we will be discussing first the merits of the petition in G.R. No. 146718.

G.R. No. 146718

Civil Case No. Q-28580 involved Muñoz's complaint for the annulment of the deeds of absolute sale dated December 28, 1972[40] and July 16, 1979,[41] the cancellation of the spouses Go's TCT No. 258977, and the restoration and revival of Muñoz's TCT No. 186306. The final judgment of RTC-Branch 95 in Civil Case No. Q-28580 was in favor of Muñoz and against Emilia M. Ching and the spouses Go. The problem arose when during the pendency of the said case, title and possession of the subject property were transferred from the spouses Go, to BPI Family, and finally, to the spouses Chan. BPI Family and the spouses Chan were never impleaded as parties and were not referred to in the dispositive portion of the final judgment in Civil Case No. Q-28580.

Muñoz questions in G.R. No. 146718: (1) the Order dated August 21, 1995 denying her Motion for Contempt against the spouses Chan, Second Motion for Contempt against Samuel Go Chan and Atty. Yabut, and Motion for an *Alias* Writ of Execution and Application for Surrender of the Owner's Duplicate Copy of TCT No. 53297; and (2) the Order dated October 3, 1995 denying her Motion for Clarificatory Order, both issued by the RTC-Branch 95 in Civil Case No. Q-28580, and upheld

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[40] Purported sale of the subject property by Muñoz to Emilia M. Ching.

[41] Purported sale of the subject property by Emilia M. Ching to the spouses Go.

by the Court of Appeals in CA-G.R. SP No. 40019. In sum, Muñoz was seeking in her aforementioned motions: (1) a categorical order from the RTC-Branch 95 that the final judgment in Civil Case No. Q-28580 be executed against the spouses Chan; and (2) the surrender and cancellation of the spouses Chan's TCT No. 53297 and restoration of Muñoz's TCT No. 186306.

There is no merit in Muñoz's petition in G.R. No. 146718.

Civil Case No. Q-28580 is an action for reconveyance of real property. In *Heirs of Eugenio Lopez, Sr. v. Enriquez*,[42] we described an action for reconveyance as follows:

> **An action for reconveyance is an action *in personam*** available to a person whose property has been wrongfully registered under the Torrens system in another's name. Although the decree is recognized as incontrovertible and no longer open to review, the registered owner is not necessarily held free from liens. As a remedy, an action for reconveyance is filed as an ordinary action in the ordinary courts of justice and not with the land registration court. **Reconveyance is always available as long as the property has not passed to an innocent third person for value.** A notice of *lis pendens* may thus be annotated on the certificate of title immediately upon the institution of the action in court. The notice of *lis pendens* will avoid transfer to an innocent third person for value and preserve the claim of the real owner.[43] (Emphases ours.)

The rule is that: (1) a judgment *in rem* is binding upon the whole world, such as a judgment in a land registration case or probate of a will; and (2) a judgment *in personam* is binding upon the parties and their successors-in-interest but not upon strangers. A judgment directing a party to deliver possession of a property to another is *in personam*; it is binding only against the parties and their successors-in-interest by title subsequent to the commencement of the action. An action for declaration of nullity of title and recovery of ownership of real property, or

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[42] G.R. No. 146262, January 21, 2005, 449 SCRA 173.

[43] *Id.* at 190.

re-conveyance, is a real action but it is an action *in personam*, for it binds a particular individual only although it concerns the right to a tangible thing. Any judgment therein is binding only upon the parties properly impleaded.[44]

Since they were not impleaded as parties and given the opportunity to participate in Civil Case No. Q-28580, the final judgment in said case cannot bind BPI Family and the spouses Chan. The effect of the said judgment cannot be extended to BPI Family and the spouses Chan by simply issuing an *alias* writ of execution against them. No man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by any judgment rendered by the court. In the same manner, a writ of execution can be issued only against a party and not against one who did not have his day in court. Only real parties in interest in an action are bound by the judgment therein and by writs of execution issued pursuant thereto.[45]

A similar situation existed in *Dino v. Court of Appeals*,[46] where we resolved that:

> As the registered owner of the subject property, petitioners are not bound by decision in Civil Case No. R-18073 for they were never summoned in said case and the notice of *lis pendens* annotated on TCT No. 73069 was already cancelled at the time petitioners purchased the subject property. While it is true that petitioners are indispensable parties in Civil Case No. R-18073, without whom no complete relief could be accorded to the private respondents, the fact still remains that petitioners were never actually joined as defendants in said case. Impleading petitioners as additional defendants only in the execution stage of said case violated petitioners' right to due process as no notice of *lis pendens* was annotated on the existing certificate of title of said property nor were petitioners given notice of the pending case, therefore petitioners remain strangers in said case and the Order of the trial court involving them is null

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[44] *Alonso v. Cebu Country Club, Inc.*, 426 Phil. 61, 86-87 (2002).

[45] *Orquiola v. Court of Appeals*, 435 Phil. 323, 332-333 (2002).

[46] G.R. No. 95921, September 2, 1992, 213 SCRA 422.

and void, considering that petitioners are innocent purchasers of the subject property for value.[47]

We further stress that Section 48 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, clearly provides that "[a] certificate of title shall not be subject to collateral attack. It cannot be altered, modified or cancelled except in a direct proceeding in accordance with law." Herein, several Torrens titles were already issued after the cancellation of Muñoz's. Certificates of title had been successively issued to Emilia M. Ching, spouses Go, BPI Family, and spouses Chan. Civil Case No. Q-28580, in which a final judgment had already been rendered, specifically challenged the validity of the certificates of title of Emilia M. Ching and the spouses Go only. To have the present certificate of title of the spouses Chan cancelled, Muñoz must institute another case directly attacking the validity of the same.

The fact that the titles to the subject property of Emilia M. Ching and the spouses Go were already declared null and void *ab initio* by final judgment in Civil Case No. Q-28580 is not enough, for it does not automatically make the subsequent titles of BPI Family and the spouses Chan correspondingly null and void *ab initio*.

It has long been ingrained in our jurisprudence that a void title may become the root of a valid title if the derivative title was obtained in good faith and for value. Following the principle of indefeasibility of a Torrens title, every person dealing with registered lands may safely rely on the correctness of the certificate of title of the vendor/transferor, and he is not required to go beyond the certificate and inquire into the circumstances culminating in the vendor's acquisition of the property. The rights of innocent third persons who relied on the correctness of the certificate of title and acquired rights over the property covered thereby cannot be disregarded and the courts cannot order the cancellation of such certificate for that would impair

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[47] *Id.* at 432-433.

or erode public confidence in the Torrens system of land registration.[48]

Hence, we pronounced in *Republic v. Agunoy, Sr.*:[49]

> Here, it bears stressing that, by petitioner's own judicial admission, the lots in dispute are no longer part of the public domain, and there are numerous third, fourth, fifth and more parties holding Torrens titles in their favor and **enjoying the presumption of good faith**. This brings to mind what we have reechoed in *Pino v. Court of Appeals* and the cases therein cited:
>
> > [E]ven on the supposition that the sale was void, the general rule that the direct result of a previous illegal contract cannot be valid (on the theory that the spring cannot rise higher than its source) cannot apply here for We are confronted with the functionings of the Torrens System of Registration. The doctrine to follow is simple enough: **a fraudulent or forged document of sale may become the ROOT of a valid title if the certificate of title has already been transferred from the name of the true owner to the name of the forger or the name indicated by the forger**.[50] (Emphases ours.)

Although the RTC-Branch 95 had declared with finality in Civil Case No. Q-28580 that the titles of Emilia M. Ching and the spouses Go were null and void, there is yet no similar determination on the titles of BPI Family and the spouses Chan. The question of whether or not the titles to the subject property of BPI Family and the spouses Chan are null and void, since they are merely the successors-in-interest, assigns, or privies of Emilia M. Ching and the spouses Go, ultimately depends on the issue of whether or not BPI Family and the spouses Chan obtained their titles to the subject property in bad faith, *i.e.*,

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[48] *Heirs of Severa P. Gregorio v. Court of Appeals*, 360 Phil. 753, 765 (1998).

[49] 492 Phil. 118 (2005), citing *Pino v. Court of Appeals*, G.R. No. 94114, June 19, 1991, 198 SCRA 434, 445; *Philippine National Bank v. Court of Appeals*, G.R. No. 43972, July 24, 1990, 187 SCRA 735, 741; *Duran v. Intermediate Appellate Court*, 223 Phil. 88, 93-94 (1985).

[50] *Republic v. Agunoy, Sr.*, *id.* at 137-138.

with notice of Muñoz's adverse claim and knowledge of the pendency of Civil Case No. Q-28580. The latter is a factual issue on which we cannot rule in the present petition, not only because we are not a trier of facts, but more importantly, because it was not among the issues raised and tried in Civil Case No. Q-28580.

In support of her prayer for an *alias* writ of execution against BPI Family and the spouses Go, Muñoz cites our ruling in *Calalang v. Register of Deeds of Quezon City*,[51] in relation to *De la Cruz v. De la Cruz*.[52]

De la Cruz is an action for reconveyance of Lot 671 founded on breach of trust filed by Augustina de la Cruz, *et al*., against Lucia dela Cruz (Lucia) and Iglesia Ni Kristo (INK). We upheld the validity of the sale of Lot 671 by Lucia to INK, and thereby validated the title of INK to the said property.

Calalang actually involved two petitions: (1) a special civil action for *certiorari* and prohibition originally filed by Virginia Calalang (Calalang) before this Court, and (2) a petition for injunction with damages originally filed by Augusto M. de Leon (De Leon), *et al*., before the RTC and docketed as Civil Case No. Q-45767. Calalang and De Leon, *et al*., assert titles that were adverse to that of INK. De Leon, *et al*., in particular, claim that their titles to Lot 671 were derived from Amando Clemente. Calalang and De Leon, *et al*., sought from the court orders enjoining INK from building a fence to enclose Lot 671; requiring the Administrator of the National Land Titles and Deeds Registration Administration (NLTDRA) to conduct an investigation of the anomaly regarding Lucia's reconstituted title to Lot 671; and dismissing the proceedings instituted by the Register of Deeds for the cancellation of their titles. We dismissed the petitions of Calalang and De Leon, *et al*., on the ground of *res judicata*, the legality or validity of the title of INK over Lot 671 had

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[51] G.R. No. 76265, April 22, 1992, 208 SCRA 215 and G.R. No. 76265, March 11, 1994, 231 SCRA 88.

[52] 215 Phil. 593 (1984).

been settled with finality in *De la Cruz*. *De la Cruz* was applied to Calalang and De Leon, *et al.*, since the facts on which such decision was predicated continued to be the facts on which the petitions of Calalang and De Leon, *et al.*, were based.

Muñoz's reliance on *Calalang* is misplaced. There are substantial differences in the facts and issues involved in *Calalang* and the present case.

In *Calalang*, there is duplication or overlapping of certificates of title issued to different persons over the same property. We already upheld in *De la Cruz* the validity of the certificate of title of INK over Lot 671, which effectively prevents us from recognizing the validity of any other certificate of title over the same property. In addition, Lucia, the predecessor-in-interest of INK, had her certificate of title judicially reconstituted. The judicial reconstitution of title is a proceeding *in rem*, constituting constructive notice to the whole world. Hence, we rejected the petitions of Calalang and De Leon, *et al.*, to enjoin INK from building a fence enclosing Lot 671, and the concerned public authorities from instituting appropriate proceedings to have all other certificates of title over Lot 671 annulled and cancelled.

In the instant case, there has been no duplication or overlapping of certificates of title. The subject property has always been covered by only one certificate of title at a time, and at present, such certificate is in the spouses Chan's names. As we have previously discussed herein, Muñoz cannot have the spouses Chan's TCT No. 53297 cancelled by a mere motion for the issuance of an *alias* writ of execution in Civil Case No. Q-28580, when the spouses Chan were not parties to the case. Civil Case No. Q-28580 was a proceeding *in personam*, and the final judgment rendered therein – declaring null and void the titles to the subject property of Emilia M. Ching and the spouses Go – should bind only the parties thereto. Furthermore, despite the void titles of Emilia M. Ching and the spouses Go, the derivative titles of BPI Family and the spouses Chan may still be valid provided that they had acquired the same in good faith and for value.

More in point with the instant petition is *Pineda v. Santiago.*[53] *Pineda* still involved Lot 671. INK sought from the RTC a second *alias* writ of execution to implement the judgment in *Calalang* against Conrado Pineda (Pineda), *et al*. In opposing the issuance of such writ, Pineda, *et al*., asserted that they held titles to Lot 671 adverse to those of Lucia and INK and that they were not parties in *De la Cruz* or in *Calalang*. In its assailed order, the RTC granted the second *alias* writ of execution on the basis that the issue of ownership of Lot 671 was already determined with finality in favor of Lucia and INK. The writ ordered the deputy sheriff to eject Pineda, *et al.*, from Lot 671. When the matter was brought before us, we annulled the assailed order as the writ of execution issued was against Pineda, *et al.*, who were not parties to Civil Case No. Q-45767, the ejectment suit instituted by De Leon, *et al*. We elaborated in *Pineda* that:

> Being a suit for injunction, Civil Case No. Q-45767 partakes of an **action *in personam*.** In *Domagas v. Jensen*, we have explained the nature of an action *in personam* and enumerated some actions and proceedings which are *in personam*, *viz*:
>
> > "The settled rule is that the aim and object of an action determine its character. Whether a proceeding is *in rem*, or *in personam*, or quasi *in rem* for that matter, is determined by its nature and purpose, and by these only. A proceeding *in personam* is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. **The purpose of a proceeding *in personam* is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant.** Of this character are suits to compel a defendant to specifically perform some act or actions to fasten a pecuniary liability on him. **An action *in personam* is said to be one which has for its object a judgment against the person, as distinguished from a judgment against the**

[53] G.R. No. 143482, April 13, 2007, 521 SCRA 47.

> **propriety to determine its state. It has been held that an action *in personam* is a proceeding to enforce personal rights or obligations; such action is brought against the person.** As far as suits for injunctive relief are concerned, it is well-settled that it is an injunctive act *in personam*. In *Combs v. Combs*, the appellate court held that proceedings to enforce personal rights and obligations and in which personal judgments are rendered adjusting the rights and obligations between the affected parties is *in personam*. **Actions for recovery of real property are *in personam*."**

The respondent judge's jurisdiction is, therefore, limited to the parties in the injunction suit. To stress, the petition for injunction, docketed as *Civil Case No. Q-45767*, was filed only by therein petitioners Augusto M. de Leon, Jose de Castro, Jose A. Panlilio, Felicidad Vergara *Vda. De* Pineda, Fernando L. Vitug I, Fernando M. Vitug II, Fernando M. Vitug III, and Faustino Tobia, and later amended to include Elena Ostrea and Feliza C. Cristobal-Generoso as additional petitioners therein, against Bishop Eraño Manalo, in his capacity as titular and spiritual head of I.N.K. Herein petitioners *Conrado Pineda, et al.* never became parties thereto. Any and all orders and writs of execution, which the respondent judge may issue in that case can, therefore, be enforced only against those parties and not against the herein petitioners *Conrado Pineda, et al.* In issuing the assailed Order dated 22 April 1998, which directed the issuance of the 2nd *Alias* Writ of Execution to eject non-parties (herein petitioners), the respondent judge clearly went out of bounds and committed grave abuse of discretion.

The nature of the injunction suit — *Civil Case No. Q-45767* — as an action *in personam* in the RTC remains to be the same whether it is elevated to the CA or to this Court for review. An action *in personam* does not become an action *in rem* just because a pronouncement confirming I.N.K.'s title to Lot 671 was made by this Court in the *Calalang decision*. **Final rulings may be made by this Court, as the Highest Court of the Land, in actions *in personam* but such rulings are binding only as against the parties therein and not against the whole world.** Here lies another grave abuse of discretion on the part of the respondent judge when he relied on the *Calalang decision* in his assailed Order dated 07 May 1998 as if it were binding against the whole world, saying:

> "After evaluating the arguments of both parties, decisive on the incident is the decision of the Supreme Court in favor

> of the respondent I.N.K., represented by its titular and spiritual head Bishop Eraño G. Manalo, sustaining its ownership over the subject Lot 671. This Court could do no less but to follow and give substantial meaning to its ownership which shall include all dominical rights by way of a Writ of Execution. To delay the issuance of such writ is a denial of justice due the I.N.K."

As a final word, this decision shall not be misinterpreted as disturbing or modifying our ruling in *Calalang*. The final ruling on I.N.K.'s ownership and title is not at all affected. Private respondent I.N.K., as the true and lawful owner of Lot 671 as ruled by the Court in *Calalang*, simply has to file the proper action against the herein petitioners to enforce its property rights within the bounds of the law and our rules. I.N.K.'s recourse of asking for the issuance of an *alias* writ of execution against the petitioners in *Civil Case No. Q-45767* and the respondent judge's orders in said case, granting I.N.K.'s prayer and enforcing the *alias* writ of execution against the present petitioners, constitutes blatant disregard of very fundamental rules and must therefore be stricken down.[54] (Emphases ours.)

Consistent with *Pineda*, and as appositely recommended by the RTC-Branch 95 and the Court of Appeals in the present case, Muñoz's legal remedy is to directly assail in a separate action the validity of the certificates of title of BPI Family and the spouses Chan.

G.R. No. 142676

G.R. No. 142676 is Muñoz's appeal of the dismissal of Civil Case No. 8286, the forcible entry case she instituted against Samuel Go Chan and Atty. Yabut before the MeTC.

There is forcible entry or *desahucio* when one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy or stealth. In such cases, the possession is illegal from the beginning and the **basic inquiry centers on who has the prior possession *de facto***. In filing forcible entry cases, the law tells us that two allegations are mandatory for the municipal court to acquire jurisdiction: first,

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

the plaintiff must allege prior physical possession of the property, and second, he must also allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the Rules of Court, *i.e.*, by force, intimidation, threat, strategy, or stealth. It is also settled that in the resolution thereof, what is important is determining who is entitled to the physical possession of the property. Indeed, **any of the parties who can prove prior possession *de facto* may recover such possession even from the owner himself since such cases proceed independently of any claim of ownership** and the plaintiff needs merely to prove prior possession *de facto* and undue deprivation thereof.[55]

Title is never in issue in a forcible entry case, the court should base its decision on who had prior physical possession. The main thing to be proven in an action for forcible entry is prior possession and that same was lost through force, intimidation, threat, strategy, and stealth, so that it behooves the court to restore possession regardless of title or ownership.[56]

We more extensively discussed in *Pajuyo v. Court of Appeals*[57] that:

Ownership or the right to possess arising from ownership is not at issue in an action for recovery of possession. The parties cannot present evidence to prove ownership or right to legal possession except to prove the nature of the possession when necessary to resolve the issue of physical possession. The same is true when the defendant asserts the absence of title over the property. **The absence of title over the contested lot is not a ground for the courts to withhold relief from the parties in an ejectment case.**

The only question that the courts must resolve in ejectment proceedings is - who is entitled to the physical possession of the

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[55] *Bañes v. Lutheran Church of the Philippines*, 511 Phil. 458, 479-480 (2005).

[56] *Domalsin v. Valenciano*, G.R. No. 158687, January 25, 2006, 480 SCRA 115, 132.

[57] G.R. No. 146364, June 3, 2004, 430 SCRA 492.

premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable, or when both parties intruded into public land and their applications to own the land have yet to be approved by the proper government agency. **Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror.** Neither is the unlawful withholding of property allowed. **Courts will always uphold respect for prior possession.**

Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.[58] (Emphases ours.)

Based on the foregoing, we find that the RTC-Branch 88 erred in ordering the dismissal of Civil Case No. 8286 even before completion of the proceedings before the MeTC. At the time said case was ordered dismissed by RTC-Branch 88, the MeTC had only gone so far as holding a hearing on and eventually granting Muñoz's prayer for the issuance of a writ of preliminary mandatory injunction.

Muñoz alleges in her complaint in Civil Case No. 8286 that she had been in prior possession of the subject property since it was turned-over to her by the sheriff on January 10, 1994, pursuant to the *Alias* Writ of Execution issued by the RTC-Branch 95 to implement the final judgment in Civil Case No. Q-28580. The factual issue of who was in prior possession of the subject property should be litigated between the parties regardless of whether or not the final judgment in Civil Case No. Q-28580 extended to the spouses Chan. Hence, the pendency of the latter issue in Civil Case No. Q-28580 before the RTC-Branch 95 did not warrant the dismissal of Civil Case No. 8286 before the MeTC on the ground of *litis pendentia*. The two cases could proceed independently of one another.

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[58] *Id.* at 510-511.

Samuel Go Chan and Atty. Yabut aver that the spouses Chan have never lost possession of the subject property since acquiring the same from BPI Family in 1990. This is a worthy defense to Muñoz's complaint for forcible entry, which Samuel Go Chan and Atty. Yabut should substantiate with evidence in the continuation of the proceedings in Civil Case No. 8286 before the MeTC.

In addition, Civil Case No. 8286, a forcible entry case, is governed by the Revised Rule on Summary Procedure, Section 19 whereof provides:

SEC. 19. *Prohibited pleadings and motions*. – The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule:

x x x x x x x x x

(g) Petition for *certiorari*, *mandamus*, or prohibition against any interlocutory order issued by the court.

The purpose of the Rule on Summary Procedure is to achieve an expeditious and inexpensive determination of cases without regard to technical rules. Pursuant to this objective, the Rule prohibits petitions for *certiorari*, like a number of other pleadings, in order to prevent unnecessary delays and to expedite the disposition of cases.[59]

Interlocutory orders are those that determine incidental matters that do not touch on the merits of the case or put an end to the proceedings.[60] An order granting a preliminary injunction, whether mandatory or prohibitory, is interlocutory and unappealable.[61]

The writ of preliminary mandatory injunction issued by the MeTC in its Order dated May 16, 1994, directing that Muñoz

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[59] *Go v. Court of Appeals*, 358 Phil. 214, 224 (1998).

[60] *Silverio, Jr. v. Filipino Business Consultants, Inc.*, 504 Phil. 150, 158 (2005).

[61] *United Coconut Planters Bank v. United Alloy Philippines Corporation*, 490 Phil. 353, 363 (2005).

be placed in possession of the subject property during the course of Civil Case No. 8286, is an interlocutory order. Samuel Go Chan and Atty. Yabut assailed the said order before the RTC-Branch 88 via a petition for *certiorari*, docketed as Civil Case No. Q-94-20632. The RTC-Branch 88 gave due course to said petition, and not only declared the MeTC Order dated May 16, 1994 null and void, but went further by dismissing Civil Case No. 8286.

The prohibition in Section 19(g) of the Revised Rule on Summary Procedure is plain enough. Its further exposition is unnecessary verbiage.[62] The petition for *certiorari* of Samuel Go Chan and Atty. Yabut in Civil Case No. Q-94-20632 is clearly covered by the said prohibition, thus, it should have been dismissed outright by the RTC-Branch 88. While the circumstances involved in Muñoz's forcible entry case against Samuel Go Chan and Atty. Yabut are admittedly very peculiar, these are insufficient to except the petition for *certiorari* of Samuel Go Chan and Atty. Yabut in Civil Case No. Q-94-20632 from the prohibition. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.[63]

Nonetheless, even though the peculiar circumstances extant herein do not justify the dismissal of Civil Case No. 8286, they do require limiting *pro hac vice* the reliefs the MeTC may accord to Muñoz in the event that she is able to successfully prove forcible entry by Samuel Go Chan and Atty. Yabut into the subject property (*i.e.*, that the sheriff actually turned-over to Muñoz the possession of the subject property on January 10, 1994, and that she was deprived of such possession by Samuel

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[62] *Bayview Hotel, Inc. v. Court of Appeals*, G.R. No. 119337, June 17, 1997, 273 SCRA 540, 547-548.

[63] *Don Tino Realty and Development Corporation v. Florentino*, 372 Phil. 882, 890-891 (1999).

Go Chan and Atty. Yabut on February 2, 1994 by means of force, intimidation, threat, strategy, and stealth). Taking into account our ruling in G.R. No. 146718 – that the final judgment in Civil Case No. Q-28580 does not extend to the spouses Chan, who were not impleaded as parties to the said case – the **MeTC is precluded from granting to Muñoz relief, whether preliminary or final, that will give her possession of the subject property**. Otherwise, we will be perpetuating the wrongful execution of the final judgment in Civil Case No. Q-28580. Based on the same reason, Muñoz can no longer insist on the reinstatement of the MeTC Order dated May 16, 1994 granting a preliminary mandatory injunction that puts her in possession of the subject property during the course of the trial. Muñoz though may recover damages if she is able to prove wrongful deprivation of possession of the subject property from February 2, 1994 until the finality of this decision in G.R. No. 146718.

WHEREFORE, in view of the foregoing, we:

(1) *GRANT* Emerita Muñoz's petition in G.R. No. 142676. We *REVERSE and SET ASIDE* the Decision dated July 21, 1995 and Resolution dated March 9, 2000 of the Court of Appeals in CA-G.R. SP No. 35322, which affirmed the Orders dated June 10, 1994 and August 5, 1994 of the Regional Trial Court, Branch 88 of Quezon City in Civil Case No. Q-94-20632. We *DIRECT* the Metropolitan Trial Court, Branch 33 of Quezon City to reinstate Emerita Muñoz's complaint for forcible entry in Civil Case No. 8286 and to resume the proceedings only to determine whether or not Emerita Muñoz was forcibly deprived of possession of the subject property from February 2, 1994 until finality of this judgment, and if so, whether or not she is entitled to an award for damages for deprivation of possession during the aforementioned period of time; and

(2) *DENY* Emerita Munoz's petition in G.R. No. 146718 for lack of merit, and *AFFIRM* the Decision dated September 29, 2000 and Resolution dated January 5, 2001 of the Court of Appeals in CA-G.R. SP No. 40019, which in turn, affirmed the Orders dated August 21, 1995 and October 3, 1995 of the Regional Trial Court, Branch 95 of Quezon City in Civil Case No. Q-28580.

No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 155307. June 6, 2011]

M.A. JIMENEZ ENTERPRISES, INC., represented by CESAR CALIMLIM and LAILA BALOIS, *petitioner, vs.* **THE HONORABLE OMBUDSMAN, JESUS P. CAMMAYO, ARTURO SANTOS, MANUEL FACTORA, TEODORO BARROZO, MANUEL ROY, RONALD MANALILI and JOHN ULASSUS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; EMPOWERED TO DETERMINE THE EXISTENCE OF PROBABLE CAUSE AGAINST THOSE IN PUBLIC OFFICE DURING A PRELIMINARY INVESTIGATION.— It is well-settled that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Ombudsman. The Ombudsman is vested with the sole power to investigate and prosecute, *motu proprio* or upon the complaint of any person, any act or omission which appears to be illegal, unjust, improper, or inefficient. It has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not.

2. ID.; ID.; ID.; INVESTIGATORY AND PROSECUTORIAL POWERS; CANNOT BE INTERFERED WITH BY COURTS EXCEPT WHEN THERE IS GRAVE ABUSE OF DISCRETION.— The Court respects the relative autonomy of the Ombudsman to investigate and prosecute, and refrains from interfering when the latter exercises such powers either directly or through the Deputy Ombudsman, except when there is grave abuse of discretion. Indeed, the Ombudsman's determination of probable cause may only be assailed through *certiorari* proceedings before this Court on the ground that such determination is tainted with grave abuse of discretion defined as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. For there to be a finding of grave abuse of discretion, it must be shown that the discretionary power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.

3. CRIMINAL LAW; VIOLATION OF SECTION 3(e) OF REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); ELEMENTS.— Respondents were charged with violation of Section 3(e) of R.A. No. 3019, the Anti-Graft and Corrupt Practices Act x x x. The following essential elements must x x x be present: (1) the accused must be a public officer discharging administrative, judicial or official functions; (2) the accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) the action of the accused caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of the functions of the accused.

4. ID.; ID.; ID.; MANIFEST PARTIALITY, EVIDENT BAD FAITH AND GROSS INEXCUSABLE NEGLIGENCE; NOT ESTABLISHED IN CASE AT BAR.— [A]s correctly noted by the Ombudsman, petitioner failed to point out specific evidence and concrete proof that respondents demonstrated manifest partiality or evident bad faith in the construction of the BGHMC and its retaining wall. There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.

Evident bad faith, on the other hand, connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage. It connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. Petitioner has not shown that respondents were impelled by such motives in the performance of their official duties and functions. Neither did petitioner establish that respondents acted with gross inexcusable negligence. x x x The x x x findings of the Ombudsman are based on substantial evidence. As long as substantial evidence supports it, the Ombudsman's ruling will not be overturned. Evidently, the collapse of the retaining wall was not mainly attributable to respondents' acts but due to a confluence of several factors, such as the unusually heavy rains during the start of the construction, discovery of a pre-war tunnel which collapsed, typhoon Feria and the fact that because the construction site was on a slope, there was always a possibility of a landslide happening in the area. These factors were beyond respondents' control and contributed to soften the soil on the construction site which resulted in soil erosion and collapse of the retaining wall.

5. ID.; ID.; ID.; GROSS INEXCUSABLE NEGLIGENCE; FOR AN ACTION TO CONSTITUTE AS GROSS INEXCUSABLE NEGLIGENCE, IT IS ESSENTIAL TO PROVE THAT THE BREACH OF DUTY BORDERS IN MALICE AND IS CHARACTERIZED BY FLAGRANT, PALPABLE AND WILLFUL INDIFFERENCE TO CONSEQUENCES INSOFAR AS OTHER PERSONS MAY BE AFFECTED.— As to petitioner's allegation that respondents DPWH officials and Teodoro Barrozo, by their inaction, were grossly negligent in their official duties, such assertion is bereft of merit. For an action to constitute as gross inexcusable negligence, it is essential to prove that the breach of duty borders on malice and is characterized by flagrant, palpable and willful indifference to consequences insofar as other person may be affected. Here, public respondents had not acted maliciously and with utter and willful indifference or disregard of other persons affected. In fact, by respondent Cammayo's act of employing additional slope protection to prevent further landslides in the area, he could not be deemed to have acted

with gross inexcusable negligence. In addition, the DPWH through its contractor installed polyurethane sheets for slope protection to the affected area in order to prevent further erosion. Soil nails consisting of steel bars and grouted cement motor was also installed. The project director immediately hired a structural design specialist to prepare plans for a new reinforced concrete retaining wall which will provide for permanent slope protection. Furthermore, as explained by respondents, the delay at the BGHMC administration in obtaining the permits was due to the need to submit documents from other offices which public respondents did not have control over. All these acts negate petitioner's assertion that respondents are guilty of gross inexcusable negligence in the construction of the BGHMC expansion project.

6. ID.; ID.; ID.; ID.; REFERS TO NEGLIGENCE CHARACTERIZED BY THE WANT OF EVEN THE SLIGHTEST CARE.— Gross inexcusable negligence does not signify mere omission of duties nor plainly the exercise of less than the standard degree of prudence. Rather, it refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected. Even if respondents failed to fully prevent the landslide which occurred at the construction site, they had exercised due diligence in order to forestall the occurrence of landslide on the area and to adjacent properties and hence, they cannot be deemed to have acted with gross inexcusable negligence.

7. ID.; ID.; ID.; UNDUE INJURY; MUST BE SPECIFIED, QUANTIFIED AND PROVEN TO THE POINT OF MORAL CERTAINTY.— [P]etitioner failed to substantiate its claim that it suffered damages when its property lost lateral support by reason of the collapsed retaining wall. In the case of *Santos v. People* cited in the case of *Soriano v. Marcelo*, the Court equated the concept of "undue injury," in the context of Section 3(e) of the Anti-Graft and Corrupt Practices Act, with the civil law concept of "actual damage." It is required that undue injury must be specified, quantified and proven to the point of moral certainty. Speculative or incidental injury is not sufficient. The damages suffered cannot be based on flimsy

and non-substantial evidence or upon speculation, conjecture or guesswork but must depend on competent proof and on the best evidence obtainable regarding specific facts which could afford some basis for measuring compensatory or actual damage. The Memorandum of the Office of the City Engineer of Baguio City, which petitioner has not refuted, clearly stated that "*the retaining wall is located approximately 7.50 meters to the nearest building line of the complainant. x x x* ***[T]he main structure of the complainant is evaluated to be outside the critical slip circle which is approximately 5.00 meters lateral distance from the retaining wall*** *x x x*." Absent any controverting evidence submitted by petitioner which would clearly prove actual damage of its property, the Ombudsman will not be faulted for relying on the said memorandum report.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; EMPLOYED TO COMPEL THE PERFORMANCE OF A MINISTERIAL, NOT A DISCRETIONARY DUTY.— As to the petitioner's prayer for the issuance of a writ of *mandamus*, suffice to say that *mandamus* is similarly unavailing to petitioner for *mandamus* is employed to compel the performance of a ministerial not a discretionary duty. In the performance of an official duty involving discretion, the corresponding official can only be directed by *mandamus* to act, but not to act one way or the other, except where there is grave abuse of discretion, manifest injustice, or palpable excess of authority.

APPEARANCES OF COUNSEL

Kapunan Lotilla Flores Garcia & Castillo for petitioner.
Gilbert A. Escoto for M. Roy
Zamora Poblador Vasquez & Bretana for J. Cammayo.
Farinas & Associates Law Offices for T. Barrozo.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a special civil action for *certiorari* and *mandamus*[1] praying that the Resolution[2] dated February 5, 2002 and Order[3] dated June 27, 2002 of the Ombudsman in OMB Case No. 0-01-0400 be nullified and a writ of *mandamus* be issued directing the Ombudsman to file informations against respondents for violation of Section 3(e) of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.

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

On January 20, 1999, the Department of Public Works and Highways (DPWH) entered into a contract[4] for the proposed construction of the Baguio General Hospital and Medical Center (BGHMC) Building (Phase I) with Royson and Co., Inc. (Royson), represented by its President, respondent Manuel V. Roy. The contract was approved by DPWH Secretary Gregorio R. Vigilar on January 29, 1999, and construction ensued.

On March 4, 1999, an excavation of sixty meters deep was made on the area under the control and supervision of the Project Director, Engr. Arturo M. Santos. Thinking that its property which was adjacent to the project site was under threat of erosion, petitioner, through its representative Carolina Jimenez, sent three letters[5] addressed to Royson asking that Royson hasten the construction of a retaining wall.

Construction of a provisional slope protection measure in the construction and excavation area was then started. Unfortunately, on February 7, 2000, unusually heavy rains

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[1] *Rollo*, pp. 4-30.

[2] *Id.* at 31-43.

[3] *Id.* at 44-47.

[4] *Id.* at 63-67.

[5] Records, pp. 89-91.

triggered the collapse of a portion of the slope protection, resulting in a landslide. Petitioner alleged that the landslide caused cracks in the house owned by it and prejudiced the structural integrity of the house. Thus, petitioner complained against the project before the Office of the Regional Director of the DPWH Cordillera Administrative Region (DPWH-CAR) and the Office of the City Mayor, which directed the Office of the City Engineer of Baguio City to conduct an investigation.

On March 23, 2000, the DPWH-CAR engineers submitted a Memorandum[6] to the DPWH Regional Director which stated, among others that "*[t]he affected part of the lot (driveway) claimed by the complainant is actually part of the BGH property as shown on the attached lot plan.*"

The City Engineer of Baguio, for its part, found the following:

1. That the construction being implemented by Royson and Co., Inc. is not covered by a building and excavation permit.

2. That the personnel of Royson & Co., Inc. alleged that no death resulted in the accident that happened on February 7, 2000 within their construction area.

3. That portion of Mr. & Mrs. Jimenez' garage allegedly encroached inside the property of BGH.

4. That the retaining wall is located approximately 7.50 meters to the nearest building line of the complainant. This building is a two (2) storey structure with a footprint area excluding the garage of approximately 10 x 15 meters.

5. That cracks on their driveway approximately 5.65 m. away from the edge of the complainant[']s building measuring approximately 6.00 meters is observed. The garage floor level is approximately 4.50 meters above the partially completed 2nd level retaining wall.[7]

Royson subsequently proceeded to build reinforced concrete slope protection, a grouted riprap, and a retaining wall for the

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[6] *Id.* at 94.

[7] *Id.* at 95.

compound. However, on June 8, 2000, when the reinforced concrete slope protection, grouted riprap, and retaining wall for the compound were already substantially completed, the retaining wall of the BGHMC Project collapsed.

Asserting that its property was damaged as a result, petitioner, through its representatives, Cesar Calimlim and Laila Balois, filed an Affidavit-Complaint[8] against all respondents before the Office of the Ombudsman.

Petitioner alleged that it is the owner of the land adjacent to the project site and that the said land was covered by TCT No. 31565. Before the incident, the land together with its improvements was valued at ₱25 million. However, according to petitioner, its property has now become virtually useless and danger-prone and can no longer be used profitably as the surrounding land has been eroded. Petitioner claimed that the damage to its property was due to respondents' gross negligence, incompetence and/or malicious conduct because they failed to construct a perimeter fence in the excavations made for the expansion of the BGHMC despite the fact that petitioner had written Royson about the possibility of an erosion happening. Thus, petitioner charged all the respondents of causing undue injury to it in the discharge of their official and administrative functions through manifest partiality, evident bad faith and inexcusable negligence in the construction of the expansion project of the BGHMC and its retaining wall.

Petitioner also averred in its affidavit-complaint that it filed a complaint for damages against the respondents before the Regional Trial Court of Quezon City, docketed as Civil Case No. Q-01-43224.

Respondent Teodoro Barrozo, the former City Engineer of Baguio City, filed his Counter-Affidavit[9] denying any liability under R.A. No. 3019. He claimed that the project in question was not a public-

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[8] *Id.* at 1-5. Dated May 8, 2001.

[9] *Id.* at 139-140.

work project of the City Government of Baguio but a project of the national government over which the Baguio City Engineer has no control and supervision. He maintained that the City Engineer's Office was never negligent or remiss in its duty: when it found out that the project was without the necessary permits, it immediately required the manager of Royson and BGHMC to obtain permits.

Respondent Jesus P. Cammayo, then Assistant Secretary of the DPWH, also submitted his Counter-Affidavit[10] denying that he was negligent in the performance of his duties and responsibilities. He also asserted that there was no basis for liability on his part because he had no participation whatsoever in the preparation, execution and approval of the contract and the project plans. The Contract for the Proposed Construction of the BGHMC (Phase I) was executed between DPWH, through Undersecretary Edmundo V. Mir, and Royson and was approved by DPWH Secretary Gregorio Vigilar. The BGHMC Project was a locally funded special project classified under Special Buildings, and as such, it was directly supervised by the Project Management Office for Special Buildings (PMO-SB) headed by the Project Director, Engr. Arturo Santos. It was also directly managed by Project Manager, Architect Angelito Damo, who was under the direct control and supervision of Engr. Santos. Although he supervises and/or controls the PMO-SB, Cammayo averred that he does not directly participate in the actual oversight of the construction of the BGHMC Project.

Cammayo added that in any event, he did all he could do to prevent damage to petitioner's property. He stressed that in the original plans for the project, there was no provision for the construction of any reinforced slope protection or retaining wall for the area adjacent to or near petitioner's property. Thus, there was no obligation to construct such permanent protection measures. But recognizing the need for slope protection, he initiated the construction of provisional slope protection measures. A supplemental agreement providing for the addition of a reinforced concrete slope protection and grouted riprap, among others, was also executed on December 9, 1999 and implemented

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[10] *Id.* at 169-186.

immediately. However, while the additional slope protection was being constructed, unusually heavy rains triggered the collapse of the portion of the slope protection within the Project Site near petitioner's property line. DPWH immediately took action to prevent further erosion.

He also maintained that when the reinforced concrete slope protection and the retaining wall of the BGHMC project collapsed on June 8, 2000, he immediately ordered respondent Engr. Santos to give him a complete report of the incident. His subordinates reported that the workers discovered a previously undetected pre-war tunnel which collapsed due to the heavy rains. This totally unforeseen and unfortunate event caused the slope protection to collapse and cause another landslide. Cammayo asserted that the cause of damage to petitioner's property was *force majeure* beyond the control of the DPWH and not any negligence, bad faith or partiality on his part.

Respondent Manuel Factora meanwhile claimed that he is the Medical Center Chief of the BGHMC and as such he had no participation whatsoever in the contract between the Republic of the Philippines through the DPWH and Royson. Being the Chief of the BGHMC, his concern is the proper and efficient operation and management of the hospital as well as the welfare of the patients brought to the hospital for treatment.[11]

In a Resolution dated February 5, 2002, the Ombudsman dismissed the complaint after finding no probable cause to hold any of the respondents liable for violation of Section 3(e) of R.A. No. 3019. The Ombudsman found no evidence of manifest partiality, evident bad faith and gross inexcusable negligence on the part of the respondents in the construction of the BGHMC Building. Further, it noted that the damage was not within petitioner's property but on a portion of BGHMC's property which petitioner merely encroached.

On June 27, 2002, the Ombudsman denied petitioner's motion for reconsideration.

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[11] *Id.* at 137.

Not satisfied, petitioner filed the instant petition contending that the Ombudsman acted without jurisdiction or with grave abuse of discretion in issuing the assailed resolution and order. Petitioner contends that:

A.

THE UNCONTROVERTED FACTS PROVE THAT CONSTRUCTION AND EXCAVATION ON THE BGHMC EXPANSION PROJECT WERE UNDERTAKEN WITHOUT BUILDING AND EXCAVATION PERMITS, SLOPE AND SOIL ANALYSIS.

B.

THE COLLAPSE OF THE RETAINING WALL AND THE EVENTUAL DAMAGE TO THE PROPERTY ARE SUFFICIENT TO RAISE A PRESUMPTION OR PERMIT AN INFERENCE OF NEGLIGENCE ON THE PART OF THE RESPONDENTS.

C.

EFFORTS TO CONSTRUCT THE RETAINING WALL WERE DONE ONLY AFTER DAMAGE HAD BEEN CAUSED TO PETITIONER'S PROPERTY.[12]

The sole issue to be resolved is whether the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the complaint against all the respondents.

Petitioner asserts that there is probable cause to charge respondents with violation of Section 3(e) of R.A. No. 3019. Petitioner insists that the collapse of the retaining wall was due to respondents' gross inexcusable negligence in their respective duties because they failed to ensure that the necessary building and excavation permits have been secured before excavation commenced. Petitioner assails the finding of the Ombudsman that the collapse was due to unusually heavy rains and typhoon Feria and the pre-war tunnel that caved-in which were all beyond the scope of respondents' authority. Petitioner argues that the

[12] *Rollo*, p. 15.

occurrence of heavy rains at the time of construction should not be considered as *force majeure* as to exempt respondents from liability. It points out that there was no proof that the collapse was due to the rains, and that it had forewarned the respondents of the possibility of erosion occurring but they continued being negligent. The Ombudsman likewise committed grave abuse of discretion in holding that the property damaged was BGHMC's property based on the report of the DPWH-CAR engineers because said engineers were allegedly in no position to determine whether petitioner encroached on a portion of BGHMC's property.

As to Cammayo's protestations of good faith and due diligence in trying to protect petitioner's property from damage, petitioner alleged that the effort to construct a retaining wall was done only after the two landslides. And although petitioner had attached a copy of the supplemental agreement to its complaint before the Ombudsman, petitioner contended that Cammayo's allegation that he initiated the construction of provisional slope protection was also allegedly not proven.

Respondents, for their part, maintained that the Ombudsman did not act with grave abuse of discretion when it dismissed the complaint against them. They further claim that the petitioner failed to establish that it suffered actual damage; that respondents DPWH and BGHMC officials gave unwarranted benefits, advantage or preference to any private party or even to the government; or that respondents acted with gross inexcusable negligence.

Private respondent Roy meanwhile stressed that under Royson's contract with the DPWH, it had no obligation to secure the permits and that it was issued a Notice to Proceed prior to its construction of the BGHMC expansion project.

We dismiss the petition.

It is well-settled that the determination of probable cause against those in public office during a preliminary investigation

is a function that belongs to the Ombudsman.[13] The Ombudsman is vested with the sole power to investigate and prosecute, *motu proprio* or upon the complaint of any person, any act or omission which appears to be illegal, unjust, improper, or inefficient.[14] It has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not.[15] As explained in *Esquivel v. Ombudsman*:[16]

> The Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. Settled is the rule that the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise. Said exercise of powers is based upon his constitutional mandate and the courts will not interfere in its exercise. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant.

The Court respects the relative autonomy of the Ombudsman to investigate and prosecute, and refrains from interfering when the latter exercises such powers either directly or through the Deputy Ombudsman, except when there is grave abuse of discretion.[17]

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[13] *Soriano v. Marcelo*, G.R. No. 160772, July 13, 2009, 592 SCRA 394, 402, citing *Presidential Commission on Good Government v. Desierto*, G.R. No. 139296, November 23, 2007, 538 SCRA 207, 215.

[14] *Vergara v. Ombudsman*, G.R. No. 174567, March 12, 2009, 580 SCRA 693, 708.

[15] *Id*.

[16] G.R. No. 137237, September 17, 2002, 389 SCRA 143, 150.

[17] *Galvante v. Casimiro*, G.R. No. 162808, April 22, 2008, 552 SCRA 304, 314-315.

Indeed, the Ombudsman's determination of probable cause may only be assailed through *certiorari* proceedings before this Court on the ground that such determination is tainted with grave abuse of discretion defined as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. For there to be a finding of grave abuse of discretion, it must be shown that the discretionary power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.[18]

Here, however, an assiduous examination of the records, as well as the assailed resolution and order of the Ombudsman dismissing the case against all the respondents for insufficiency of evidence, shows that the Ombudsman did not act with grave abuse of discretion.

Respondents were charged with violation of Section 3(e) of R.A. No. 3019, the Anti-Graft and Corrupt Practices Act, which is committed as follows:

> SEC. 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.

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[18] *Presidential Commission on Good Government v. Desierto, supra* note 13 at 216; *Office of the Ombudsman v. Magno*, G.R. No. 178923, November 27, 2008, 572 SCRA 272, 287.

The following essential elements must therefore be present: (1) the accused must be a public officer discharging administrative, judicial or official functions; (2) the accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) the action of the accused caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of the functions of the accused.[19]

But as correctly noted by the Ombudsman, petitioner failed to point out specific evidence and concrete proof that respondents demonstrated manifest partiality or evident bad faith in the construction of the BGHMC and its retaining wall. There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.[20] Evident bad faith, on the other hand, connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.[21] It connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.[22] Petitioner has not shown that respondents were impelled by such motives in the performance of their official duties and functions. Neither did petitioner establish that respondents acted with gross inexcusable negligence. As found by the Ombudsman:

> Respondents adopted emergency slope protection at the onset of the BGHMC Project. The Supplemental Agreement provided reinforced concrete slope protection and grouted rip rap, installation of polyurethane sheets and hiring of structural design specialist x x x. In fact, as recommended by complainant's Architect Angelo Lazaro three hundred (300) RSB soil nails were installed on site. The collapse was due to heavy rains and typhoon Feria. This was followed by the

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[19] *Belongilot v. Cua, et al.*, G.R. No. 160933, November 24, 2010, p. 12.

[20] *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009, 580 SCRA 279, 290.

[21] *Tayaban v. People*, G.R No. 150194, March 6, 2007, 517 SCRA 488, 500-501.

[22] *Id.* at 500; *Albert v. Sandiganbayan*, *supra* note 20.

discovery of a pre-war tunnel under which caved-in and collapsed also. The delay was beyond the control of respondents. There was the Open public bidding and the review of plans and structural design by the Bureau of Design. These factors were beyond the scope of authority of respondents. Conformably to the series of acts done by the respondents, we find no negligence or inexcusable negligence as claimed by complainants. The recommendation of complainant's architect was even implemented and yet, due to "*force majeure*", the collapse happened.

The Report or Memorandum for DPWH-CAR dated March 23, 2000 attached to the complaint remain undisputed. It clearly states that the damage is NOT within complainant's property. The affected part is actually a part of the BGHMC property as shown by the plan x x x and the Memorandum Report dated March 30, 2000 which states that the damage is 7.5 meters NEAREST the building line of complainant and that portion of Mr. & Mrs. Jimenez' garage allegedly **encroached inside** the property **of BGHMC** x x x.[23]

The foregoing findings of the Ombudsman are based on substantial evidence. As long as substantial evidence supports it, the Ombudsman's ruling will not be overturned. Evidently, the collapse of the retaining wall was not mainly attributable to respondents' acts but due to a confluence of several factors, such as the unusually heavy rains during the start of the construction, discovery of a pre-war tunnel which collapsed, typhoon Feria and the fact that because the construction site was on a slope, there was always a possibility of a landslide happening in the area. These factors were beyond respondents' control and contributed to soften the soil on the construction site which resulted in soil erosion and collapse of the retaining wall.

As to petitioner's allegation that respondents DPWH officials and Teodoro Barrozo, by their inaction, were grossly negligent in their official duties, such assertion is bereft of merit. For an action to constitute as gross inexcusable negligence, it is essential to prove that the breach of duty borders on malice and is

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[23] Records, pp. 249-250.

characterized by flagrant, palpable and willful indifference to consequences insofar as other person may be affected.[24] Here, public respondents had not acted maliciously and with utter and willful indifference or disregard of other persons affected. In fact, by respondent Cammayo's act of employing additional slope protection to prevent further landslides in the area, he could not be deemed to have acted with gross inexcusable negligence. In addition, the DPWH through its contractor installed polyurethane sheets for slope protection to the affected area in order to prevent further erosion. Soil nails consisting of steel bars and grouted cement motor was also installed. The project director immediately hired a structural design specialist to prepare plans for a new reinforced concrete retaining wall which will provide for permanent slope protection. Furthermore, as explained by respondents, the delay of the BGHMC administration in obtaining the permits was due to the need to submit documents from other offices which public respondents did not have control over. All these acts negate petitioner's assertion that respondents are guilty of gross inexcusable negligence in the construction of the BGHMC expansion project. Gross inexcusable negligence does not signify mere omission of duties nor plainly the exercise of less than the standard degree of prudence. Rather, it refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[25] Even if respondents failed to fully prevent the landslide which occurred at the construction site, they had exercised due diligence in order to forestall the occurrence of landslide on the area and to adjacent properties and hence, they cannot be deemed to have acted with gross inexcusable negligence.

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[24] *Sistoza v. Desierto*, G.R. No. 144784, September 3, 2002, 388 SCRA 307, 316.

[25] *Catindig v. People*, G.R. No. 183141, September 18, 2009, 600 SCRA 749, 769, citing *Soriano v. Marcelo, supra* note 13 at 404 and *Albert v. Sandiganbayan, supra* note 20; *De la Victoria v. Mongaya*, A.M. No. P-00-1436, February 19, 2001, 352 SCRA 12, 20.

More importantly, petitioner failed to substantiate its claim that it suffered damages when its property lost lateral support by reason of the collapsed retaining wall. In the case of *Santos v. People*[26] cited in the case of *Soriano v. Marcelo,*[27] the Court equated the concept of "undue injury," in the context of Section 3(e) of the Anti-Graft and Corrupt Practices Act, with the civil law concept of "actual damage." It is required that undue injury must be specified, quantified and proven to the point of moral certainty.[28] Speculative or incidental injury is not sufficient. The damages suffered cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture or guesswork[29] but must depend on competent proof and on the best evidence obtainable regarding specific facts which could afford some basis for measuring compensatory or actual damage. The Memorandum of the Office of the City Engineer of Baguio City, which petitioner has not refuted, clearly stated that *"the retaining wall is located approximately 7.50 meters to the nearest building line of the complainant. x x x* ***[T]he main structure of the complainant is evaluated to be outside the critical slip circle which is approximately 5.00 meters lateral distance from the retaining wall*** *x x x."* Absent any controverting evidence submitted by petitioner which would clearly prove actual damage of its property, the Ombudsman will not be faulted for relying on the said memorandum report.

As to petitioner's prayer for the issuance of a writ of *mandamus*, suffice to say that *mandamus* is similarly unavailing to petitioner for *mandamus* is employed to compel the performance of a ministerial, not a discretionary duty. In the performance of an official duty involving discretion, the corresponding official can only be directed by *mandamus* to act, but not to act one way

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[26] G.R. No. 161877, March 23, 2006, 485 SCRA 185, 197.

[27] G.R. No. 163178, January 30, 2009, 577 SCRA 312, 319-320.

[28] *Buyagao v. Karon*, G.R. No. 162938, December 27, 2007, 541 SCRA 420, 431.

[29] *Llorente, Jr. v. Sandiganbayan*, G.R. No. 122166, March 11, 1998, 287 SCRA 382, 400.

or the other, except where there is grave abuse of discretion, manifest injustice, or palpable excess of authority.[30]

WHEREFORE, the present petition for *certiorari* and *mandamus* is *DENIED* for lack of merit. The Resolution dated February 5, 2002 and Order dated June 27, 2002 of the Ombudsman in OMB Case No. 0-01-0400 are *AFFIRMED*.

No costs.

SO ORDERED.

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

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[30] *Albay Accredited Constructors Association, Inc. v. Desierto*, G.R. No. 133517, January 30, 2006, 480 SCRA 520, 537.

[*] Designated additional member per Special Order No. 997 dated June 6, 2011.

FIRST DIVISION

[G.R. No. 160506. June 6, 2011]

JOEB M. ALIVIADO, ARTHUR CORPUZ, ERIC ALIVIADO, MONCHITO AMPELOQUIO, ABRAHAM BASMAYOR, JONATHAN MATEO, LORENZO PLATON, JOSE FERNANDO GUTIERREZ, ESTANISLAO BUENAVENTURA, LOPE SALONGA, FRANZ DAVID, NESTOR IGNACIO, JULIO REY, RUBEN MARQUEZ, JR., MAXIMINO PASCUAL, ERNESTO CALANAO, ROLANDO ROMASANTA, RHUEL AGOO, BONIFACIO ORTEGA, ARSENIO SORIANO, JR., ARNEL ENDAYA, ROBERTO ENRIQUEZ, NESTOR BAQUILA, EDGARDO QUIAMBAO, SANTOS BACALSO, SAMSON BASCO, ALADINO GREGORO,[*] JR., EDWIN GARCIA, ARMANDO VILLAR, EMIL TAWAT, MARIO P. LIONGSON, CRESENTE J. GARCIA, FERNANDO MACABENTE, MELECIO CASAPAO, REYNALDO JACABAN, FERDINAND SALVO, ALSTANDO MONTOS, RAINER N. SALVADOR, RAMIL REYES, PEDRO G. ROY, LEONARDO P. TALLEDO, ENRIQUE F. TALLEDO, WILLIE ORTIZ, ERNESTO SOYOSA, ROMEO VASQUEZ, JOEL BILLONES, ALLAN BALTAZAR, NOLI GABUYO, EMMANUEL E. LABAN, RAMIR E. PIAT, RAUL DULAY, TADEO DURAN, JOSEPH BANICO, ALBERT LEYNES, ANTONIO DACUNA, RENATO DELA CRUZ, ROMEO VIERNES, JR., ELAIS BASEO,[**] WILFREDO TORRES, MELCHOR CARDANO, MARIANO NARANIAN, JOHN SUMERGIDO, ROBERTO ROSALES, GERRY C. GATPO, GERMAN N. GUEVARRA, GILBERT Y. MIRANDA, RODOLFO

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[*] Also spelled as Gregore in some parts of the records.

[**] Also spelled as Elias Basco in some parts of the records.

C. TOLEDO, ARNOLD D. LASTONA, PHILIP M. LOZA, MARIO N. CULDAYON, ORLANDO P. JIMENEZ, FRED P. JIMENEZ, RESTITUTO C. PAMINTUAN, JR., ROLANDO J. DE ANDRES, ARTUZ BUSTENERA, ROBERTO B. CRUZ, ROSEDY O. YORDAN, DENNIS DACASIN, ALEJANDRINO ABATON, and ORLANDO S. BALANGUE, *petitioners, vs.* **PROCTER & GAMBLE PHILS., INC., and PROMM-GEM, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; ENTRY OF JUDGMENT; ISSUANCE THEREOF IS RECKONED FROM THE TIME THE PARTIES RECEIVED A COPY OF THE RESOLUTION DENYING THE FIRST MOTION FOR RECONSIDERATION IN CASE AT BAR.— We stress that the issuance of the Entry of Judgment on July 27, 2010 was proper because it was made after receipt by P&G of a copy of the Resolution denying its motion for reconsideration. x x x It is immaterial that the Entry of Judgment was made without the Court having first resolved P&G's second motion for reconsideration. This is because the issuance of the entry of judgment is reckoned from the time the parties received a copy of the resolution denying the first motion for reconsideration. The filing by P&G of several pleadings after receipt of the resolution denying its first motion for reconsideration does not in any way bar the finality or entry of judgment. Besides, to reckon the finality of a judgment from receipt of the denial of the second motion for reconsideration would be absurd. First, the Rules of Court and the Internal Rules of the Supreme Court prohibit the filing of a second motion for reconsideration. Second, some crafty litigants may resort to filing prohibited pleadings just to delay entry of judgment.

2. ID.; ID.; ID.; IMMUTABILITY OF JUDGMENTS; ONCE A JUDGMENT HAS BECOME FINAL AND EXECUTORY, IT MAY NO LONGER BE MODIFIED IN ANY RESPECT; EXCEPTIONS.— The March 9, 2010 Decision had already attained finality. It could no longer be set aside or modified. "It is a hornbook rule that once a judgment has become final

and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment." x x x In *Mocorro, Jr. v. Ramirez*, we held that: x x x "The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments."

3. ID.; ID.; MOTIONS; A SECOND MOTION FOR RECONSIDERATION IS A PROHIBITED PLEADING.— Section 2, Rule 52 of the Rules of Court explicitly provides that "[n]o motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Moreover, Section 3, Rule 15 of the Internal Rules of the Supreme Court decrees *viz*: "SEC. 3. *Second motion for reconsideration*. - The Court shall not entertain a second motion for reconsideration and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. x x x A second motion for reconsideration can only be entertained **before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.**" x x x For the orderly administration of justice, the rules of court provide for only one motion for reconsideration so errors committed by the Court may be brought to its attention and the Court be given a chance to timely correct its mistake. It wreaks havoc on the administration of justice to allow parties to move for a reconsideration of a decision in a *piecemeal* manner and with no time limit. Even P&G concedes to this principle when it stated in its Supplemental Opposition (to petitioners' motion for partial reconsideration) that "to allow fresh issues on appeal is violative of the rudiments of fair play, justice and due process". x x x [A] second motion for reconsideration is a prohibited pleading and that the instant Decision had already attained finality hence it is already immutable. Every case must end at some point. Every Decision becomes final and executory at some point. In the present case, the Entry of Judgment states that the Decision became final and executory on July 27, 2010.

4. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR STANDARDS; LABOR-ONLY CONTRACTING; IN LABOR-ONLY CONTRACTING, THE LABOR-ONLY CONTRACTOR IS CONSIDERED MERELY AN AGENT OF THE PRINCIPAL EMPLOYER.— Article 106 defines "labor-only" contracting x x x. [T]he "control test" is merely one of the factors to consider. This is clearly deduced from x x x [Sec. 5, Rule VIII-A, Book III of the Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 18-02] which states that labor-only contracting exists when *any* of the two elements is present. In our March 9, 2010 Decision, it was established that SAPS has no substantial capitalization and it was performing merchandising and promotional activities which are directly related to P&G's business. Since SAPS met one of the requirements, it was enough basis for us to hold that it is a labor-only contractor. Consequently, its principal, P&G, is considered the employer of its employees. This is pursuant to our ruling in *Aklan v. San Miguel Corporation* where we held that "[a] **finding that a contractor is a 'labor-only' contractor, as opposed to permissible job contracting, is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the 'labor-only' contractor is considered as a mere agent of the principal, the real employer**." x x x It must be emphasized that in labor-only contracting, "the labor-only contractor is considered merely an agent of the principal employer. The principal employer is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes solidarily liable with the labor-only contractor for **all** the rightful claims of the employees."

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES OR GROUNDS NOT RAISED BELOW CANNOT BE RESOLVED ON REVIEW BY THE SUPREME COURT.— "Well-settled is the rule that issues or grounds not raised below cannot be resolved on review by the Supreme Court, for to allow the parties to raise new issues is antithetical to the sporting idea of fair play, justice and due process. Issues not raised during the trial cannot be raised for the first time on appeal

and more especially on motion for reconsideration. Litigation must end at some point; once the case is finally adjudged, the parties must learn to accept victory or defeat."

APPEARANCES OF COUNSEL

Nenita C. Mahinay for petitioners.
Angara Abello Concepcion Regala & Cruz for respondents.

R E S O L U T I O N

DEL CASTILLO, *J.*:

On March 9, 2010, this Court rendered a Decision[1] holding: (a) that Promm-Gem, Inc. (Promm-Gem) is a legitimate independent contractor; (b) that Sales and Promotions Services (SAPS) is a labor-only contractor consequently its employees are considered employees of Procter & Gamble Phils., Inc. (P&G); (c) that Promm-Gem is guilty of illegal dismissal; (d) that SAPS/P&G is likewise guilty of illegal dismissal; (e) that petitioners are entitled to reinstatement; and (f) that the dismissed employees of SAPS/P&G are entitled to moral damages and attorney's fees there being bad faith in their dismissal.

The dispositive portion of our Decision reads:

WHEREFORE, the petition is **GRANTED**. The Decision dated March 21, 2003 of the Court of Appeals in CA-G.R. SP No. 52082 and the Resolution dated October 20, 2003 are **REVERSED** and **SET ASIDE**. Procter & Gamble Phils., Inc. and Promm-Gem, Inc. are **ORDERED** to reinstate their respective employees immediately without loss of seniority rights and with full backwages and other benefits from the time of their illegal dismissal up to the time of their actual reinstatement. Procter & Gamble Phils., Inc. is further **ORDERED** to pay each of those petitioners considered as its employees, namely Arthur Corpuz, Eric Aliviado, Monchito

[1] Penned by Associate Justice Mariano C. Del Castillo and concurred in by Associate Justices Antonio T. Carpio, Arturo D. Brion, Roberto A. Abad and Jose Portugal Perez.

Ampeloquio, Abraham Basmayor, Jr., Jonathan Mateo, Lorenzo Platon, Estanislao Buenaventura, Lope Salonga, Franz David, Nestor Ignacio, Rolando Romasanta, Roehl Agoo, Bonifacio Ortega, Arsenio Soriano, Jr., Arnel Endaya, Roberto Enriquez, Edgardo Quiambao, Santos Bacalso, Samson Basco, Alstando Montos, Rainer N. Salvador, Pedro G. Roy, Leonardo F. Talledo, Enrique F. Talledo, Joel Billones, Allan Baltazar, Noli Gabuyo, Gerry Gatpo, German Guevara, Gilbert Y. Miranda, Rodolfo C. Toledo, Jr., Arnold D. Laspoña, Philip M. Loza, Mario N. Coldayon, Orlando P. Jimenez, Fred P. Jimenez, Restituto C. Pamintuan, Jr., Rolando J. De Andres, Artuz Bustenera, Jr., Roberto B. Cruz, Rosedy O. Yordan, Orlando S. Balangue, Emil Tawat, Cresente J. Garcia, Melencio Casapao, Romeo Vasquez, Renato dela Cruz, Romeo Viernes, Jr., Elias Basco and Dennis Dacasin, ₱25,000.00 as moral damages plus ten percent of the total sum as and for attorney's fees.

Let this case be **REMANDED** to the Labor Arbiter for the computation, within 30 days from receipt of this Decision, of petitioners' backwages and other benefits; and ten percent of the total sum as and for attorney's fees as stated above; and for immediate execution.

SO ORDERED.[2]

P&G filed a *Motion for Reconsideration*,[3] an *Opposition*[4] (to petitioners' motion for partial reconsideration), and *Supplemental Opposition*.[5] On the other hand, petitioners filed a *Motion for Partial Reconsideration*[6] and *Comment/ Opposition*[7] (to P&G's motion for reconsideration).

On June 16, 2010, we denied the Motion for Reconsideration of P&G as well as the Motion for Partial Reconsideration of the petitioners.[8]

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[2] *Rollo*, pp. 852-853.

[3] *Id.* at 908-938.

[4] *Id.* at 986-1000.

[5] *Id.* at 1052-1066.

[6] *Id.* at 939-954.

[7] *Id.* at 1030-1047.

[8] *Id.* at 1001-1001-A.

Entry of Judgment was made on July 27, 2010.[9]

Before any of the parties received the notice of Entry of Judgment, P&G filed on August 9, 2010 a *Motion for Leave to File Motion to Refer the Case to the Supreme Court En Banc with Second Motion for Reconsideration and Motion for Clarification*[10] and a *Motion to Refer the Case to the Supreme Court En Banc with Second Motion for Reconsideration and Motion for Clarification*.[11] On October 4, 2010, P&G filed a *Motion for Leave to Admit the Attached Supplement to the Motion to Refer the Case to the Supreme Court En Banc with Second Motion for Reconsideration and Motion for Clarification*[12] as well as a *Supplement to the Motion to Refer the Case to the Supreme Court En Banc with Second Motion for Reconsideration and Motion for Clarification*.[13]

Thereafter, or on November 8, 2010, P&G filed a *Manifestation and Motion*[14] praying that its *Motion for Leave to File Motion to Refer the Case to the Supreme Court En Banc with Second Motion for Reconsideration and Motion for Clarification, Motion to Refer the Case to the Supreme Court En Banc with Second Motion for Reconsideration and Motion for Clarification, Motion for Leave to Admit the Attached Supplement to the Motion to Refer the Case to the Supreme Court En Banc with Second Motion for Reconsideration and Motion for Clarification* as well as its *Supplement to the Motion to Refer the Case to the Supreme Court En Banc with Second Motion for Reconsideration and Motion for Clarification*, be resolved as they were filed before it received notice of the entry of judgment.

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[9] In a notice dated October 20, 2010, the Judicial Records Office, Judgment Division, informed the parties that an Entry of Judgment was made on July 27, 2010. *Id.* at 1171-1172.

[10] *Id.* at 1080-1086.

[11] *Id.* at 1087-1134.

[12] *Id.* at 1146-1150.

[13] *Id.* at 1151-1164.

[14] *Id.* at 1186-1193.

In our Resolution[15] dated January 17, 2011, we resolved to note the aforesaid pleadings and at the same time to require the petitioners to file their comment thereto. We reiterated our directive for petitioners to file their comment *via* our Resolution[16] dated February 28, 2011. On March 16, 2011, petitioners filed a Very Urgent Manifestation[17] in lieu of their comment. In gist, they reminded this Court of the Entry of Judgment made on July 27, 2010 and argued that the motions filed by P&G are frivolous and dilatory.

Issuance of Entry of Judgment was Proper.

We stress that the issuance of the Entry of Judgment on July 27, 2010 was proper because it was made after receipt by P&G of a copy of the Resolution denying its motion for reconsideration. Section 1, Rule 15 of the Internal Rules of the Supreme Court[18] provides that:

> SECTION 1. *Finality of decisions and resolutions*. - A decision or resolution of the Court may be deemed final after the lapse of fifteen days from receipt by the parties of a copy of the same subject to the following:
>
> (a) the date of receipt indicated in the registry return card signed by the party or, in case he or she is represented by counsel, by such counsel or his or her representative, shall be the reckoning date for counting the fifteen-day period; and
>
> (b) if the Judgment Division is unable to retrieve the registry return card within thirty (30) days from mailing, it shall immediately inquire from the receiving post office on (i) the date when the addressee received the mailed decision or resolution, and (ii) who received the same, with the information provided by authorized personnel of the said post office serving as the basis for the computation of the fifteen-day period.

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[15] *Id.* at 2199-2200.

[16] *Id.* at 2281-2282.

[17] *Id.* at 1652-1656.

[18] A.M. No. 10-4-20-SC.

It is immaterial that the Entry of Judgment was made without the Court having first resolved P&G's second motion for reconsideration. This is because the issuance of the entry of judgment is reckoned from the time the parties received a copy of the resolution denying the first motion for reconsideration. The filing by P&G of several pleadings after receipt of the resolution denying its first motion for reconsideration does not in any way bar the finality or entry of judgment. Besides, to reckon the finality of a judgment from receipt of the denial of the second motion for reconsideration would be absurd. First, the Rules of Court and the Internal Rules of the Supreme Court prohibit the filing of a second motion for reconsideration. Second, some crafty litigants may resort to filing prohibited pleadings just to delay entry of judgment. Our ruling in *Securities and Exchange Commission v. PICOP Resources, Inc.*[19] is instructive, thus:

> In *Dinglasan v. Court of Appeals*, this Court explained the reason why it is unwise to reckon the period of finality of judgment from the denial of the second motion for reconsideration.
>
> > 'To rule that finality of judgment shall be reckoned from the receipt of the resolution or order denying the second motion for reconsideration would result to an **absurd situation whereby courts will be obliged to issue orders or resolutions denying what is a prohibited motion in the first place**, in order that the period for the finality of judgments shall run, thereby, prolonging the disposition of cases. Moreover, such a ruling would allow a party to forestall the running of the period of finality of judgments by virtue of filing a prohibited pleading; such a situation is not only illogical but also unjust to the winning party.'[20]

The March 9, 2010 Decision has attained finality; it is therefore immutable.

The March 9, 2010 Decision had already attained finality. It could no longer be set aside or modified.

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[19] G.R. No. 164314, September 26, 2008, 566 SCRA 451.

[20] *Id.* at 467-468.

It is a hornbook rule that once a judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment.

The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional errors, the judgment of adjudicating bodies must become final and executory on some definite date fixed by law. […], the Supreme Court reiterated that the doctrine of immutability of final judgment is adhered to by necessity notwithstanding occasional errors that may result thereby, since litigations must somehow come to an end for otherwise, it would 'even be more intolerable than the wrong and injustice it is designed to correct.'[21]

In *Mocorro, Jr. v. Ramirez*,[22] we held that:

A definitive final judgment, however erroneous, is no longer subject to change or revision.

A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write *finis* to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments

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[21] *Vios v. Pantangco, Jr.*, G.R. No. 163103, February 6, 2009, 578 SCRA 129, 143-144. Citation omitted.

[22] G.R. No. 178366, July 28, 2008, 560 SCRA 362, 372-373.

of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.

The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments. *Nunc pro tunc* judgments have been defined and characterized by the Court in the following manner:

> The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been. (*Wilmerding vs. Corbin Banking Co.*, 28 South., 640, 641; 126 Ala., 268.)
>
> A *nunc pro tunc* entry in practice is an entry made now of something which was actually previously done, to have effect as of the former date. Its office is not to supply omitted action by the court, but to supply an omission in the record of action really had, but omitted through inadvertence or mistake. (*Perkins vs. Haywood*, 31 N. E., 670, 672)

A second motion for reconsideration is a prohibited pleading.

Section 2, Rule 52 of the Rules of Court explicitly provides that "[n]o motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Moreover, Section 3, Rule 15 of the Internal Rules of the Supreme Court[23] decrees *viz*:

> SEC. 3. *Second motion for reconsideration*. — The Court shall not entertain a second motion for reconsideration and any exception to this rule can only be granted in the higher interest of justice by

[23] A.M. No. 10-4-20-SC.

the Court *en banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration 'in the highest interest of justice' when the assailed decision is not only legally erroneous but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained **before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.**

In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court *En Banc*.[24]

Clearly, therefore, P&G's second motion for reconsideration could no longer be entertained based on two grounds: First, it is a prohibited pleading. Second, the ruling sought to be reconsidered has already become final per Entry of Judgment made on July 27, 2010.

The foregoing notwithstanding, we will proceed to discuss the issues raised by P&G – not because they are of transcendental importance or that P&G proffered "extraordinarily persuasive reasons"[25] but only to dispel any doubt that it is being denied due process.

The Court correctly determined that SAPS is a labor-only contractor.

There is no basis for P&G's claim that the Court erred in not applying the "four-fold" test, particularly the "control test" in determining whether SAPS is a legitimate independent contractor or a labor-only contractor. As discussed in our March 9, 2010 Decision, the applicable rules are Article 106 of the Labor Code and Rule VIII-A, Book III of the Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 18-02.[26]

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[24] Emphasis supplied.

[25] *United Planters Sugar Milling Company, Inc. v. Court of Appeals*, G.R. No. 126890, March 9, 2010, 614 SCRA 451, 463.

[26] *Rollo*, pp. 840-841.

Article 106 defines "labor-only" contracting, *viz*:

> There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

On the same vein, Rule VIII-A, Book III of the Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 18-02, pertinently provides:

> *Section 5. Prohibition against labor-only contracting.* Labor only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and **ANY** of the following elements are present:
>
> i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; **OR**
>
> ii) [T]he contractor does not exercise the right to control over the performance of the work of the contractual employee.

Therefore, the "control test" is merely one of the factors to consider. This is clearly deduced from the above-provision which states that labor-only contracting exists when *any* of the two elements is present. In our March 9, 2010 Decision, it was established that SAPS has no substantial capitalization and it was performing merchandising and promotional activities which are directly related to P&G's business. Since SAPS met one of the requirements, it was enough basis for us to hold that it is a labor-only contractor. Consequently, its principal, P&G, is considered the employer of its employees. This is pursuant to

our ruling in *Aklan v. San Miguel Corporation*[27] where we held that "[a] **finding that a contractor is a 'labor-only' contractor, as opposed to permissible job contracting, is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the 'labor-only' contractor is considered as a mere agent of the principal, the real employer**."

Corollarily, we also decreed in *Coca-Cola Bottlers Phils., Inc. v. Agito*[28] that:

> The law clearly establishes an employer-employee relationship between the principal employer and the contractor's employee upon a finding that the contractor is engaged in "labor-only" contracting. Article 106 of the Labor Code categorically states: "There is 'labor-only' contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, **and** the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer." Thus, performing activities directly related to the principal business of the employer is only one of the two indicators that "labor-only" contracting exists; the other is lack of substantial capital or investment. The Court finds that both indicators exist in the case at bar.

The Court did not err in finding that SAPS has no substantial capital.

P&G claims that contrary to the principle that "no absolute figure is set for what is considered 'substantial capital'" because the same is "measured against the type of work which the contractor is obligated to perform for the principal,"[29] the March 9, 2010 Decision used the prevailing economic atmosphere in the country and the capitalization of another contractor engaged

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[27] G.R. No. 168537, December 11, 2008, 573 SCRA 675, 685.

[28] G.R. No. 179546, February 13, 2009, 579 SCRA 445, 460-461.

[29] *Rollo*, p. 1106 citing *Coca-cola Bottlers Phils, Inc. v. Agito, supra*.

to perform a different kind of service to gauge the sufficiency or insufficiency of the capitalization of SAPS.

This is misleading. Our discussion on whether Promm-Gem and SAPS have substantial capitalization in our March 9, 2010 Decision is self-explanatory.

In the instant case, the financial statements of Promm-Gem show that it has authorized capital stock of ₱1 million and a paid-in capital, or capital available for operations, of ₱500,000.00 as of 1990. It also has long term assets worth ₱432,895.28 and current assets of ₱719,042.32. Promm-Gem has also proven that it maintained its own warehouse and office space with a floor area of 870 square meters. It also had under its name three registered vehicles which were used for its promotional/merchandising business. Promm-Gem also has other clients aside from P&G. Under the circumstances, we find that Promm-Gem has substantial investment which relates to the work to be performed. These facts negate the existence of the element specified in Section 5(i) of DOLE Department Order No. 18-02.

The records also show that Promm-Gem supplied its complainant-workers with the relevant materials, such as markers, tapes, liners and cutters, necessary for them to perform their work. Promm-Gem also issued uniforms to them. It is also relevant to mention that Promm-Gem already considered the complainants working under it as its regular, not merely contractual or project, employees. This circumstance negates the existence of element (ii) as stated in Section 5 of DOLE Department Order No. 18-02, which speaks of *contractual* employees. This, furthermore, negates – on the part of Promm-Gem – bad faith and intent to circumvent labor laws which factors have often been tipping points that lead the Court to strike down the employment practice or agreement concerned as contrary to public policy, morals, good customs or public order.

Under the circumstances, Promm-Gem cannot be considered as a labor-only contractor. We find that it is a legitimate independent contractor.

On the other hand, the Articles of Incorporation of SAPS shows that it has a paid-in capital of only ₱31,250. There is no other evidence presented to show how much its working capital and assets are. Furthermore, there is no showing of substantial investment in tools, equipment or other assets.

In *Vinoya v. National Labor Relations Commission*, the Court held that "[w]ith the current economic atmosphere in the country, the paid-in capitalization of PMCI amounting to ₱75,000.00 cannot be considered as substantial capital and, as such, PMCI cannot qualify as an independent contractor." Applying the same rationale to the present case, it is clear that **SAPS – having a paid-in capital of only ₱31,250 – has no substantial capital. SAPS' lack of substantial capital is underlined by the records which show that its payroll for its merchandisers alone for one month would already total ₱44,561.00. It has 6-month contracts with P&G. Yet SAPS failed to show that it could complete the 6-month contracts using its own capital and investment. Its capital is not even sufficient for one month's payroll. SAPS failed to show that its paid-in capital of ₱31,250.00 is sufficient for the period required for it to generate [the] needed revenue to sustain its operations independently. Substantial capital refers to capitalization used in the *performance or completion* of the job, work or service contracted out. In the present case, SAPS failed to show substantial capital.**[30]

The awards of moral damages and attorney's fees are proper.

P&G insists that to be entitled to moral damages, "it must be proven that the act of dismissal was attended by bad faith or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy".[31] Our March 9, 2010 Decision complied with this requirement when we ruled in this wise:

> We now go to the issue of whether petitioners are entitled to damages. Moral and exemplary damages are recoverable where the dismissal of an employee was attended by bad faith or fraud or constituted an act oppressive to labor or was done in a manner contrary to moral, good customs or public policy.
>
> With regard to the employees of Promm-Gem, there being no evidence of bad faith, fraud or any oppressive act on the part of the latter, we find no support for the award of damages.

[30] *Id.* at 842-844.

[31] *Id.* at 1117.

As for P&G, the records show that it dismissed its employees through SAPS in a manner oppressive to labor. The sudden and peremptory barring of concerned petitioners from work, and from admission to the work place, after just a one-day verbal notice, *and* for no valid cause bellows oppression and utter disregard of the right to the due process of the concerned petitioners. Hence, an award of moral damages is called for.

Attorney's fees may likewise be awarded to the concerned petitioners who were illegally dismissed in bad faith and were compelled to litigate or incur expenses to protect their rights by reason of the oppressive acts of P&G.[32]

Nevertheless, P&G insists that there is no evidence to prove that it dismissed the petitioners, much less that it was done in an oppressive manner.[33] It claims that if there was any bad faith in the dismissal of the petitioners, it could only be attributed to SAPS and not to P&G.[34] It asserts that it acted in good faith in dealing with SAPS.

The contentions are untenable. It must be emphasized that in labor-only contracting, "the labor-only contractor is considered merely an agent of the principal employer. The principal employer is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes solidarily liable with the labor-only contractor for **all** the rightful claims of the employees."[35]

P&G's assertions that it was held responsible for 10 employees despite their having no record of having been assigned by SAPS to P&G and that

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[32] *Id.* at 850-851.

[33] *Id.* at 1118.

[34] *Id.* at 1119-1120.

[35] *PCI Automation Center, Inc. v. National Labor Relations Commission,* 322 Phil. 536, 548 (1996) citing *Philippine Bank of Communications v. National Labor Relations Commission,* 230 Phil. 430, (1986).

petitioners could not be reinstated because there are no available positions for them in the existing plantilla of P&G are belatedly raised.

P&G claims that 10 out of the 50 employees of SAPS have never been assigned to P&G; thus, they should not be declared employees of P&G.[36] In particular, P&G asserts that Rosedy Yordan, Dennis Dacasin, Allan Baltazar, Philip Loza, Emil Tawat, Cresente Garcia, Romeo Vasquez, Renato dela Cruz, Romeo Viernes, Jr. and Elias Basco, were never assigned to it.

It would appear that this issue was raised for the first time in P&G's second motion for reconsideration. It will be noted that in petitioners' Petition for Review on *Certiorari*,[37] and even in petitioners' previous pleadings, it was alleged already that Rosedy Yordan,[38] Dennis Dacasin,[39] Allan Baltazar,[40] Philip Loza,[41] Emil Tawat,[42] Cresente Garcia,[43] Romeo Vasquez,[44] Renato dela Cruz,[45] Romeo Viernes, Jr.[46] and Elias Basco[47] were employees of P&G through its own agents and salesmen. However, this was never rebutted by P&G. In fact, in its Comment[48] P&G even alleged that "it was amply shown

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[36] *Rollo*, pp. 1126-1127.

[37] *Id.* at 19-85.

[38] *Id.* at 31 as #77.

[39] *Id.* at 31 as #78.

[40] *Id.* at 30 as #47.

[41] *Id.* at 31 as #69.

[42] *Id.* at 30 as #30.

[43] *Id.* at 31 as #32.

[44] *Id.* at 30 as #45.

[45] *Id.* at 31 as #56.

[46] *Id.* at 31 as #57.

[47] *Id.* at 31 as #58.

[48] *Id.* at 357.

throughout the course of the proceedings that the respondent contractors, through an assigned supervisor, regularly checked the attendance of the petitioners, monitored their on-site performance, and oversaw their actual day-to-day work in the areas where they had been engaged to promote the products of respondent P&G."[49] This alone belies the claim that these 10 petitioners were never assigned by SAPS to P&G. Moreover, this issue has not been raised in P&G's Memorandum; consequently it is now considered as waived or abandoned. In our January 29, 2007 Resolution[50] we apprised both parties that "[n]o new issues may be raised by a party in his/its memorandum and the issues raised in his/its pleadings but not included in the memorandum shall be deemed waived or abandoned. Being summations of the parties' previous pleadings, the Court may consider the memoranda alone in deciding or resolving this petition."

Likewise raised belatedly is P&G's claim that petitioners could no longer be reinstated because its existing plantilla does not have positions for them; that there is a climate of antagonism pervading between the parties; and because of the prolonged period of time that has passed between the dismissals and the resolution of the case. We note that petitioners had been consistently praying for reinstatement as shown in their Memorandum filed before the Labor Arbiter, Memorandum of Appeal filed before the National Labor Relations Commission, Motion for Reconsideration filed before the Court of Appeals, and their Petition for Review on *Certiorari* and Memorandum filed before this Court. However, in P&G's Memorandum filed before this Court, it merely confined its discussion to the fact that it was allegedly not the employer of the herein petitioners and proceeded to argue that there being no employer-employee relationship between it and the petitioners, then petitioners' "claims for backwages, monetary claims, damages and/or attorney's

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[49] *Id.* at 376.

[50] *Id.* at 652-653.

fees"[51] are without basis. It omitted to mention the issue of reinstatement which is one of petitioners' causes of action.

Even after the rendition of our March 9, 2010 Decision where we ordered the reinstatement of the petitioners, P&G still failed to raise the non-feasibility of the same. In its Motion for Reconsideration,[52] P&G only tersely stated that there is no basis for petitioners' reinstatement or payment of backwages because they are not its employees. It is only now that it is raising the issue that no similar or equivalent position exists in its plantilla and that there is existing antagonism between the parties.[53] It is likewise in its second motion for reconsideration and in its supplement thereto that P&G is raising the issue that reinstatement is no longer feasible because of the "length of time that has passed from the date of their dismissal to the final resolution of the case."[54] P&G failed to raise this matter in its first motion for reconsideration. It was only after the Decision became final and executory that it brought this issue to the attention of the Court. For the orderly administration of justice, the rules of court provide for only one motion for reconsideration so errors committed by the Court may be brought to its attention and the Court be given a chance to timely correct its mistake. It wreaks havoc on the administration of justice to allow parties to move for a reconsideration of a decision in a *piecemeal* manner and with no time limit. Even P&G concedes to this principle when it stated in its Supplemental Opposition[55] (to petitioners' motion for partial reconsideration) that "to allow fresh issues on appeal is violative of the rudiments of fair play, justice and due process."[56]

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[51] *Rollo*, p. 748.

[52] *Id.* at 929.

[53] *Id.* at 1128-1129.

[54] *Id.* at 1155.

[55] *Id.* at 1052-1066.

[56] *Id.* at 1056, citing *Labor Congress of the Philippines v. National Labor Relations Commission*, 354 Phil. 481, 490 (1998).

"Well-settled is the rule that issues or grounds not raised below cannot be resolved on review by the Supreme Court, for to allow the parties to raise new issues is antithetical to the sporting idea of fair play, justice and due process. Issues not raised during the trial cannot be raised for the first time on appeal and more especially on motion for reconsideration. Litigation must end at some point; once the case is finally adjudged, the parties must learn to accept victory or defeat."[57] Finally, we wish to reiterate our discussion above that a second motion for reconsideration is a prohibited pleading and that the instant Decision had already attained finality hence it is already immutable.

Every case must end at some point. Every Decision becomes final and executory at some point. In the present case, the Entry of Judgment states that the Decision became final and executory on July 27, 2010.

ACCORDINGLY, premises considered, we *DENY* with *FINALITY* respondent Procter & Gamble Phils., Inc.'s Motion to Refer the Case to the Supreme Court *En Banc* with Second Motion for Reconsideration and Motion for Clarification and its Supplement to the Motion to Refer the Case to the Supreme Court *En Banc* with Second Motion for Reconsideration and Motion for Clarification considering that the assailed March 9, 2010 Decision has already attained finality in view of the Entry of Judgment made on July 27, 2010. No further pleadings shall be entertained.

SO ORDERED.

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

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[57] *Cuenco v. Talisay Tourist Sports Complex, Incorporated,* G.R. No. 174154, July 30, 2009, 594 SCRA 396, 399-400.

THIRD DIVISION

[G.R. No. 164891. June 6, 2011]

VIRGINIA M. GUADINES, *petitioner, vs.* **SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

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

2. CRIMINAL LAW; VIOLATION OF SECTION 3(e) OF REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACTS); ELEMENTS.— Petitioner was charged with violation of Section 3(e) of R.A. No. 3019 x x x. The essential elements of this crime are: (1) the accused are public officers or private persons charged in conspiracy with them; (2) said public officers commit the prohibited acts during the performance of their official duties or in relation to their public position; (3) they caused undue injury to any party, whether the government or a private party; (4) such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.

3. ID.; ID.; ID.; UNDUE INJURY OR DAMAGE; ESTABLISHED IN CASE AT BAR.— By accepting payment for delivery of lumber found to be without supporting documents as required by law, petitioner caused undue injury or damage to the

provincial government which had no obligation to pay for confiscated lumber considered as government property. In fact, it is only the DENR Secretary or his representative who can dispose of such confiscated lumber in accordance with forestry laws and regulations, pursuant to Section 68-A of Presidential Decree (P.D.) No. 705 (otherwise known as the Forestry Code of the Philippines), as amended by Executive Order No. 277 x x x. Apart from petitioner's own statements, the Sandiganbayan's finding that it was petitioner's lumber which were later confiscated by CENR forest rangers and used in the bridge repair and construction, was satisfactorily established by the prosecution's documentary and testimonial evidence. As part of their official duties and following standard procedure, they prepared the Confiscation Report and Seizure Receipt, and testified in court detailing the incident. Two other witnesses corroborated their declaration that the confiscated lumber were actually used in the repair and construction of the Navotas Bridge.

4. REMEDIAL LAW; EVIDENCE; THE MINUTES OF FORMAL PROCEEDINGS ARE IMPORTANT WHEN THE COURT IS CONFRONTED WITH CONFLICTING CLAIMS OF PARTIES AS TO THE TRUTH AND ACCURACY OF THE MATTERS TAKEN UP THEREIN.— We find no grave abuse of discretion on the part of the Sandiganbayan when it cited the pertinent portions of the minutes of the *Sangguniang Bayan* session of December 14, 1992, as evidence of petitioner's statements concerning the lumber she delivered which were confiscated by the CENR for lack of requisite legal documents. These statements revealed that petitioner was fully aware of the confiscation of her lumber stockpiled along the Polillo-Burdeos provincial road, *after* she had delivered the same. We have previously underscored the importance of the minutes of formal proceedings when the court is confronted with conflicting claims of parties as to the truth and accuracy of the matters taken up therein.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ALL CONTRACTS, INCLUDING GOVERNMENT CONTRACTS, ARE SUBJECT TO THE POLICE POWER OF THE STATE.— Basic is the rule that provisions of existing laws and regulations are read into and form an integral part of contracts, more so in the case of government contracts. Verily,

all contracts, including Government contracts, are subject to the police power of the State. Being an inherent attribute of sovereignty, such power is deemed incorporated into the laws of the land, which are part of all contracts, thereby qualifying the obligations arising therefrom. Thus, it is an implied condition in the subject contract for the procurement of materials needed in the repair and construction of the Navotas Bridge that petitioner as private contractor would comply with pertinent forestry laws and regulations on the cutting and gathering of the lumber she undertook to supply the provincial government.

6. CRIMINAL LAW; CONSPIRACY; PRESENT IN CASE AT BAR.— When the defendants by their acts aimed at the same object, one performing one part, and the other performing another part so as to complete it, with a view to the attainment of the same object, and their acts though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the court will be justified in concluding that said defendants were engaged in a conspiracy. In this case, the finding of conspiracy was well-supported by evidence.

7. ID.; VIOLATION OF SECTION 3(e) OF REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); COMMITTED IN CASE AT BAR.— [P]etitioner's participation and cooperation was indispensable in defrauding the government of the amount paid for the said confiscated lumber. Without doubt, her acts in making delivery to Azaula instead of the provincial government or PEO, evading apprehension for the illegally cut logs and yet pursuing clearance for the release of the said products by appealing to the local *sanggunian*, and later accepting payment with the assistance of Azaula and Escara — all clearly showed her complicity in the anomalous disbursement of provincial government funds allocated for the bridge repair/construction project. Consequently, the Sandiganbayan did not err in finding her guilty of violation of Section 3(e) of R.A. No. 3019 and ordering her to return the amount corresponding to the payment for the confiscated lumber used in the construction of the Navotas Bridge, the same materials delivered by the petitioner under her contract with the provincial government.

8. ID.; ID.; PENALTY.— The penalty for violation of Section 3(e) of R.A. No. 3019 is "imprisonment for not less than six years and one month nor more than fifteen years, and perpetual disqualification from public office." Under the Indeterminate Sentence Law, if the offense is punished by special law, as in the present case, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall not exceed the maximum fixed by the law, and the minimum not less than the minimum prescribed therein. In view of attendant circumstances, we hold that the penalty imposed by the Sandiganbayan is in accord with law and jurisprudence.

APPEARANCES OF COUNSEL

Law Firm of Habitan Ferrer Chan Tagapan Patriarca & Associates for petitioners.

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] promulgated on April 30, 2004 and Resolution[2] dated August 20, 2004 of the Sandiganbayan convicting petitioner of violation of Section 3(e) of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.

The factual antecedents:

On August 25, 1992, the Provincial Treasurer of Quezon directed the Municipal Treasurer of Polillo, Quezon, Naime Ayuma, to conduct a public bidding for the materials to be used

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[1] *Rollo*, pp. 33-73. Penned by Associate Justice Ma. Cristina G. Cortez-Estrada and concurred in by Presiding Justice Minita V. Chico-Nazario (who was appointed to this Court and now retired) and Associate Justice Teresita V. Diaz-Baldos.

[2] *Id.* at 74-86. Penned by Associate Justice Ma. Cristina G. Cortez-Estrada and concurred in by Associate Justices Teresita V. Diaz-Baldos and Jose R. Hernandez.

in the repair and construction of Navotas Bridge along Polillo-Burdeos provincial road at Barangay Sibulan. As a result of the bidding held on September 8, 1992, the contract was awarded to V.M. Guadines Construction Supply owned and managed by petitioner Virginia M. Guadines. On October 19, 1992, Purchaser Order No. 2019 was issued by the Provincial Government of Quezon for construction materials in the total price of ₱83,228.00. On November 13, 1992, the materials consisting of lumber (*Macaasim* hardwood cut by chainsaw) were stockpiled along the road about five meters away from the Navotas Bridge, and received by Bernie H. Azaula (Azaula).[3] Azaula was then Barangay Chairman of Poblacion, Polillo and Member of the *Sangguniang Bayan* being the President of the Association of *Barangay* Captains of Polillo.[4]

On November 20, 1992, a team of Department of Environment and Natural Resources (DENR) officials/forest rangers from the Community and Environment Resources (CENR) Polillo Station led by Officer-in-Charge Herminio M. Salvosa confiscated seventy-three (73) pieces of *Macaasim* lumber (4,172 board feet valued at ₱41,172.00) which were stockpiled alongside the Polillo-Burdeos road at Barangay Sibulan, approximately five meters away from the Navotas Bridge. They measured the confiscated lumber using Marking Hatchet No. 1742 in which the number 1742 was 1/6 of an inch thick so that when you strike the lumber, the number 1742 will appear on the lumber. They also marked the lumber with the words "DENR CONFISCATED" using white paint. These forest products were confiscated in favor of the government pending submission of certain required documents. No person or entity was apprehended as owner/possessor of the lumber. Since Azaula volunteered to take custody as a public official in the locality, the CENR decided to turn over the seized lumber to him and required him to sign the Seizure Receipt.[5]

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[3] TSN, September 20, 2001, pp. 8-9; Exhibits "6" and "7".

[4] *Id.* at 14.

[5] TSN, March 31, 1998, pp. 4-8, 10-19; TSN, July 28, 1998, pp. 2-4, 10, 12-13; Exhibits "A", "B", "C" and "S".

On December 14, 1992, the *Sangguniang Bayan* of Polillo acting upon the petition of some 460 individuals, and after debating on whether to still wait for the DENR officials to ascertain the identity of the contractor involved in the illegally cut timber or to proceed with the construction of the bridge using the confiscated lumber, resolved to formally request the DENR Regional Director to donate the seized lumber so it can be used for the delayed repair and construction of the Navotas Bridge. The logs remained stockpiled near the said bridge, apparently abandoned by its owner.[6] Later however, the *Sanggunian* passed a resolution (*Kapasiyahan Blg. 24, t. 1993*) requesting the Department of Public Works and Highways (DPWH) through Provincial Engineer Abelardo Abrigo to send their personnel to work on the repair and construction of the Navotas Bridge in the earliest possible time.[7] Azaula was among those members of the *Sanggunian* who had opposed the proposal to request the DENR Regional Director for the donation of the confiscated lumber, insisting that the contractor (petitioner) be paid for said materials.[8]

In his letter dated January 25, 1993 addressed to Engr. Bert Nierva of the Provincial Engineer's Office (PEO), Polillo Mayor Rosendo H. Escara requested for assistance in the immediate construction of the Navotas Bridge, citing the approval of *Kapasiyahan Blg. 24, t. 1993* by the *Sangguniang Bayan*. On January 28, 1993, Polillo Municipal Treasurer Naime Ayuma prepared the Inspection Report stating that the materials specified under Purchase Order No. 2019 were delivered by the contractor (V.M. Guadines Construction Supply) and "[r]eceived in good order and condition." The Inspection Report was signed by both Ayuma and Mayor Escara.[9]

By February 5, 1993, the repair and construction of Navotas Bridge was finished. Upon the request of Azaula, Disbursement

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[6] Exhibits "O" and "P".

[7] Exhibit "BB-3".

[8] TSN, September 20, 2001, pp. 23-25.

[9] Exhibits "F" and "I".

Voucher 001-9302-957 was prepared, authorizing the Provincial Treasurer to pay V.M. Guadines Construction Supply the total amount of ₱83,228.00. On February 18, 1993, petitioner received from the Provincial Treasurer's Office the amount of ₱83,228.00 as payment for the lumber and other materials she delivered for the repair and construction of Navotas Bridge.[10]

In a Memorandum dated February 26, 1993, CENR Polillo Station OIC Salvosa reported to the CENRO of Real, Quezon that despite warnings from forest rangers, workers headed by Engr. Nierva of the PEO utilized the confiscated lumber in the construction of Navotas Bridge. Salvosa further informed the CENRO that while Engr. Nierva claimed to be acting on official instructions from the Provincial Governor, they were not furnished any copy of such directive or instruction.[11] Accordingly, Juan dela Cruz, CENRO of Real, Quezon, prepared a memorandum-report and forwarded the same to the DENR Region IV Executive Director with a request for a lawyer to be sent to their office to assist in the preparation and filing of appropriate charges against the custodian who is the *Barangay* Chairman of Poblacion, Polillo, Quezon. In a letter dated March 10, 1993, CENRO dela Cruz asked Azaula to explain why he should not be charged with estafa and malversation for disposing the confiscated lumber without legal authority or clearance from the DENR Secretary.[12]

On May 5, 1993, the Provincial Auditor of Quezon directed Edgardo A. Mendoza, State Auditor II, to conduct an investigation regarding the payment made for confiscated lumber used in the repair and construction of Navotas Bridge. After inspecting the site and inventory of the lumber in the newly constructed bridge together with the Municipal Engineer, Mendoza confirmed that these materials were the same ones confiscated by the CENR personnel, differing only in length of the logs used. Mendoza

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[10] TSN, September 20, 2001, pp. 28-30; Exhibits "D" and "X".

[11] Exhibit "M".

[12] TSN, March 31, 1998, pp. 21-22; TSN, March 30, 1998, pp. 5, 7-15; Exhibits "G" and "H".

concluded that there was no justification for the government to pay the purchase price of the lumber allegedly delivered by the contractor. Thus, in his final report submitted to the Provincial Auditor, Mendoza recommended that V.M. Guadines Construction be ordered to refund the amount paid by the provincial government and that administrative and criminal actions be filed against said contractor, as well as the public officials who participated in defrauding the government in the amount of ₱83,228.00 and for violation of the Anti-Graft and Corrupt Practices Act.[13]

On November 15, 1994, a Notice of Disallowance was issued by the Commission on Audit (COA), Lucena City for the amount of ₱70,924.00. From the original amount of ₱83,228.00, they deducted the value of the common materials used such as nails and "*kawad*." The difference represents the value of the confiscated lumber actually used in the construction of the bridge.[14]

Subsequently, a complaint was filed before the Office of the Ombudsman by *Sangguniang Bayan* member May Verzo-Estuita against petitioner, Ayuma, Azaula and Escara for violation of the Anti-Graft and Corrupt Practices Act (OMB 0-93-1388). On April 22, 1994, a Resolution[15] was issued by the Ombudsman recommending the filing of appropriate information against all the respondents for violation of Section 3(e) of R.A. No. 3019. The Ombudsman found to be without merit respondents' denial that the lumber used in the construction of Navotas Bridge were the same lumber earlier confiscated by the CENR field personnel, noting that Azaula took cognizance of the said materials during the deliberations in the *Sangguniang Bayan*. Respondents were thus held liable for causing undue injury to the provincial government which was made to pay the amount of ₱83,228.00 for the confiscated lumber.

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[13] TSN, December 12, 1997, pp. 4-24; Exhibits "U", "V" and "W".

[14] *Id.* at 25-28. Exhibit "Y".

[15] *Rollo*, pp. 87-92.

The Information charging petitioner, Azaula, Escara and Ayuma with violation of Section 3(e) of R.A. No. 3019 (Criminal Case No. 20878) reads:

> That in or about February of 1993, or immediately prior or subsequent thereto, in Polillo, Quezon, and within the jurisdiction of this Honorable Court, accused Bernie H. Azaula, Rosendo N. Escara, Namie V. Ayuma, being the *Barangay* Captain, Municipal Mayor and Municipal Treasurer, respectively, of Polillo, Quezon, in the exercise of their administrative and/or official functions, with evident bad faith, conspiring and confederating with accused Virginia M. Guadines, doing business under the V.M. Guadines Construction Supply, did then and there wi[l]lfully and unlawfully cause undue injury and/or damage to the province of Quezon, by using in the construction of the Navotas Bridge in Sibulan, Polillo, Quezon, confiscated lumber consisting of 73 pieces with a volume of ₱4,172 board feet, valued at P11,172.00, more or less, and make it appear in a Disbursement Voucher, Delivery Receipt No. 0063, and Inspection Report dated January 28, 1993, that the lumber used in the construction of the Navotas Bridge were purchased from the V.M. Guadines Construction Supply for ₱83,228.00, thus enabling accused Virginia Guadines to receive the said purchase price, to the damage and prejudice of the Province of Quezon, in the aforementioned amount.
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> CONTRARY TO LAW.[16]

The aforenamed respondents filed motions for reconsideration and re-investigation with the Ombudsman. In his Order dated January 19, 1995, the Ombudsman recommended that the prosecution of petitioner, Azaula and Escara be continued while the complaint against Ayuma be dropped for insufficiency of evidence. Consequently, Ayuma was ordered excluded from the Information in Criminal Case No. 20878.[17]

After trial, the Sandiganbayan rendered its decision convicting petitioner, Escara and Azaula of the crime charged, as follows:

> WHEREFORE, in view of all the foregoing, this Court finds accused BERNIE H. AZAULA, ROSENDO N. ESCARA AND

[16] *Id.* at 93-94.

[17] *Id.* at 95-133.

VIRGINIA M. GUADINES GUILTY beyond reasonable doubt of violation of Section 3 (e) of R.A. No. 3019, and hereby sentences each of them to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum. They are also ordered to pay, jointly and severally, the costs of this suit.

Accused Guadines, having unlawfully received the amount of ₱70,924.00, representing payment for the confiscated lumber, is hereby ordered to return the said amount to the Province of Quezon.

SO ORDERED.[18]

In their motion for reconsideration,[19] petitioner and Azaula maintained that the lumber delivered by V.M. Guadines Construction Supply were not the same lumber confiscated by the CENR. They argued that (1) the confiscated lumber does not match the specified size, quality and quantity of the materials needed for the bridge repair/construction project; (2) petitioner purchased the logs from third persons there being no sawmills in the locality, and it is but proper that she be paid for the materials she delivered; and (3) since the municipalities of Polillo and Burdeos have benefited from the repair and construction of the Navotas Bridge, the allegation that the Province of Quezon suffered damage and prejudice is erroneous. As to the Sandiganbayan's reliance on the statements she made during the *Sangguniang Bayan* proceedings on December 14, 1992, petitioner vehemently denied making those statements and contended that to give them probative value would violate the rule on *res inter alios acta*. Petitioner further asserted that she acted in good faith, as in fact no *Sangguniang Bayan* member interposed an objection to the payment made in her favor.

In its August 20, 2004 Resolution, the Sandiganbayan denied the motions for reconsideration filed by petitioner, Azaula and Escara. The Sandiganbayan noted that petitioner herself admitted in her direct testimony that the lumber she delivered were the ones used in the repair and construction of the Navotas Bridge.

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[18] *Id.* at 72.

[19] *Id.* at 167-172.

Even if the confiscated lumber were undersized, the pieces of lumber could have been bolted together to conform to the required length of 22 feet long. Testimonial evidence also clearly showed that the confiscated lumber were used in the construction of the bridge. As to petitioner's contention that no damage or injury was caused to the provincial government, the Sandiganbayan held that after confiscation by the DENR, the subject lumber became the property of the National Government and consequently the Municipality of Polillo had no right to utilize the same without authority from the DENR. And since the lumber had already been confiscated, petitioner had no right to receive payment; hence, the payment made in her favor by the Province of Quezon did not produce any legal effect, pursuant to Article 1240[20] of the Civil Code. Petitioner's denial of the statements she made before the *Sanggunian* was likewise found to be without merit. The certified copy of the minutes taken during the December 14, 1992 session of the *Sanggunian* being a public document and an official record of the proceedings, is considered *prima facie* evidence of the facts stated therein. The presumption of regularity and authenticity of public official records had not been overcome and rebutted by the petitioner, there being no competent evidence to support her denial. Further, there was no violation of the *res inter alios acta* rule because the declarations and admissions made by the accused (petitioner) are being used against her and not against any other individual or third persons. Finally, petitioner's claim of good faith was rejected by the Sandiganbayan stating that she clearly intentionally took advantage of the government when, despite her knowledge that the lumber delivered to the Province of Quezon was confiscated, she still accepted and received the purchase price paid by the provincial government.[21]

Hence, this petition alleging that the Sandiganbayan gravely abused its discretion in finding that she acted in conspiracy

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[20] Art. 1240. Payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it.

[21] *Rollo*, pp. 81-85.

with Azaula and Escara in defrauding the provincial government under their contract for purchase of construction materials.

Petitioner reiterates her argument that the materials she delivered on November 13, 1992 were not the same lumber confiscated by the DENR field personnel on November 20, 1992. The delivered lumber having been left unguarded and unprotected along the national highway, some pieces thereof could have been stolen, which explains why there was a smaller number (73) of confiscated lumber than the actual quantity (99) delivered. In any case, petitioner asserts that the matter was not anymore her concern after she fulfilled her contractual obligation of delivering the specified quantity and quality of lumber. The fact that Ayuma had certified in his Inspection Report that the delivered lumber were received in good order and condition would only mean that there was no "CONFISCATED" marking found thereon. Ayuma need not have foreknowledge of the DENR confiscation to confirm such marking in the course of her physical inspection of the lumber delivered by petitioner.

On the allegation of conspiracy, petitioner contends that evidence is wanting to support the prosecution case against her. A finding of guilt must not be based on speculation, such as the lumber she delivered were the ones confiscated later by the DENR. Indeed, the lumber left along the highway exposed it to possibilities which include substitution. Even if the materials used in the repair and construction of Navotas Bridge bore the DENR marking "CONFISCATED", it cannot automatically mean that those were the same lumber delivered by petitioner, considering that Ayuma had inspected these pieces of lumber and did not see those markings. Moreover, what happened to the lumber after its delivery was no longer within the control of petitioner. Her only responsibility is to deliver the goods stated in the contract she entered with the local government. After receipt of the lumber in good order and condition by the provincial government through its officials which include Ayuma as the Municipal Treasurer, petitioner had already fulfilled her contractual obligation. It was but natural and proper that petitioner be compensated for the lumber she purchased from third persons.

The provincial government suffered no damage or injury since the repair and construction of the Navotas Bridge was completed. And assuming for the sake of argument that her lumber were actually confiscated by the DENR, petitioner contends that what should have been filed against her was a case for violation of the Forestry Code and not the Anti-Graft and Corrupt Practices Act.

The petition has no merit.

Well-entrenched is the rule that factual findings of the Sandiganbayan are conclusive upon this Court except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts and the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by the evidence on record.[22] Petitioner failed to establish any of the foregoing exceptional circumstances.

On the contrary, the evidence on record clearly showed petitioner's participation in the anomalous disbursement of government funds in favor of a private contractor for lumber which have been validly seized by CENR forest rangers. The inspection of deliveries and acceptance by the provincial government through Ayuma and Escara who certified in the Inspection Report that lumber delivered by petitioner were found to be "in good order and condition" relates only to the physical aspect and compliance with specifications as to quality, quantity and size of the materials. Said certification did not state whether the lumber delivered by petitioner have been cut or gathered in accordance with existing forestry laws, rules and regulations. Petitioner could have readily substantiated her defense by producing documents, such as permits and Certificate of Timber/ Lumber Origin, allegedly secured by persons from whom she bought the lumber, or presenting as witnesses those workers

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

who supposedly cut the trees and hauled the logs. But none of these were presented at the trial. Hence, the prosecution evidence showing the lumber delivered by petitioner to have been illegally cut and gathered, stands unrebutted.

Petitioner was charged with violation of Section 3(e) of R.A. No. 3019, which provides:

> SEC. 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
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> (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. (Emphasis supplied.)

The essential elements of this crime are: (1) the accused are public officers or private persons charged in conspiracy with them; (2) said public officers commit the prohibited acts during the performance of their official duties or in relation to their public position; (3) they caused undue injury to any party, whether the government or a private party; (4) such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[23]

We explained the foregoing elements in *Santos v. People*:[24]

> As may be noted, what contextually is punishable is the act of causing any undue injury to any party, or the giving to any private

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[23] *Dugayon v. People*, G.R. No. 147333, August 12, 2004, 436 SCRA 262, 272.

[24] G.R. No. 161877, March 23, 2006, 485 SCRA 185, 194-195, 197.

party of unwarranted benefits, advantage or preference in the discharge of the public officer's functions. In *Uy vs. Sandiganbayan*, and again in *Santiago vs. Garchitorena*, the Court has made it abundantly clear that the use of the disjunctive word "or" connotes that either act of (a) "causing any undue injury to any party, including the Government"; and (b) "giving any private party any unwarranted benefits, advantage or preference," qualifies as a violation of Section 3(e) of R.A. No. 3019, as amended. This is not to say, however, that each mode constitutes a distinct offense but that an accused may be proceeded against under either or both modes.

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The term "undue injury" in the context of Section 3 (e) of the Anti-Graft and Corrupt Practices Act punishing the act of "causing undue injury to any party," has a meaning akin to that civil law concept of "actual damage." The Court said so in *Llorente vs. Sandiganbayan,* thus:

> In jurisprudence, "**undue injury**" is consistently interpreted as "actual damage." ***Undue* has been defined as "more than necessary, not proper, [or] illegal**;" and *injury* as "any wrong or damage done to another, either in his person, rights, reputation or property [; that is, the] invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law. (Emphasis supplied.)

By accepting payment for delivery of lumber found to be without supporting documents as required by law, petitioner caused undue injury or damage to the provincial government which had no obligation to pay for confiscated lumber considered as government property. In fact, it is only the DENR Secretary or his representative who can dispose of such confiscated lumber in accordance with forestry laws and regulations, pursuant to Section 68-A of Presidential Decree (P.D.) No. 705 (otherwise known as the Forestry Code of the Philippines), as amended by Executive Order No. 277, which provides:

SEC. 68-A. *Administrative Authority of the Department Head or His Duly Authorized Representative to Order Confiscation*. - In all cases of violations of this Code or other forest laws[,] rules and regulations, the Department Head or his duly authorized representative, may order the confiscation of any forest products

illegally cut, gathered, removed, or possessed or abandoned, and all conveyances used either by land, water[,] or air in the commission of the offense and **to dispose of the same in accordance with pertinent laws, regulations or policies on the matter**."

Petitioner's contention that she should have been instead prosecuted for illegal cutting, gathering and possession of timber or other forest products under Section 68 of P.D. No. 705 ignores the fact that she never came out to claim ownership of the seized lumber until her appearance before the *Sangguniang Bayan* wherein she pleaded for consideration in the delayed bridge construction project after the DENR confiscated the lumber she delivered. Except for her bare denial, petitioner failed to refute the correctness of the statements she made as reflected in the official minutes of the *Sanggunian* session held on December 14, 1992, duly certified by the Municipal Secretary and signed by the *Sanggunian* Members present, to wit:

Ang sumunod na binigyang pahintulot upang magbigay ng kanyang pahayag ay si Gng. Virginia Guadines, ang nagtatapat na Contractor ng tulay ng Barangay Sibulan, o tulay Nabotas ayon sa pagkilala ng DPWH. Ayon sa kanya siya bilang contractor ng nabanggit na proyekto ay nalulungkot sa pagkaabala nito dahilan nga sa nangyaring paghuli ng mga tauhan ng Forestry sa mga kahoy na gagamitin sa tulay. Nalaman din niya na bunga nito ay nagkakaroon ng parang pagpafaction-faction sa Sangguniang Bayan. Nais niyang ipagunita na ito ay isang public knowledge na siya ang nanalong bidder sa ginanap na public bidding na nasabing proyekto at nalalaman ng lahat na siya ay hindi makakapag-provide ng kahoy na gagamitin sa nasabing tulay. Nang mga panahong iyon nga ay kailangang magtungo siya sa Lucban, Quezon para sa pagkoku[m]pleto ng mga kailangang papeles sa nasabing kontrata, kaya't siya ay nakisuyo ng taong mangangasiwa sa pagkuha ng kahoy. Ngayon na nangyari ang hindi inaasahan ay hinihiling niya na tayo ay magtulungan na maipatapos ang tulay na ito alang-alang sa kapakanan ng mga taong magdaraan sa nasabing tulay oras na ito ay matapos.

Nalalaman niya na siya ay mayroong pagkukulang, nguni't hinihiling niya sa Sangguniang Bayan na bigyan na siya ng konsiderasyon sa pangyayaring ito, total ay pinapayagan na pala ngayon ang pagputol ng kahoy kung gagamitin sa mga government

projects. Ang nabanggit na kautusan ay noon pa palang Nobyembre 1992 ipinalabas, kaya nga lamang ay hindi agad niya nalaman. Siya naman ay taos[-]puso ang pagtulong sa pamahalaang bayan ng Polillo at basta at nakabalita siya ng proyektong maaaring ang makikinabang ay ang ating bayan ay kanyang ginagawa kahi't minsan nga ay nagdudukot bulsa siya para maiparating ito sa ating bayan.[25]

We find no grave abuse of discretion on the part of the Sandiganbayan when it cited the pertinent portions of the minutes of the *Sangguniang Bayan* session of December 14, 1992, as evidence of petitioner's statements concerning the lumber she delivered which were confiscated by the CENR for lack of requisite legal documents. These statements revealed that petitioner was fully aware of the confiscation of her lumber stockpiled along the Polillo-Burdeos provincial road, *after* she had delivered the same. We have previously underscored the importance of the minutes of formal proceedings when the court is confronted with conflicting claims of parties as to the truth and accuracy of the matters taken up therein. In *De los Reyes v. Sandiganbayan, Third Division*,[26] this Court held:

> Thus, the Court accords full recognition to the minutes as the official repository of what actually transpires in every proceeding. It has happened that the minutes may be corrected to reflect the true account of a proceeding, thus giving the Court more reason to accord them great weight for such subsequent corrections, if any, are made precisely to preserve the accuracy of the records. In light of the conflicting claims of the parties in the case at bar, the Court, without resorting to the minutes, will encounter difficulty in resolving the dispute at hand.[27]

Apart from petitioner's own statements, the Sandiganbayan's finding that it was petitioner's lumber which were later confiscated by CENR forest rangers and used in the bridge repair and construction, was satisfactorily established by the prosecution's documentary and testimonial evidence. As part of their official

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[25] Exhibit "O-2".

[26] G.R. No. 121215, November 13, 1997, 281 SCRA 631, 638.

[27] Cited in *Regidor, Jr. v. People*, G.R. Nos. 166086-92, February 13, 2009, 579 SCRA 244, 267.

duties and following standard procedure, they prepared the Confiscation Report and Seizure Receipt, and testified in court detailing the incident. Two other witnesses corroborated their declaration that the confiscated lumber were actually used in the repair and construction of the Navotas Bridge.

Johnny V. Abanica, a Construction Maintenance employee of the PEO, testified that sometime in February 1993, his supervisor, Engr. Felixberto Nierva, informed him that they were going to construct the Navotas Bridge. Upon arriving at the site, he noticed that the lumber they were going to use was marked "confiscated." He then reminded Nierva that they might get into trouble because of it but Engr. Nierva told him that he already have an agreement with Azaula. Thereafter, he and his companions started demolishing the old bridge. He executed a *Sinumpaang Salaysay* on September 25, 1993 in connection with the confiscated lumber.[28]

Salvosa who led the CENR team who seized the lumber, likewise testified that in February 1993, upon being verbally informed by their field personnel, Forest Rangers Odelon Azul, Arnel F. Simon and Edwin Hernandez, he went to the construction site. He saw for himself that the lumber used in the new bridge were marked with "DENR CONFISCATED" and hatchet number 1742. Thereafter, he prepared a Memorandum-Report addressed to the CENR of Real, Quezon informing the latter of utilization of confiscated lumber without prior approval of their office and despite repeated warnings from their forest rangers, which report was endorsed to the DENR Regional Director.[29]

Dela Cruz, the CENRO of Real, Quezon, also testified that after receiving the Memorandum-Report of Salvosa, he informed the Regional Executive Director, DENR-Region IV about the matter with the recommendation that a legal officer be sent to Polillo to assist them in filing the proper complaint. He also

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[28] TSN, November 25, 1998, pp. 3-7.

[29] TSN, March 31, 1998, pp. 20-22.

wrote Azaula requiring him to explain but since Azaula did not respond to his letter, the case was referred to their legal division.[30]

Lastly, COA Auditor Mendoza, who, along with the Municipal Engineer of Polillo, was tasked to investigate the purchase of the materials used in the repair and construction of the Navotas Bridge after the completion of the project, also confirmed that the lumber used bore the white paint marking "DENR" and contained hatchet numbers when they inspected the same from under the new wooden bridge. He prepared three reports explaining his findings. He then recommended to the Provincial Auditor that the money paid to the supplier be refunded to the government and that administrative and criminal actions be instituted against the supplier and the concerned public officials. Consequently, the COA disallowed the payment of the amount of ₱70,924.00, deducting from the original amount of ₱83,228.00 the amount paid for common materials such as *kawad* and nails. The lumber used in the new bridge consisted of 3,172 board feet while the volume of the confiscated lumber was around 4,000 board feet.[31]

In support of her claim that the lumber she delivered were not those confiscated by the CENR personnel, petitioner presented as witness PO2 Reny I. Marasigan of the PNP Polillo Station. Marasigan testified that he issued a certification dated June 9, 2000 stating that the lumber confiscated near the Navotas Bridge in 1993 were deposited for safekeeping and are still intact at the back of their building. These rotting lumber on the ground were photographed by petitioner.[32] However, Marasigan failed to present proper documents evidencing the official transfer of custody of the seized lumber by the CENRO to their headquarters. In fact, Marasigan signed the Confiscation Report and Seizure Receipt as part of the apprehending team[33] while it was Azaula who signed as the "Receiving Officer."[34] Moreover, prosecution

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[30] TSN, March 30, 1998, pp. 10-15.

[31] TSN, December 12, 1997, pp. 5-28.

[32] TSN, July 8, 2003, pp. 3-9; Exhibits "25" to "35".

[33] Exhibits "A" and "B".

[34] Exhibit "A-2".

witnesses Salvosa and his forest rangers, as well as Abanica and Mendoza, all categorically declared that the lumber confiscated near the Navotas Bridge on November 20, 1992 were used in the repair and construction of the bridge.

As to petitioner's contention that the subsequent confiscation of the lumber she delivered, even if true, was no longer her concern because she had already fulfilled her contractual undertaking to provide the lumber for the bridge repair and construction, the same is untenable.

Basic is the rule that provisions of existing laws and regulations are read into and form an integral part of contracts, moreso in the case of government contracts. Verily, all contracts, including Government contracts, are subject to the police power of the State. Being an inherent attribute of sovereignty, such power is deemed incorporated into the laws of the land, which are part of all contracts, thereby qualifying the obligations arising therefrom.[35] Thus, it is an implied condition in the subject contract for the procurement of materials needed in the repair and construction of the Navotas Bridge that petitioner as private contractor would comply with pertinent forestry laws and regulations on the cutting and gathering of the lumber she undertook to supply the provincial government.

Petitioner's actual knowledge of the absence of supporting legal documents for the lumber she contracted to deliver to the provincial government — which resulted in its confiscation by the CENR personnel — belies her claim of good faith in receiving the payment for the said lumber.

When the defendants by their acts aimed at the same object, one performing one part, and the other performing another part so as to complete it, with a view to the attainment of the same object, and their acts though apparently independent, were in fact concerted and cooperative, indicating closeness of personal

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[35] Bartolome C. Fernandez, Jr., *A TREATISE ON GOVERNMENT CONTRACTS UNDER PHILIPPINE LAW*, 2003 Rev. Ed., p. 39, citing *Central Bank v. Cloribel,* No. L-26971, April 11, 1972, 44 SCRA 307, 318.

association, concerted action and concurrence of sentiments, the court will be justified in concluding that said defendants were engaged in a conspiracy.[36] In this case, the finding of conspiracy was well-supported by evidence.

Indeed, petitioner's participation and cooperation was indispensable in defrauding the government of the amount paid for the said confiscated lumber. Without doubt, her acts in making delivery to Azaula instead of the provincial government or PEO, evading apprehension for the illegally cut logs and yet pursuing clearance for the release of the said products by appealing to the local *sanggunian*, and later accepting payment with the assistance of Azaula and Escara — all clearly showed her complicity in the anomalous disbursement of provincial government funds allocated for the bridge repair/construction project. Consequently, the Sandiganbayan did not err in finding her guilty of violation of Section 3(e) of R.A. No. 3019 and ordering her to return the amount corresponding to the payment for the confiscated lumber used in the construction of the Navotas Bridge, the same materials delivered by the petitioner under her contract with the provincial government.

The penalty for violation of Section 3(e) of R.A. No. 3019 is "imprisonment for not less than six years and one month nor more than fifteen years, and perpetual disqualification from public office."[37] Under the Indeterminate Sentence Law, if the offense is punished by special law, as in the present case, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall not exceed the maximum fixed by the law, and the minimum not less than the minimum prescribed therein.[38] In view of the attendant circumstances, we hold that the penalty imposed by the Sandiganbayan is in accord with law and jurisprudence.

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[36] *Baldebrin v. Sandiganbayan*, G.R. Nos. 144950-71, March 22, 2007, 518 SCRA 627, 639.

[37] *Ong v. People*, *supra* note 22 at 56, citing Section 9, R.A. No. 3019.

[38] *Ong v. People*, *id.* at 56-57, citing *Nacaytuna v. People*, G.R No. 171144, November 24, 2006, 508 SCRA 128, 135.

WHEREFORE, the petition for review on *certiorari* is *DENIED*. The Decision dated April 30, 2004 and Resolution dated August 20, 2004 of the Sandiganbayan in Criminal Case No. 20878 are *AFFIRMED*.

With costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 164939. June 6, 2011]

SAMAHAN NG MGA MANGGAGAWA SA HYATT (SAMASAH-NUWHRAIN), *petitioner, vs.* **HON. VOLUNTARY ARBITRATOR BUENAVENTURA C. MAGSALIN and HOTEL ENTERPRISES OF THE PHILIPPINES, INC.,** *respondents.*

[G.R. No. 172303. June 6, 2011]

SAMAHAN NG MGA MANGGAGAWA SA HYATT (SAMASAH-NUWHRAIN), *petitioner, vs.* **HOTEL ENTERPRISES OF THE PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 43; APPLIES TO

[*] Designated additional member per Special Order No. 997 dated June 6, 2011

APPEALS FROM DECISIONS OR AWARDS OF VOLUNTARY ARBITRATORS.— In the case of *Samahan ng mga Manggagawa sa Hyatt-NUWHRAIN-APL v. Bacungan*, we repeated the well-settled rule that a decision or award of a voluntary arbitrator is appealable to the CA via petition for review under Rule 43. x x x Furthermore, Sections 1, 3 and 4, Rule 43 of the 1997 Rules of Civil Procedure, as amended, provide: "SECTION 1. *Scope*. – This Rule shall apply to appeals x x x from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the x x x, and **voluntary arbitrators** authorized by law. x x x SEC. 3. *Where to appeal*. – **An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner therein provided** x x x. SEC. 4. *Period of appeal*. – The **appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution** x x x." Hence, upon receipt on May 26, 2003 of the Voluntary Arbitrator's Resolution denying peititioner's motion for reconsideration, petitioner should have filed with the CA, within the fifteen (15)-day reglementary period, a petition for review, not a petition for *certiorari.*

2. ID.; RULES OF PROCEDURE; CANNOT BE LIBERALLY CONSTRUED IN CASE AT BAR.— Petitioner insists on a liberal interpretation of the rules but we find no cogent reason in this case to deviate from the general rule. Verily, rules of procedure exist for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard following judicial procedure and in the correct forum. Public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; SEPARATION PAY; SHALL BE ALLOWED ONLY WHEN THE CAUSE OF THE

DISMISSAL IS OTHER THAN SERIOUS MISCONDUCT OR FOR CAUSES WHICH REFLECT ADVERSELY ON THE EMPLOYEE'S MORAL CHARACTER.— The grant of separation pay or some other financial assistance to an employee dismissed for just causes is based on equity. In *Phil. Long Distance Telephone Co. v. NLRC*, we ruled that severance compensation, or whatever name it is called, on the ground of social justice shall be allowed only when the cause of the dismissal is other than serious misconduct or for causes which reflect adversely on the employee's moral character. x x x Caragdag's dismissal being due to serious misconduct, it follows that he should not be entitled to financial assistance. To rule otherwise would be to reward him for the grave misconduct he committed. We must emphasize that social justice is extended only to those who deserve its compassion.

4. ID.; ID.; ID.; JUST CAUSES; SERIOUS MISCONDUCT; A SERIES OF IRREGULARITIES WHEN PUT TOGETHER MAY CONSTITUTE SERIOUS MISCONDUCT WHICH IS A JUST CAUSE FOR DISMISSAL; CASE AT BAR.— Here, Caragdag's dismissal was due to several instances of willful disobedience to the reasonable rules and regulations prescribed by his employer. The Voluntary Arbitrator pointed out that according to the hotel's Code of Discipline, an employee who commits three different acts of misconduct within a twelve (12)-month period commits serious misconduct. He stressed that Caragdag's infractions were not even spread in a period of twelve (12) months, but rather in a period of a little over a month. Records show that various violations of the hotel's rules and regulations were committed by Caragdag. He was suspended for violating the hotel policy on bag inspection and body frisking. He was likewise suspended for threatening and intimidating a superior while the latter was counseling his staff. He was again suspended for leaving his work assignment without permission. Evidently, Caragdag's acts constitute serious misconduct. In *Piedad v. Lanao del Norte Electric Cooperative, Inc.*, we ruled that a series of irregularities when put together may constitute serious misconduct, which under Article 282 of the Labor Code, as amended, is a just cause for dismissal.

APPEARANCES OF COUNSEL

Sentro ng Alternatibong Lingap Panligal (SALIGAN) for petitioner.

Ermitano Manzano Reodica & Associates for private respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court are two consolidated petitions filed by petitioner *Samahan ng mga Manggagawa sa* Hyatt-NUWHRAIN-APL under Rule 45 of the 1997 Rules of Civil Procedure, as amended. The first petition, docketed as G.R. No. 164939, assails the Resolutions dated October 3, 2003[1] and August 13, 2004[2] of the Court of Appeals (CA) in CA-G.R. SP No. 78364, which dismissed petitioner's petition for review at the CA for being the wrong remedy. The second petition, docketed as G.R. No. 172303, assails the Decision[3] dated December 16, 2005 and Resolution[4] dated April 12, 2006 of the CA in CA-G.R. SP No. 77478, modifying the judgment of the Voluntary Arbitrator in NCMB-NCR-CRN-07-008-01.

The antecedent facts are as follows:

Petitioner *Samahan ng mga Manggagawa sa* Hyatt-NUWHRAIN-APL is a duly registered union and the certified bargaining representative of the rank-and-file employees of Hyatt

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[1] *Rollo* (G.R. No. 164939), pp. 32-33. Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Portia Aliño-Hormachuelos and Edgardo F. Sundiam, concurring.

[2] *Id.* at 35.

[3] *Rollo* (G.R. No. 172303), pp. 12-20. Penned by Associate Justice Marina L. Buzon, with Associate Justices Danilo B. Pine and Arcangelita Romilla-Lontok, concurring.

[4] *Id.* at 9-10. Penned by Associate Justice Marina L. Buzon, with Associate Justices Rosmari D. Carandang and Arcangelita Romilla-Lontok, concurring.

Regency Manila, a five-star hotel owned and operated by respondent Hotel Enterprises of the Philippines, Inc. On January 31, 2001, Hyatt's General Manager, David C. Pacey, issued a Memorandum[5] informing all hotel employees that hotel security have been instructed to conduct a thorough bag inspection and body frisking in every entrance and exit of the hotel. He enjoined employees to comply therewith. Copies of the Memorandum were furnished petitioner.

On February 3, 2001, Angelito Caragdag, a waiter at the hotel's Cafe Al Fresco restaurant and a director of the union, refused to be frisked by the security personnel. The incident was reported to the hotel's Human Resources Department (HRD), which issued a Memorandum[6] to Caragdag on February 5, 2001, requiring him to explain in writing within forty-eight (48) hours from notice why no disciplinary action should be taken against him. The following day, on February 6, 2001, Caragdag again refused to be frisked by the security personnel. Thus, on February 8, 2001, the HRD issued another Memorandum[7] requiring him to explain.

On February 14, 2001, the HRD imposed on Caragdag the penalty of reprimand for the February 3, 2001 incident, which was considered a first offense, and suspended him for three days for the February 6, 2001 incident, which was considered as a second offense.[8] Both penalties were in accordance with the hotel's Code of Discipline.

Subsequently, on February 22, 2001, when Mike Moral, the manager of Hyatt's Cafe Al Fresco and Caragdag's immediate superior, was about to counsel two staff members, Larry Lacambacal and Allan Alvaro, at the training room, Caragdag suddenly opened the door and yelled at the two with an enraged look. In a disturbing voice he said, "*Ang titigas talaga ng ulo*

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[5] CA *rollo* (CA-G.R. SP. No. 77478), p. 86.

[6] *Id.* at 87.

[7] *Id.* at 88.

[8] *Id.* at 89.

n'yo. Sinabi ko na sa inyo na huwag kayong makikipagusap sa management habang ongoing pa ang kaso!" (You are very stubborn. I told you not to speak to management while the case is ongoing!) Moral asked Caragdag what the problem was and informed him that he was simply talking to his staff. Moral also told Caragdag that he did not have the right to interrupt and intimidate him during his counseling session with his staff.

On February 23, 2001, Moral issued a Memorandum[9] requiring Caragdag to explain his actions in the training room. Caragdag submitted his written explanation on February 25, 2001[10] narrating that he was informed by someone that Lacambacal and Alvaro were requesting for his assistance because Moral had invited them to the training room. Believing that he should advise the two that they should be accompanied by a union officer to any inquisition, he went to the training room. However, before he could enter the door, Moral blocked him. Thus, he told Lacambacal and Alvaro that they should be assisted by a union representative before giving any statement to management. Caragdag also prayed that Moral be investigated for harassing union officers and union members.

On February 28, 2001, Moral found the explanations unsatisfactory. In a Memorandum[11] issued on the same date, Moral held Caragdag liable for Offenses Subject to Disciplinary Action (OSDA) 3.01 of the hotel's Code of Discipline, *i.e.*, "threatening, intimidating, coercing, and provoking to a fight your superior for reasons directly connected with his discharge of official duty." Thus, Caragdag was imposed the penalty of seven days suspension in accordance with the hotel's Code of Discipline.

Still later, on March 2, 2001, Caragdag committed another infraction. At 9:35 a.m. on the said date, Caragdag left his work assignment during official hours without prior permission from

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[9] *Id.* at 90.

[10] *Id.* at 161-163.

[11] *Id.* at 92.

his Department Head. He was required to submit an explanation, but the explanation[12] he submitted was found unsatisfactory. On March 17, 2001, Moral found Caragdag liable for violating OSDA 3.07, *i.e.*, "leaving work assignment during official working hours without prior permission from the department head or immediate superior," and suspended him for three days.[13]

Because of the succession of infractions he committed, the HRD also required Caragdag to explain on May 11, 2001 why the hotel's OSDA 4.32 (Committing offenses which are penalized with three [3] suspensions during a 12-month period) should not be enforced against him.[14] An investigation board was formed after receipt of Caragdag's written explanation, and the matter was set for hearing on May 19, 2001. However, despite notice of the scheduled hearing, both Caragdag and the Union President failed to attend. Thereafter, the investigating board resolved on the said date to dismiss Caragdag for violation of OSDA 4.32.[15] Caragdag appealed but the investigating board affirmed its resolution after hearing on May 24, 2001.

On June 1, 2001, the hotel, through Atty. Juancho A. Baltazar, sent Caragdag a Notice of Dismissal,[16] the pertinent portion of which reads:

> Based on the findings of the Investigation Board dated May 19, 2001 which was approved by the General Manager Mr. David Pacey on the same day and which did not merit any reversal or modification after the hearing on your appeal on May 24, 2001, the penalty of DISMISSAL is therefore affirmed to take effect on June 1, 2001.

Caragdag's dismissal was questioned by petitioner, and the dispute was referred to voluntary arbitration upon agreement of the parties. On May 6, 2002, the Voluntary Arbitrator rendered a decision,[17] the dispositive portion of which reads:

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[12] *Id.* at 164.

[13] *Id.* at 94.

[14] *Id.* at 95.

[15] *Id.* at 98-100.

[16] *Id.* at 108-109.

[17] *Id.* at 9-25.

WHEREFORE, premises considered, this Arbiter rules that the three separate suspensions of Mr. Caragdag are valid, his dismissal is legal and OSDA 4.32 of Hyatt's Code of Discipline is reasonable.

However, for humanitarian considerations, Hyatt is hereby ordered to grant financial assistance to Mr. Caragdag in the amount of One Hundred Thousand Pesos (PhP100,000.00).

In finding the three separate suspensions of Caragdag valid, the Voluntary Arbitrator reasoned that the union officers and members had no right to breach company rules and regulations on security and employee discipline on the basis of certain suspicions against management and an ongoing CBA negotiation standoff. The Voluntary Arbitrator also found that when Caragdag advised Lacambacal and Alvaro not to give any statement, he threatened and intimidated his superior while the latter was performing his duties. Moreover, there is no reason why he did not arrange his time-off with the Department Head concerned. Thus, Caragdag was validly dismissed pursuant to OSDA 4.32 of Hyatt's Code of Discipline, which states that an employee who commits three different acts of misconduct within a twelve (12)-month period commits serious misconduct.

Petitioner sought reconsideration of the decision while respondent filed a motion for partial reconsideration. However, the Voluntary Arbitrator denied both motions on May 26, 2003.[18]

On August 1, 2003, petitioner assailed the decision of the Voluntary Arbitrator before the CA in a petition for *certiorari* which was docketed as CA-G.R. SP No. 78364.[19] As mentioned at the outset, the CA dismissed the petition outright for being the wrong remedy. The CA explained:

Rule 43, Section 5 of the 1997 Rules of Civil Procedure explicitly provides that the proper mode of appeal from judgments, final orders or resolution of voluntary arbitrators is through a Petition for Review which should be filed within fifteen (15) days from the receipt of notice of judgment, order or resolution of the voluntary arbitrator.

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

[19] CA *rollo* (CA-G.R. SP. No. 78364), pp. 2-31.

Considering that petitioner intends this petition to be a Petition for *Certiorari*, the Court hereby resolves to dismiss the petition outright for being an improper mode of appeal.

Even if this Court treats the instant petition as a Petition for Review, still the Court has no alternative but to dismiss the same for having been filed out of time. As admitted by the petitioner it received the Order dated 26 May 2003 denying their motion for reconsideration on 02 June 2003. The fifteen (15) day period within which to appeal through a Petition for Review is until June 17, 2003. The petitioner filed the present petition on August 1, 2003, way beyond the reglementary period provided for by the Rules.[20]

Petitioner duly filed a motion for reconsideration of the dismissal, but the motion was denied by the CA. Thus, petitioner filed before this Court a petition for review on *certiorari* which was docketed as G.R. No. 164939.

In the meantime, on June 30, 2003, respondent also filed a petition for review[21] with the CA on the ground that the Voluntary Arbitrator committed a grievous error in awarding financial assistance to Caragdag despite his finding that the dismissal due to serious misconduct was valid. On December 16, 2005, the CA promulgated a decision in CA-G.R. SP. No. 77478 as follows:

WHEREFORE, the Decision dated May 6, 2002 of Voluntary Arbitrator Buenaventura C. Magsalin is AFFIRMED with MODIFICATION by DELETING the award of financial assistance in the amount of ₱100,000.00 to Angelito Caragdag.

SO ORDERED.[22]

In deleting the award of financial assistance to Caragdag, the CA cited the case of *Philippine Commercial International Bank v. Abad*,[23] which held that the grant of separation pay or other

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[20] *Supra* note 1.

[21] CA *rollo* (CA-G.R. SP. No. 77478), pp. 33-56.

[22] *Supra* note 3 at 20.

[23] G.R. No. 158045, February 28, 2005, 452 SCRA 579, 587.

financial assistance to an employee dismissed for just cause is based on equity and is a measure of social justice, awarded to an employee who has been validly dismissed if the dismissal was not due to serious misconduct or causes that reflected adversely on the moral character of the employee. In this case, the CA agreed with the findings of the Voluntary Arbitrator that Caragdag was validly dismissed due to serious misconduct. Accordingly, financial assistance should not have been awarded to Caragdag. The CA also noted that it is the employer's prerogative to prescribe reasonable rules and regulations necessary or proper for the conduct of its business or concern, to provide certain disciplinary measures to implement said rules and to ensure compliance therewith.

Petitioner sought reconsideration of the decision, but the CA denied the motion for lack of merit. Hence, petitioner filed before us a petition for review on *certiorari* docketed as G.R. No. 172303.

Considering that G.R. Nos. 164939 and 172303 have the same origin, involve the same parties, and raise interrelated issues, the petitions were consolidated.

Petitioner raises the following issues:

In G.R. No. 164939

THE COURT OF APPEALS ERRED IN DISMISSING OUTRIGHT THE PETITION FOR *CERTIORARI* ON THE GROUND THAT THE SAME IS AN IMPROPER MODE OF APPEAL.[24]

In G.R. No. 172303

THE COURT OF APPEALS ERRED IN DELETING THE AWARD OF FINANCIAL ASSISTANCE IN THE AMOUNT OF ₱100,000.00 TO ANGELITO CARAGDAG.[25]

The issues for our resolution are thus two-fold: first, whether the CA erred in dismissing outright the petition for *certiorari*

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[24] *Rollo* (G.R. No. 164939), p. 20.

[25] *Rollo* (G.R. No. 172303), p. 30.

filed before it on the ground that the same is an improper mode of appeal; and second, whether the CA erred in deleting the award of financial assistance in the amount of ₱100,000.00 to Caragdag.

On the first issue, petitioner argues that because decisions rendered by voluntary arbitrators are issued under Title VII-A of the Labor Code, they are not covered by Rule 43 of the 1997 Rules of Civil Procedure, as amended, by express provision of Section 2 thereof. Section 2, petitioner points out, expressly provides that Rule 43 "shall not apply to judgments or final orders issued under the Labor Code of the Philippines." Hence, a petition for *certiorari* under Rule 65 is the proper remedy for questioning the decision of the Voluntary Arbitrator, and petitioner having availed of such remedy, the CA erred in declaring that the petition was filed out of time since the petition was filed within the sixty (60)-day reglementary period.

On the other hand, respondent maintains that the CA acted correctly in dismissing the petition for *certiorari* for being the wrong mode of appeal. It stresses that Section 1 of Rule 43 clearly states that it is the governing rule with regard to appeals from awards, judgments, final orders or resolutions of voluntary arbitrators. Respondent contends that the voluntary arbitrators authorized by law include the voluntary arbitrators appointed and accredited under the Labor Code, as they are considered as included in the term "quasi-judicial instrumentalities."

Petitioner's arguments fail to persuade.

In the case of *Samahan ng mga Manggagawa sa Hyatt-NUWHRAIN-APL v. Bacungan*,[26] we repeated the well-settled rule that a decision or award of a voluntary arbitrator is appealable to the CA via petition for review under Rule 43. We held that:

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[26] G.R. No. 149050, March 25, 2009, 582 SCRA 369, 374-375, citing *Luzon Development Bank v. Association of Luzon Development Bank Employees*, 319 Phil. 262 (1995); *Alcantara, Jr. v. Court of Appeals*, 435 Phil. 395 (2002); and *Nippon Paint Employees Union-Olalia v. Court of Appeals*, G.R. No. 159010, November 19, 2004, 443 SCRA 286.

The question on the proper recourse to assail a decision of a voluntary arbitrator has already been settled in *Luzon Development Bank v. Association of Luzon Development Bank Employees*, where the Court held that the decision or award of the voluntary arbitrator or panel of arbitrators should likewise be appealable to the Court of Appeals, in line with the procedure outlined in Revised Administrative Circular No. 1-95 (now embodied in Rule 43 of the 1997 Rules of Civil Procedure), just like those of the quasi-judicial agencies, boards and commissions enumerated therein, and consistent with the original purpose to provide a uniform procedure for the appellate review of adjudications of all quasi-judicial entities.

Subsequently, in *Alcantara, Jr. v. Court of Appeals*, and *Nippon Paint Employees Union-Olalia v. Court of Appeals*, the Court reiterated the aforequoted ruling. In *Alcantara*, the Court held that notwithstanding Section 2 of Rule 43, the ruling in *Luzon Development Bank* still stands. The Court explained, thus:

> "The provisions may be new to the Rules of Court but it is far from being a new law. Section 2, Rules 42 of the 1997 Rules of Civil Procedure, as presently worded, is nothing more but a reiteration of the exception to the exclusive appellate jurisdiction of the Court of Appeals, as provided for in Section 9, *Batas Pambansa Blg.* 129, as amended by Republic Act No. 7902:
>
> > (3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Employees' Compensation Commission and the Civil Service Commission, *except those falling within* the appellate jurisdiction of the Supreme Court in accordance with the Constitution, *the Labor Code of the Philippines under Presidential Decree No. 442, as amended,* the provisions of this Act and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.
>
> "The Court took into account this exception in *Luzon Development Bank* but, nevertheless, held that the decisions of voluntary arbitrators issued pursuant to the Labor Code do not come within its ambit x x x"

Furthermore, Sections 1, 3 and 4, Rule 43 of the 1997 Rules of Civil Procedure, as amended, provide:

SECTION 1. *Scope*. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the x x x, and **voluntary arbitrators** authorized by law.

x x x x x x x x x

SEC. 3. *Where to appeal*. - **An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner therein provided**, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.

SEC. 4. *Period of appeal*. - The **appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution**, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. x x x. (Emphasis supplied.)

Hence, upon receipt on May 26, 2003 of the Voluntary Arbitrator's Resolution denying petitioner's motion for reconsideration, petitioner should have filed with the CA, within the fifteen (15)-day reglementary period, a petition for review, not a petition for *certiorari*.

Petitioner insists on a liberal interpretation of the rules but we find no cogent reason in this case to deviate from the general rule. Verily, rules of procedure exist for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard following judicial procedure and in the correct forum. Public order and our system of justice

are well served by a conscientious observance by the parties of the procedural rules.[27]

On the second issue, petitioner argues that Caragdag is entitled to financial assistance in the amount of ₱100,000 on humanitarian considerations. Petitioner stresses that Caragdag's infractions were due to his being a union officer and his acts did not show moral depravity. Petitioner also adds that, while it is true that the award of financial assistance is given only for dismissals due to causes specified under Articles 283 and 284 of the Labor Code, as amended, this Court has, by way of exception, allowed the grant of financial assistance to an employee dismissed for just causes based on equity.

Respondent on the other hand, asserts that the CA correctly deleted the award of financial assistance erroneously granted to Caragdag considering that he was found guilty of serious misconduct and other acts adversely reflecting on his moral character. Respondent stresses that Caragdag's willful defiance of the hotel's security policy, disrespect and intimidation of a superior, and unjustifiable desertion of his work assignment during working hours without permission, patently show his serious and gross misconduct as well as amoral character.[28]

Again, petitioner's arguments lack merit.

The grant of separation pay or some other financial assistance to an employee dismissed for just causes is based on equity.[29] In *Phil. Long Distance Telephone Co. v. NLRC*,[30] we ruled that severance compensation, or whatever name it is called, on the ground of social justice shall be allowed only when the cause of the dismissal is other than serious misconduct or for causes which reflect adversely on the employee's moral character. The Court succinctly discussed the propriety of the grant of separation pay in this wise:

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[27] *Audi AG v. Mejia*, G.R. No. 167533, July 27, 2007, 528 SCRA 378, 385

[28] *Rollo* (G.R. No. 172303), p. 416.

[29] See *Aparente, Sr. v. NLRC*, 387 Phil. 96, 107 (2000).

[30] G.R. No. 80609, August 23, 1988, 164 SCRA 671, 680.

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.

The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.[31]

Here, Caragdag's dismissal was due to several instances of willful disobedience to the reasonable rules and regulations prescribed by his employer. The Voluntary Arbitrator pointed out that according to the hotel's Code of Discipline, an employee

[31] *Id.* at 682-683.

who commits three different acts of misconduct within a twelve (12)-month period commits serious misconduct. He stressed that Caragdag's infractions were not even spread in a period of twelve (12) months, but rather in a period of a little over a month. Records show that various violations of the hotel's rules and regulations were committed by Caragdag. He was suspended for violating the hotel policy on bag inspection and body frisking. He was likewise suspended for threatening and intimidating a superior while the latter was counseling his staff. He was again suspended for leaving his work assignment without permission. Evidently, Caragdag's acts constitute serious misconduct.

In *Piedad v. Lanao del Norte Electric Cooperative, Inc.*,[32] we ruled that a series of irregularities when put together may constitute serious misconduct, which under Article 282 of the Labor Code, as amended, is a just cause for dismissal.

Caragdag's dismissal being due to serious misconduct, it follows that he should not be entitled to financial assistance. To rule otherwise would be to reward him for the grave misconduct he committed. We must emphasize that social justice is extended only to those who deserve its compassion.[33]

WHEREFORE, the petitions for review on *certiorari* are *DENIED*. The October 3, 2003 and August 13, 2004 Court of Appeals Resolutions in CA-G.R. SP No. 78364, as well as the Court of Appeals December 16, 2005 Decision and April 12, 2006 Resolution in CA-G.R. SP No. 77478, are *AFFIRMED* and *UPHELD*.

With costs against the petitioner.

SO ORDERED.

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

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[32] G.R. No. 73735, August 31, 1987, 153 SCRA 500, 509, citing *National Service Corporation v. Leogardo, Jr.*, No. L-64296, July 20, 1984, 130 SCRA 502, 509.

[33] *A' Prime Security Services, Inc. v. NLRC*, G.R. No. 93476, March 19, 1993, 220 SCRA 142.

[*] Designated additional member per Special Order No. 997 dated June 6, 2011.

THIRD DIVISION

[G.R. No. 165887. June 6, 2011]

MAJORITY STOCKHOLDERS OF RUBY INDUSTRIAL CORPORATION, *petitioners, vs.* **MIGUEL LIM, in his personal capacity as Stockholder of Ruby Industrial Corporation and representing the MINORITY STOCKHOLDERS OF RUBY INDUSTRIAL CORPORATION and the MANAGEMENT COMMITTEE OF RUBY INDUSTRIAL CORPORATION,** *respondents.*

[G.R. No. 165929. June 6, 2011]

CHINA BANKING CORPORATION, *petitioner, vs.* **MIGUEL LIM, in his personal capacity as a stockholder of Ruby Industrial Corporation and representing the MINORITY STOCKHOLDERS OF RUBY INDUSTRIAL CORPORATION,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; STOCK CORPORATIONS; DERIVATIVE ACTION; REFERS TO A SUIT BY A SHAREHOLDER TO ENFORCE A CORPORATE CAUSE OF ACTION.— A derivative action is a suit by a shareholder to enforce a corporate cause of action. It is a remedy designed by equity and has been the principal defense of the minority shareholders against abuses by the majority. For this purpose, it is enough that a member or a minority of stockholders file a derivative suit for and in behalf of a corporation. An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party in interest.

2. ID.; ID.; ID.; EXPRESSLY GRANTED THE POWER TO ISSUE OR SELL STOCKS.— A stock corporation is expressly granted the power to issue or sell stocks. The power to issue shares of stock in a corporation is lodged in the board of directors and no stockholders' meeting is required to consider it because additional issuances of shares of stock does not need approval of the stockholders. What is only required is the board resolution approving the additional issuance of shares. The corporation shall also file the necessary application with the SEC to exempt these from the registration requirements under the Revised Securities Act (now the Securities Regulation Code).

3. ID.; ID.; ID.; PRE-EMPTIVE RIGHT; REFERS TO THE RIGHT OF A STOCKHOLDER OF A STOCK CORPORATION TO SUBSCRIBE TO ALL ISSUES OR DISPOSITION OF SHARES OF ANY CLASS, IN PROPORTION TO THEIR RESPECTIVE SHAREHOLDINGS.— Pre-emptive right under Sec. 39 of the Corporation Code refers to the right of a stockholder of a stock corporation to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings. The right may be restricted or denied under the articles of incorporation, and subject to certain exceptions and limitations. The stockholder must be given a reasonable time within which to exercise their pre-emptive rights. Upon the expiration of said period, any stockholder who has not exercised such right will be deemed to have waived it.

4. ID.; ID.; ID.; SHARES OF STOCKS; THE VALIDITY OF ISSUANCE OF ADDITIONAL SHARES MAY BE QUESTIONED IF DONE IN BREACH OF TRUST BY THE CONTROLLING STOCKHOLDERS.— The validity of issuance of additional shares may be questioned if done in breach of trust by the controlling stockholders. Thus, even if the pre-emptive right does not exist, either because the issue comes within the exceptions in Section 39 or because it is denied or limited in the articles of incorporation, an issue of shares may still be objectionable if the directors acted in breach of trust and their primary purpose is to perpetuate or shift control of the corporation, or to "freeze out" the minority interest.

5. ID.; ID.; DISSOLUTION; CORPORATE LIQUIDATION; CONSISTS OF COLLECTING ALL THAT IS DUE THE CORPORATION, THE SETTLEMENT AND ADJUSTMENT OF CLAIMS AGAINST IT AND THE PAYMENT OF ITS JUST DEBTS.— *Liquidation*, or settlement of the affairs of the corporation, consists of adjusting the debts and claims, that is, of collecting all that is due the corporation, the settlement and adjustment of claims against it and the payment of its just debts. It involves the winding up of the affairs of the corporation, which means the collection of all assets, the payment of all its creditors, and the distribution of the remaining assets, if any, among the stockholders thereof in accordance with their contracts, or if there be no special contract, on the basis of their respective interests.

6. ID.; ID.; ID.; ID.; SHOULD ENSUE WHERE THE CORPORATE LIFE OF A CORPORATION HAS EXPIRED WITHOUT A VALID EXTENSION HAVING BEEN EFFECTED.— Since the corporate life of RUBY as stated in its articles of incorporation expired, without a valid extension having been effected, it was deemed dissolved by such expiration without need of further action on the part of the corporation or State. With greater reason then should liquidation ensue considering that the last paragraph of Sec. 4-9 of the Rules of Procedure on Corporate Recovery mandates the SEC to order the dissolution *and* liquidation proceedings under Rule VI. Sec. 6-1, Rule VI likewise authorizes the SEC on motion or *motu proprio*, or upon recommendation of the management committee, to order dissolution of the debtor corporation and the liquidation of its remaining assets, appointing a Liquidator for the purpose, if "the continuance in business of the debtor is no longer feasible or profitable or no longer works to the best interest of the stockholders, parties-litigants, creditors, or the general public."

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LAW OF THE CASE; DEFINED AS THE OPINION DELIVERED ON A FORMER APPEAL.— We have held that when the validity of an interlocutory order has already been passed upon on appeal, the Decision of the Court on appeal becomes the law of the case between the same parties. *Law of the case* has been defined as "the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably

established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court."

8. MERCANTILE LAW; CORPORATION CODE; DISSOLUTION; CORPORATE LIQUIDATION; JURISDICTION OVER THE LIQUIDATION OF CORPORATIONS NOW PERTAINS TO THE APPROPRIATE REGIONAL TRIAL COURTS; CASE AT BAR.— We ruled that the SEC observed the correct procedure under the present law, in cases where it merely retained jurisdiction over pending cases for suspension of payments/ rehabilitation, thus: "Republic Act No. 8799 (RA 8799) transferred to the appropriate regional trial courts the SEC's jurisdiction defined under Section 5(d) of Presidential Decree No. 902-A. Section 5.2 of RA 8799 provides: x x x **The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed**. x x x **While the SEC has jurisdiction to order the dissolution of a corporation, jurisdiction over the liquidation of the corporation now pertains to the appropriate regional trial courts**. x x x **This is the correct procedure because the liquidation of a corporation requires the settlement of claims for and against the corporation, which clearly falls under the jurisdiction of the regular courts. The trial court is in the best position to convene all the creditors of the corporation, ascertain their claims, and determine their preferences**." In view of the foregoing, the SEC should now be directed to transfer this case to the proper RTC which shall supervise the liquidation proceedings under Sec. 122 of the Corporation Code. Under Sec. 6 (d) of P.D. 902-A, the SEC is empowered, on the basis of the findings and recommendations of the management committee or rehabilitation receiver, or on its own findings, to determine that the continuance in business of a debtor corporation under suspension of payment or rehabilitation would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation and its remaining assets liquidated accordingly. x x x [T]he

procedure is governed by Rule VI of the SEC Rules of Procedure on Corporate Recovery.

9. ID.; REPUBLIC ACT NO. 10142 (THE FINANCIAL REHABILITATION AND INSOLVENCY ACT); PROVIDES FOR COURT PROCEEDINGS IN THE REHABILITATION OR LIQUIDATION OF DEBTORS, BOTH JURIDICAL AND NATURAL PERSONS.— R.A. No. 10142 otherwise known as the Financial Rehabilitation and Insolvency Act (FRIA) of 2010, now provides for court proceedings in the rehabilitation or liquidation of debtors, both juridical and natural persons, in a manner that will "ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure equitable treatment of creditors who are similarly situated." Considering that this case was still pending when the new law took effect last year, the RTC to which this case will be transferred shall be guided by Sec. 146 of said law, which states: "SEC. 146. *Application to Pending Insolvency, Suspension of Payments and Rehabilitation Cases.* - This Act shall govern all petitions filed after it has taken effect. All further proceedings in insolvency, suspension of payments and rehabilitation cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the procedures set forth in prior laws and regulations shall apply."

APPEARANCES OF COUNSEL

Lim Vigilia Alcala Dumlao & Orencia for China Bank.

Balgos Fernando & Gumaru for petitioners in G.R. No. 165887.

Romulo Mabanta Buenaventura Sayoc & Delos Angeles Law Offices for Miguel Lim.

Santiago & Santiago for Ruby Industrial Corp.

Walter T. Young for Management Committee.

D E C I S I O N

VILLARAMA, JR., *J.*:

This case is brought to us on appeal for the *fourth* time, involving the same parties and interests litigating on issues arising from rehabilitation proceedings initiated by Ruby Industrial Corporation wayback in 1983.

Following is the factual backdrop of the present controversy, as culled from the records and facts set forth in the *ponencia* of Chief Justice Reynato S. Puno in *Ruby Industrial Corporation v. Court of Appeals*.[1]

The Antecedents

Ruby Industrial Corporation (RUBY) is a domestic corporation engaged in glass manufacturing. Reeling from severe liquidity problems beginning in 1980, RUBY filed on December 13, 1983 a petition for suspension of payments with the Securities and Exchange Commission (SEC) docketed as SEC Case No. 2556. On December 20, 1983, the SEC issued an order declaring RUBY under suspension of payments and enjoining the disposition of its properties pending hearing of the petition, except insofar as necessary in its ordinary operations, and making payments outside of the necessary or legitimate expenses of its business.

On August 10, 1984, the SEC Hearing Panel created the management committee (MANCOM) for RUBY, composed of representatives from Allied Leasing and Finance Corporation (ALFC), Philippine Bank of Communications (PBCOM), China Banking Corporation (China Bank), Pilipinas Shell Petroleum Corporation (Pilipinas Shell), and RUBY represented by Mr. Yu Kim Giang. The MANCOM was tasked to perform the following functions: (1) undertake the management of RUBY; (2) take custody and control over all existing assets and liabilities of RUBY; (3) evaluate RUBY's existing assets and liabilities, earnings and operations; (4) determine the best way to salvage

[1] G.R. Nos. 124185-87, January 20, 1998, 284 SCRA 445.

and protect the interest of its investors and creditors; and (5) study, review and evaluate the proposed rehabilitation plan for RUBY.

Subsequently, two (2) rehabilitation plans were submitted to the SEC: the BENHAR/RUBY Rehabilitation Plan of the majority stockholders led by Yu Kim Giang, and the Alternative Plan of the minority stockholders represented by Miguel Lim (Lim).

Under the BENHAR/RUBY Plan, Benhar International, Inc. (BENHAR) — a domestic corporation engaged in the importation and sale of vehicle spare parts which is wholly owned by the Yu family and headed by Henry Yu, who is also a director and majority stockholder of RUBY — shall lend its ₱60 million credit line in China Bank to RUBY, payable within ten (10) years. Moreover, BENHAR shall purchase the credits of RUBY's creditors and mortgage RUBY's properties to obtain credit facilities for RUBY. Upon approval of the rehabilitation plan, BENHAR shall control and manage RUBY's operations. For its service, BENHAR shall receive a management fee equivalent to 7.5% of RUBY's net sales.

The BENHAR/RUBY Plan was opposed by 40% of the stockholders, including Lim, a minority shareholder of RUBY. ALFC, the biggest unsecured creditor of RUBY and chairman of the management committee, also objected to the plan as it would transfer RUBY's assets beyond the reach and to the prejudice of its unsecured creditors.

On the other hand, the Alternative Plan of RUBY's minority stockholders proposed to: (1) pay all RUBY's creditors without securing any bank loan; (2) run and operate RUBY without charging management fees; (3) buy-out the majority shares or sell their shares to the majority stockholders; (4) rehabilitate RUBY's two plants; and (5) secure a loan at 25% interest, as against the 28% interest charged in the loan under the BENHAR/RUBY Plan.

Both plans were endorsed by the SEC to the MANCOM for evaluation.

On October 28, 1988, the SEC Hearing Panel approved the BENHAR/RUBY Plan. The minority stockholders thru Lim appealed to the SEC *En Banc* which, in its November 15, 1988 Order, enjoined the implementation of the BENHAR/RUBY Plan. On December 20, 1988 after the expiration of the temporary restraining order (TRO), the SEC *En Banc* granted the writ of preliminary injunction against the enforcement of the BENHAR/RUBY Plan. BENHAR, Henry Yu, RUBY and Yu Kim Giang questioned the issuance of the writ in their petition filed in the Court of Appeals (CA), docketed as CA-G.R. SP No. 16798. The CA denied their appeal.[2] Upon elevation to this Court (*G.R. No. L-88311*), we issued a minute resolution dated February 28, 1990 denying the petition and upholding the injunction against the implementation of the BENHAR/RUBY Plan.

Meanwhile, BENHAR paid off Far East Bank & Trust Company (FEBTC), one of RUBY's secured creditors. By May 30, 1988, FEBTC had already executed a deed of assignment of credit and mortgage rights in favor of BENHAR. BENHAR likewise paid the other secured creditors who, in turn, assigned their rights in favor of BENHAR. These acts were done by BENHAR despite the SEC's TRO and injunction *and* even before the SEC Hearing Panel approved the BENHAR/RUBY Plan on October 28, 1988.

ALFC and Miguel Lim moved to nullify the deeds of assignment executed in favor of BENHAR and cite the parties thereto in contempt for willful violation of the December 20, 1983 SEC order enjoining RUBY from disposing its properties and making payments pending the hearing of its petition for suspension of payments. They also charged that in paying off FEBTC's credits, FEBTC was given undue preference over the other creditors of RUBY. Acting on the motions, the SEC Hearing Panel **nullified** the deeds of assignment executed by RUBY's creditors in favor of BENHAR and declared the parties thereto guilty of indirect

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[2] CA *rollo*, pp. 95-111. Decision dated April 27, 1989, penned by Associate Justice Cecilio L. Pe and concurred in by Associate Justices Vicente V. Mendoza (now a retired Member of this Court) and Pedro A. Ramirez.

contempt. BENHAR and RUBY appealed to the SEC *En Banc* which denied their appeal. BENHAR and RUBY joined by Henry Yu and Yu Kim Giang appealed to the CA (CA-G.R. SP No. 18310). By Decision[3] dated August 29, 1990, the CA affirmed the SEC ruling nullifying the deeds of assignment. The CA also declared its decision final and executory as to RUBY and Yu Kim Giang for their failure to file their pleadings within the reglementary period. By Resolution dated August 26, 1991 in *G.R. No. 96675*,[4] this Court affirmed the CA's decision.

Earlier, on May 29, 1990, after the SEC *En Banc* enjoined the implementation of BENHAR/RUBY Plan, RUBY filed with the SEC *En Banc* an *ex parte* petition to create a new management committee and to approve its revised rehabilitation plan (Revised BENHAR/RUBY Plan). Under the revised plan, BENHAR shall receive ₱34.068 million of the ₱60.437 Million credit facility to be extended to RUBY, as reimbursement for BENHAR's payment to some of RUBY's creditors. The SEC *En Banc* directed RUBY to submit its revised rehabilitation plan to its creditors for comment and approval while the petition for the creation of a new management committee was remanded for further proceedings to the SEC Hearing Panel. The Alternative Plan of RUBY's minority stockholders was also forwarded to the hearing panel for evaluation.

On April 26, 1991, over ninety percent (90%) of RUBY's creditors objected to the Revised BENHAR/RUBY Plan and the creation of a new management committee. Instead, they endorsed the minority stockholders' Alternative Plan. At the hearing of the petition for the creation of a new management committee, three (3) members of the original management committee (Lim, ALFC and Pilipinas Shell) opposed the Revised BENHAR/RUBY Plan on grounds that: (1) it would legitimize the entry of BENHAR, a total stranger, to RUBY as BENHAR would become the biggest creditor of RUBY; (2) it would put

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[3] *Id.* at 117-124. Penned by Associate Justice Jose C. Campos, Jr. and concurred in by Associate Justices Oscar M. Herrera and Artemon D. Luna.

[4] *Id.* at 125.

RUBY's assets beyond the reach of the unsecured creditors and the minority stockholders; and (3) it was not approved by RUBY's stockholders in a meeting called for the purpose.

Notwithstanding the objections of 90% of RUBY's creditors and three members of the MANCOM, the SEC Hearing Panel approved on September 18, 1991 the Revised BENHAR/RUBY Plan and dissolved the existing management committee. It also created a new management committee and appointed BENHAR as one of its members. In addition to the powers originally conferred to the management committee under Presidential Decree (P.D.) No. 902-A, the new management committee was tasked to oversee the implementation by the Board of Directors of the revised rehabilitation plan for RUBY.

The original management committee (MANCOM), Lim and ALFC appealed to the SEC *En Banc* which affirmed the approval of the Revised BENHAR/RUBY Plan and the creation of a new management committee on July 30, 1993. To ensure that the management of RUBY will not be controlled by any group, the SEC appointed SEC lawyers Ruben C. Ladia and Teresita R. Siao as additional members of the new management committee. Further, it declared that BENHAR's membership in the new management committee is subject to the condition that BENHAR will extend its credit facilities to RUBY without using the latter's assets as security or collateral.

Lim, ALFC and MANCOM moved for reconsideration while RUBY and BENHAR asked the SEC to reconsider the portion of its Order prohibiting BENHAR from utilizing RUBY's assets as collateral. On October 15, 1993, the SEC denied the motion of Lim, ALFC and the original management committee but granted RUBY and BENHAR's motion and allowed BENHAR to use RUBY's assets as collateral for loans, subject to the approval of the majority of all the members of the new management committee. Lim, ALFC and MANCOM appealed to the CA (CA-G.R. SP Nos. 32404, 32469 & 32483) which by Decision[5]

[5] *Id.* at 243-267. Penned by Associate Justice Consuelo Ynares-Santiago (now a retired Member of this Court) and concurred in by Associate Justices Antonio M. Martinez and Ruben T. Reyes.

dated March 31, 1995 set aside the SEC's approval of the Revised BENHAR/RUBY Plan and remanded the case to the SEC for further proceedings. The CA ruled that the revised plan circumvented its earlier decision (CA-G.R. SP No. 18310) nullifying the deeds of assignment executed by RUBY's creditors in favor of BENHAR. Since under the revised plan, BENHAR was to receive ₱34.068 Million of the ₱60.437 Million credit facility to be extended to RUBY, as settlement for its advance payment to RUBY's seven (7) secured creditors, such payments made by BENHAR under the void Deeds of Assignment, in effect were recognized as payable to BENHAR under the revised plan. The motion for reconsideration filed by BENHAR and RUBY was likewise denied by the CA.[6]

Undaunted, RUBY and BENHAR filed a petition for review in this Court (*G.R. Nos. 124185-87* entitled *Ruby Industrial Corporation v. Court of Appeals*) alleging that the CA gravely abused its discretion in substituting its judgment for that of the SEC, and in allowing Lim, ALFC and MANCOM to file separate petitions prepared by lawyers representing themselves as belonging to different firms. By Decision[7] dated January 20, 1998, we sustained the CA's ruling that the Revised BENHAR/RUBY Plan contained provisions which circumvented its final decision in CA-G.R. SP No. 18310, nullifying the deeds of assignment of credits and mortgages executed by RUBY's creditors in favor of BENHAR, as well as this Court's Resolution in G.R. No. 96675, affirming the said CA's decision. We thus held:

> …Specifically, the Revised BENHAR/RUBY Plan considered as valid the advance payments made by BENHAR in favor of some of RUBY's creditors. The nullity of BENHAR's unauthorized dealings with RUBY's creditors is settled. The deeds of assignment between BENHAR and RUBY's creditors had been categorically declared void by the SEC Hearing Panel in two (2) orders issued on January 12, 1989 and March 15, 1989. x x x
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> x x x x x x x x x

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[6] *Id.* at 269-287.

[7] *Supra* note 1.

These orders were upheld by the SEC *en banc* and the Court of Appeals. In CA-G.R. SP No. 18310, the Court of Appeals ruled as follows:

"x x x x x x x x x

"1) x x x when the Deed of Assignment was executed on May 30, 1988 by and between Ruby Industrial Corp., Benhar International, Inc., and FEBTC, *the Rehabilitation Plan proposed by petitioner Ruby Industrial Corp. for Benhar International, Inc. to assume all petitioner's obligation has not been approved by the SEC.* The Rehabilitation Plan was not approved until October 28, 1988. *There was a willful and blatant violation of the SEC order dated December 20, 1983* on the part of petitioner Ruby Industrial Corp., represented by Yu Kim Giang, by Benhar International, Inc., represented by Henry Yu and by FEBTC.…

"2) The magnitude and coverage of the transactions involved were such that Yu Kim Giang and the other signatories cannot feign ignorance or pretend lack of knowledge thereto in view of the fact that they were all signatories to the transaction and privy to all the negotiations leading to the questioned transactions. *In executing the Deeds of Assignment, the petitioners totally disregarded the mandate contained in the SEC order not to dispose the properties of Ruby Industrial Corp.* in any manner whatsoever pending the approval of the Rehabilitation Plan and rendered illusory the SEC efforts to rehabilitate the petitioner corporation to the best interests of all the creditors.

"3) *The assignments were made without prior approval of the Management Committee* created by the SEC in an Order dated August 10, 1984. Under Sec. 6, par. d, sub. par. (2) of P.D. 902-A as amended by P.D. 1799, the Management Committee, rehabilitation receiver, board or body shall have the power to take custody and control over all existing assets of such entities under management notwithstanding any provision of law, articles of incorporation or by-law to the contrary. The SEC therefore has the power and authority, through a Management Committee composed of petitioner's creditors or through itself directly, to declare all assignment of assets of the petitioner Corporation declared under suspension of payments, null and void, and to conserve the same in order to

effect a fair, equitable and meaningful rehabilitation of the insolvent corporation."

"4) x x x. The acts for which petitioners were held in indirect contempt by the SEC arose from the failure or willful refusal by petitioners to obey the lawful order of the SEC not to dispose of any of its properties in any manner whatsoever without authority or approval of the SEC. *The execution of the Deeds of Assignment tend to defeat or obstruct the administration of justice.* Such acts are offenses against the SEC because *they are calculated to embarrass, hinder and obstruct the tribunal in the administration of justice or lessen its authority.*

"x x x x x x x x x

Even the SEC *en banc*, in its July 30, 1993 Order affirming the approval of the Revised BENHAR/RUBY Plan, has acknowledged the invalidity of the subject deeds of assignment. However, to justify it's approval of the plan and the appointment of BENHAR to the new management committee, it gave the lame excuse that BENHAR became RUBY's creditor for having paid RUBY's debts. x x x

x x x x x x x x x

For its part, the Court of Appeals noted that the approved Revised BENHAR/RUBY Plan gave undue preference to BENHAR. The records, indeed, show that BENHAR's offer to lend its credit facility in favor of RUBY is conditioned upon the payment of the amount it advanced to RUBY's creditors, x x x

x x x x x x x x x

In fact, BENHAR shall receive ₱34.068 Million out of the ₱60.437 Million credit facility to be extended to RUBY for the latter's rehabilitation.

Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. When a distressed company is placed under rehabilitation, the appointment of a management committee follows to avoid collusion between the previous management and creditors it might favor, to the prejudice of the other creditors**. All assets of a corporation under rehabilitation receivership are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage**

or preference over another by the expediency of attachment, execution or otherwise. As between the creditors, the key phrase is equality in equity. Once the corporation threatened by bankruptcy is taken over by a receiver, all the creditors ought to stand on equal footing. **Not any one of them should be paid ahead of the others. This is precisely the reason for suspending all pending claims against the corporation under receivership.**[8] (Additional emphasis supplied.)

Aside from the undue preference that would have been given to BENHAR under the Revised BENHAR/RUBY Plan, we also found RUBY's dealing with BENHAR highly irregular and its proposed financing scheme more costly and ultimately prejudicial to RUBY. Thus:

> Parenthetically, BENHAR is a domestic corporation engaged in importing and selling vehicle spare parts with an authorized capital stock of thirty million pesos. Yet, it offered to lend its credit facility in the amount of sixty to eighty million pesos to RUBY. It is to be noted that BENHAR is not a lending or financing corporation and lending its credit facilities, worth more than double its authorized capitalization, is not one of the powers granted to it under its Articles of Incorporation. Significantly, Henry Yu, a director and a majority stockholder of RUBY is, at the same time, a stockholder of BENHAR, a corporation owned and controlled by his family. These circumstances render the deals between BENHAR and RUBY highly irregular.
>
> x x x x x x x x x
>
> Moreover, when RUBY initiated its petition for suspension of payments with the SEC, BENHAR was not listed as one of RUBY's creditors. BENHAR is a total stranger to RUBY. If at all, BENHAR only served as a conduit of RUBY. As aptly stated in the challenged Court of Appeals decision:
>
> > "Benhar's role in the Revised Benhar/Ruby Plan, as envisioned by the majority stockholders, is to contract the loan for Ruby and, serving the role of a financier, relend the same to Ruby. Benhar is merely extending its credit line facility with China Bank, under which the bank agrees to advance funds to the company should the need arise. This is unlikely a loan in which

[8] *Id.* at 455-460.

> the entire amount is made available to the borrower so that it can be used and programmed for the benefit of the company's financial and operational needs. *Thus, it is actually China Bank which will be the source of the funds to be relent to Ruby. Benhar will not shell out a single centavo of its own funds. It is the assets of Ruby which will be mortgaged in favor of Benhar*. **Benhar's participation will only make the rehabilitation plan more costly and, because of the mortgage of its (Ruby's) assets to a new creditor, will create a situation which is worse than the present.** x x x"

We need not say more.[9] (Additional emphasis supplied.)

After the finality of the above decision, the SEC set the case for further proceedings.[10] On March 14, 2000, Bank of the Philippine Islands (BPI), one of RUBY's secured creditors, filed a Motion to Vacate Suspension Order[11] on grounds that there is no existing management committee and that no decision has been rendered in the case for more than 16 years already, which is beyond the period mandated by Sec. 3-8 of the Rules of Procedure on Corporate Recovery. RUBY filed its opposition,[12] asserting that the MANCOM never relinquished its status as the duly appointed management committee as it resisted the orders of the second and third management committees subsequently created, which have been nullified by the CA and later this Court. As to the applicability of the cited rule under the Rules on Corporate Recovery, RUBY pointed out that this case was filed long before the effectivity of said rules. It also pointed out that the undue delay in the approval of the rehabilitation plan being due to the numerous appeals taken by the minority stockholders and MANCOM to the CA and this Court, from the SEC approval of the BENHAR/RUBY Plan. Since there have already been steps taken to finally settle RUBY's obligations with its creditors, it was contended that the application of the

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[9] *Id.* at 461-462.

[10] SEC records (Vol. 10), p. 3488.

[11] *Id.* at 3533-3535.

[12] *Id.* at 3545-3549.

mandatory period under the cited provision would cause prejudice and injustice to RUBY.

It appears that even earlier during the pendency of the appeals in the CA, BENHAR and RUBY have performed other acts in pursuance of the BENHAR/RUBY Plan approved by the SEC.

On September 1, 1996, Lim received a Notice of Stockholders' Meeting scheduled on September 3, 1996 signed by a certain Mr. Edgardo M. Magtalas, the "Designated Secretary" of RUBY and stating the matters to be taken up in said meeting, which include the extension of RUBY's corporate term for another twenty-five (25) years and election of Directors.[13] At the scheduled stockholders' meeting of September 3, 1996, Lim together with other minority stockholders, appeared in order to put on record their objections on the validity of holding thereof and the matters to be taken therein. Specifically, they questioned the percentage of stockholders present in the meeting which the majority claimed stood at 74.75% of the outstanding capital stock of RUBY.

The aforesaid stockholders meeting was the subject of the Motion to Cite For Contempt[14] and Supplement to Motion to Cite For Contempt[15] filed by Lim before the CA where their petitions for review (CA-G.R. Nos. 32404, 32469 and 32483) were then pending. Lim argued that the majority stockholders claimed to have increased their shares to 74.75% by subscribing to the unissued shares of the authorized capital stock (ACS). Lim pointed out that such move of the majority was in implementation of the BENHAR/RUBY Plan which calls for capital infusion of ₱11.814 Million representing the unissued and unsubscribed portion of the present ACS of ₱23.7 Million, and the Revised BENHAR/RUBY Plan which proposed an additional subscription of ₱30 Million. Since the implementation of both majority plans have been enjoined by the SEC and CA, the calling of the special stockholders meeting by the majority

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[13] CA *rollo*, p. 345.

[14] *Id.* at 337-344.

[15] *Id.* at 346-355.

stockholders clearly violated the said injunction orders. This circumstance certainly affects the determination of quorum, the voting requirements for corporate term extension, as well as the election of Directors pursuant to the July 30, 1993 Order and October 15, 1993 Resolution of the SEC enjoining not only the implementation of the revised plan but also the doing of any act that may render the appeal from the approval of the said plan moot and academic.

The aforementioned capital infusion was taken up by RUBY's board of directors in a special meeting[16] held on October 2, 1991 following the issuance by the SEC of its Order dated September 18, 1991[17] approving the Revised BENHAR/RUBY Plan and creating a new management committee to oversee its implementation. During the said meeting, the board asserted its authority and resolved to take over the management of RUBY's funds, properties and records and to demand an accounting from the MANCOM which was ordered dissolved by the SEC. The board thus resolved that:

> The corporation be authorized to issue out of the unissued portion of the authorized capital stocks of the corporation in the form of common stocks 11.8134.00 [Million] after comparing this with the audited financial statement prepared by SGV as of December 31, 1982, to be subscribed and paid in full by the present stockholders in proportion to their present stockholding in the corporation on staggered basis starting October 28, December 27 then February 28 and April 28 as the last installment date at 25% for each period. It was also moved and seconded that should any of the stockholders fail to exercise their rights to buy the number of shares they are qualified to buy by making the first installment payment of 25% on or before October 13, 1991, then the other stockholders may buy the same and that only when none of the present stockholders are interested in the shares may there be a resort to selling them by public auction.[18]

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[16] *Rollo* (G.R. No. 165929), pp. 1340-1345.

[17] CA *rollo*, pp. 127-136.

[18] *Rollo* (G.R. No. 165929), pp. 1342-1343.

As reflected in the Minutes of the special board meeting, a representative of the absent directors (Tan Chai, Tomas Lim, Miguel Lim and Yok Lim) came to submit their letter addressed to the Chairman suggesting that said meeting be deferred until the September 18, 1991 SEC Order becomes final and executory. The directors present nevertheless proceeded with the meeting upon their belief that neither appeal nor motion for reconsideration can stay the SEC order.[19]

The resolution to extend RUBY's corporate term, which was to expire on January 2, 1997, was approved during the September 3, 1996 stockholders meeting, as recommended by the board of directors composed of Henry Yu (Chairman), James Yu, David Yukimteng, Harry L. Yu, Yu Kim Giang, Mary L. Yu and Vivian L. Yu. The board certified that said resolution was approved by stockholders representing two-thirds (2/3) of RUBY's outstanding capital stock.[20] Per Certification[21] dated August 31, 1995 issued by Yu Kim Giang as Executive Vice-President of RUBY, the majority stockholders own 74.75% of RUBY's outstanding capital stock as of October 27, 1991. The Amended Articles of Incorporation was filed with the SEC on September 24, 1996.[22]

On March 17, 2000, Lim filed a Motion[23] informing the SEC of acts being performed by BENHAR and RUBY through directors who were illegally elected, despite the pendency of the appeal before this Court questioning the SEC approval of the BENHAR/RUBY Plan and creation of a new management committee, and after this Court had denied their motion for reconsideration of the January 20, 1998 decision in G.R. Nos. 124185-87. Lim reiterated that before the matter of extension of corporate life can be passed upon by the stockholders, it is necessary to determine the percentage ownership of the outstanding shares of the

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[19] *Id.* at 1342.

[20] SEC records (Vol. 11), pp. 3586-3587.

[21] *Id.* at 3585.

[22] *Id.* at 3589-3598.

[23] *Id.* at 3550-3575.

corporation. The majority stockholders claimed that they have increased their shareholdings from 59.828% to 74.75% as a result of the illegal and invalid stockholders' meeting on September 3, 1996. The additional subscription of shares cannot be done as it implements the BENHAR/RUBY Plan against which an existing injunction is still effective based on the SEC Order dated January 6, 1989, and which was struck down under the final decision of this Court in G.R. Nos. 124185-87. Hence, the implementation of the new percentage stockholdings of the majority stockholders and the calling of stockholders' meeting and the subsequent resolution approving the extension of corporate life of RUBY for another twenty-five (25) years, were all done in violation of the decisions of the CA and this Court, and without compliance with the legal requirements under the Corporation Code. There being no valid extension of corporate term, RUBY's corporate life had legally ceased. Consequently, Lim moved that the SEC: (1) declare as null and void the infusion of additional capital made by the majority stockholders and restore the capital structure of RUBY to its original structure prior to the time injunction was issued; and (2) declare as null and void the resolution of the majority stockholders extending the corporate life of RUBY for another twenty-five (25) years.

The MANCOM concurred with Lim and made a similar manifestation/comment[24] regarding the irregular and invalid capital infusion and extension of RUBY's corporate term approved by stockholders representing only 60% of RUBY's outstanding capital stock. It further stated that the foregoing acts were perpetrated by the majority stockholders without even consulting the MANCOM, which technically stepped into the shoes of RUBY's board of directors. Since RUBY was still under a state of suspension of payment at the time the special stockholders' meeting was called, all corporate acts should have been made in consultation and close coordination with the MANCOM.

Lim likewise filed an Opposition[25] to BPI's Motion to Vacate Suspension Order, asserting that the management committee

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[24] *Id.* at 3622-3625.

[25] *Id.* at 3576-3580.

originally created by the SEC continues to control the corporate affairs and properties of RUBY. He also contended that the SEC Rules of Procedure on Corporate Recovery cannot apply in this case which was filed long before the effectivity of said rules.

On the other hand, RUBY filed its Opposition[26] to the Motion filed by Lim denying the allegation of Lim that RUBY's corporate existence had ceased. RUBY claimed that due notice were given to all stockholders of the October 2, 1991 special meeting in which the infusion of additional capital was discussed. It further contended that the CA decision setting aside the SEC orders approving the Revised BENHAR/RUBY Plan, which was subsequently affirmed by this Court on January 20, 1998, did not nullify the resolution of RUBY's board of directors to issue the previously unissued shares. The amendment of its articles of incorporation on the extension of RUBY's corporate term was duly submitted with and approved by the SEC as per the Certification dated September 24, 1996.

The MANCOM also filed its Opposition[27] to BPI's Motion to Vacate Suspension Order, stating that it has continuously performed its primary function of preserving the assets of RUBY and undertaken the management of RUBY's day-to-day affairs. It expressed belief that between chaotic foreclosure proceedings and collection suits that would be triggered by the vacation of the suspension order and an orderly settlement of creditors' claims before the SEC, the latter path is the more prudent and logical course of action. On April 28, 2000, it submitted to the court copies of the minutes of meetings held from January 18, 1999 to December 1, 1999 in pursuance of its mandate to preserve the assets and administer the business affairs of RUBY.[28]

On August 23, 2000, China Bank filed a Manifestation[29] echoing the contentions of BPI that as there is no existing management

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[26] *Id.* at 3611-3618.

[27] *Id.* at 3626-3629.

[28] *Id.* at 3640-3665.

[29] *Id.* at 3687-3695.

committee and no rehabilitation plan approved even after the 240-day period, warrants the application of Sec. 4-9 of the SEC Rules of Procedure on Corporate Recovery such that the petition is "deemed *ipso facto* denied and dismissed." China Bank lamented that the length of time that has lapsed, as well as the parties' actuations, completely betrays a genuine attempt to rehabilitate RUBY's moribund operations – all to the dismay, damage and prejudice of RUBY's creditors. It stressed that the proceedings cannot be prolonged nor used as a ploy to defer indefinitely the payment of long overdue obligations of RUBY to its creditors. With the case having been *ipso facto* dismissed, there is no need of further action from the parties or an order from the SEC. Consequently, RUBY's creditors may now take whatever legal action they may deem appropriate to protect their rights including, but not limited to extrajudicial foreclosure.

On September 11, 2000, the SEC granted Lim's request for the issuance of subpoena *duces tecum*/*ad testificandum* to Ms. Jocelyn Sta. Ana of BPI for the latter to testify and bring all documents and records pertaining to RUBY.[30] Earlier, Lim moved for a hearing to verify the information that China Bank and BPI had separately executed deeds of assignment in favor of Greener Investment Corporation, a company owned by Yu Kim Giang, one of RUBY's majority stockholders.[31] Said hearing, however, did not push through in view of RUBY's proposal for a compromise agreement.[32] Lim submitted his comments on the Proposed Compromise Agreement, but there was no response from RUBY and the majority stockholders.[33] The minority stockholders likewise served a copy of the revised Compromise Agreement to the majority stockholders.[34] Lim moved that the case be assigned to a new Panel of Hearing

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[30] *Id.* at 3701-3702, 3706.

[31] *Id.* at 3697-3700.

[32] *Id.* at 3829-3834.

[33] *Id.* at 3838-3842.

[34] *Id.* at 3745-3763.

Officers and the majority stockholders be made to declare in a hearing whether they accept the counterproposals of the minority in their draft Amicable Settlement in order that the case can proceed immediately to liquidation.[35]

On January 25, 2001, the MANCOM filed with the SEC its Resolution unanimously adopted on January 19, 2001 affirming that: (1) MANCOM was never informed nor advised of the supposed capital infusion by the majority stockholders in October 1991 and it never actually received any such additional subscription nor signed any document attesting to or authorizing the said increase of RUBY's capital stock or the extension of its corporate life; (2) MANCOM continuously recognizes the 60%-40% ratio of shareholding profile between the majority and minority stockholders, with the majority having 59.828% while the minority holds 40.172% shareholding; (3) as there was no valid increase in the shareholding of the majority and consequently no valid extension of corporate term, the liquidation of RUBY is thus in order; (4) to date, the majority stockholders or Yu Kim Giang have not complied with the December 22, 1989 SEC order for them to turn over the cash including bank deposits, all other financial records and documents of RUBY including transfer certificates of title over its real properties, and render an accounting of all the money received by RUBY; and (5) pursuant to this Court's ruling in G.R. No. 96675 dated August 26, 1991, the previous deeds of assignment made in favor of BENHAR by Florence Damon, Philippine Bank of Communications, Philippine Commercial International Bank, Philippine Trust Company, PCI Leasing and Finance, Inc. and FEBTC, having been earlier declared void by the SEC Hearing Panel, and the CA decision in CA-G.R. SP No. 18310 affirmed by this Court – have no legal effect and are deemed void.[36]

On the other hand, Lim filed a Supplement (to Manifestation and Motion dated January 18, 2001)[37] reiterating his pending

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[35] *Supra* note 33.

[36] *Id.* at 3843-3848.

[37] *Id.* at 3849-3868.

motion filed on March 15, 2000 for the SEC to implement this Court's January 20, 1998 Decision in G.R. Nos. 124185-87 which states in part that "[t]he SEC therefore has the power and authority, directly to declare all assignment of assets of the petitioner Corporation declared under suspension of payments, null and void, and to conserve the same in order to effect a fair, equitable and meaningful rehabilitation of the insolvent corporation." Lim contended that the SEC retains jurisdiction over pending suspension of payment/rehabilitation cases filed as of June 30, 2000 until these are finally disposed, pursuant to Sec. 5.2 of the Securities Regulation Code (Republic Act [R.A.] No. 8799). Considering that the Management Committee is intact, the majority stockholders cannot act in an illegal manner with regard to RUBY's assets. He thus concluded that the continued disobedience of the majority stockholders to the orders and decisions of the SEC and CA, as affirmed by this Court, have certainly rendered any additional assignments, such as the Deeds of Assignment executed by BPI and China Bank with BENHAR, Henry Yu or conduits of the majority stockholders, null and void.

The MANCOM manifested that it is adopting *in toto* the Manifestation and Motion dated January 18, 2001 filed by Lim. It also moved for the SEC to conduct further proceedings as directed by this Court. Considering that there is no chance at all for the proposed rehabilitation of RUBY in light of strict implementation by government authorities of environmental laws particularly on pollution control, and MANCOM's assent to effect a liquidation, the MANCOM asserted that a hearing should focus on the eventual liquidation of RUBY. It added that a dismissal under the circumstances would be tantamount to a perceived shirking by the SEC of its mandate to afford all creditors ample opportunity to recover on their respective financial exposure with RUBY.[38]

On May 15, 2001, the MANCOM submitted copies of minutes of meetings held from April 13, 2000 to December 29, 2000.[39]

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[38] *Id.* at 3870-3871.

[39] *Id.* at 3872-3919.

On September 20, 2001, the SEC issued an Order directing the Management Committee to submit a detailed report – not mere minutes of meetings — on the status of the rehabilitation process and financial condition of RUBY, which should contain a statement on the feasibility of the rehabilitation plan.[40] The MANCOM complied with the said order on February 15, 2002.[41] The majority stockholders and RUBY moved to dismiss the petition and strike from the records the Compliance/Report. MANCOM filed its omnibus opposition to the said motions. There was further exchange of pleadings by the parties on the matter of whether the SEC should already dismiss the petition of RUBY as prayed for by the majority stockholders and RUBY, or proceed with supervised liquidation of RUBY as proposed by the MANCOM and minority stockholders.

The SEC's Ruling

On September 18, 2002, the SEC issued its Order[42] denying the petition for suspension of payments, as follows:

> WHEREFORE, in view of the foregoing, the Commission hereby resolves to terminate the proceedings and DENY the instant petition.
>
> Accordingly, pursuant to Sec. 5-5 of the SEC's Rules of Procedure on Corporate Recovery, which provides:
>
> "Discharge of the Management Committee — The Management Committee shall be discharged and dissolved under the following circumstances:
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> a. Whenever the Commission, on motion or *motu prop[r]io*, has determined that the necessity for the Management Committee no longer exists;
> b. Upon the appointment of a liquidator under these Rules;
> c. By agreement of the parties;
> d. Upon termination of the proceedings.
>
> Upon its discharge and dissolution, the Management Committee shall submit its final report and render an accounting

[40] *Id.* at 3927.

[41] SEC records (Vol. 12), pp. 4308-4318.

[42] *Rollo* (G.R. No. 165929), pp. 83-89.

of its management within such reasonable time as the Commission may allow."

the Management Committee is hereby DISSOLVED. It is likewise ordered to:

(1) Make an inventory of the assets, funds and properties of the petitioner;
(2) Turn-over the aforementioned assets, funds and properties to the proper party(ies);
(3) Render an accounting of its management; and
(4) Submit its Final Report to the Commission.

The MANCOM is ordered to comply with the foregoing within a non-extendible period of thirty (30) days from receipt of this Order. Relative to any compensation owing to the MANCOM, it is left to the determination of the parties concerned.

No pronouncement as to costs.

SO ORDERED.[43]

The SEC declared that since its order declaring RUBY under a state of suspension of payments was issued on December 20, 1983, the 180-day period provided in Sec. 4-9 of the Rules of Procedure on Corporate Recovery had long lapsed. Being a remedial rule, said provision can be applied retroactively in this case. The SEC also overruled the objections raised by the minority stockholders regarding the questionable issuance of shares of stock by the majority stockholders and extension of RUBY's corporate term, citing the presumption of regularity in the act of a government entity which obtains upon the SEC's approval of RUBY's amendment of articles of incorporation. It pointed out that Lim raised the issue only in the year 2000. Moreover, the SEC found that notwithstanding his allegations of fraud, Lim never proved the illegality of the additional infusion of the capitalization by RUBY so as to warrant a finding that there was indeed an unlawful act.[44]

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[43] *Id.* at 88-89.

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

Lim, in his personal capacity and in representation of the minority stockholders of RUBY, filed a petition for review with prayer for a temporary restraining order and/or writ of preliminary injunction before the CA (CA-G.R. SP No. 73195) assailing the SEC order dismissing the petition and dissolving the MANCOM.

Ruling of the CA

On May 26, 2004, the CA rendered its Decision,[45] the dispositive portion of which states:

> WHEREFORE, the Questioned Order dated 18 September 2002 issued by the Securities and Exchange Commission in SEC Case No. 2556 entitled "*In the Matter of the Petition for Suspension of Payments, Ruby Industrial Corporation, Petitioner,*" is hereby SET ASIDE, and consequently:
>
> (1) the infusion of additional capital made by the majority stockholders be declared null and void and restoring the capital structure of Ruby to its original structure prior to the time the injunction was issued, that is, majority stockholders – 59.828% and the minority stockholders – 40.172% of the authorized capital stock of Ruby Industrial Corporation.
>
> (2) the resolution of the majority stockholders, who represents only 59.828% of the outstanding capital stock of Ruby, extending the corporate life of Ruby for another twenty-five (25) years which was made during the supposed stockholders' meeting held on 03 September 1996 be declared null and void;
>
> (3) implementing the invalidation of any and all illegal assignments of credit/purchase of credits and the cancellation of mortgages connected therewith made by the creditors of Ruby Industrial Corporation during the effectivity of the suspension of payments order including that of China Bank and BPI and to deliver to MANCOM or the Liquidator all the original of the Deeds of Assignments and the registered titles thereto and any other documents related thereto; and order their unwinding and requiring the majority stockholders to account for all illegal assignments (amounts, dates, interests, *etc*. and present the original documents supporting the same); and

[45] *Id.* at 38-67.

(4) ordering the Securities and Exchange Commission to supervise the liquidation of Ruby Industrial Corporation after the foregoing steps shall have been undertaken.

SO ORDERED.[46]

According to the CA, the SEC erred in not finding that the October 2, 1991 meeting held by RUBY's board of directors was illegal because the MANCOM was neither involved nor consulted in the resolution approving the issuance of additional shares of RUBY.

The CA further noted that the October 2, 1991 board meeting was conducted on the basis of the September 18, 1991 order of the SEC Hearing Panel approving the Revised BENHAR/RUBY Plan, which plan was set aside under this Court's January 20, 1998 Decision in G.R. Nos. 124185-87. The CA pointed out that records confirmed the proposed infusion of additional capital for RUBY's rehabilitation, approved during said meeting, as *implementing* the Revised BENHAR/RUBY Plan. Necessarily then, such capital infusion is covered by the final injunction against the implementation of the revised plan. It must be recalled that this Court affirmed the CA's ruling that the revised plan not only recognized the void deeds of assignments entered into with some of RUBY's creditors in violation of the CA's decision in CA-G.R. SP No. 18310, but also maintained a financing scheme which will just make the rehabilitation plan more costly and create a worse situation for RUBY.

On the supposed delay of the minority stockholders in raising the issue of the validity of the infusion of additional capital effected by the board of directors, the CA held that laches is inapplicable in this case. It noted that Lim sought relief while the case is still pending before the SEC. If ever there was delay, the same is not fatal to the cause of the minority stockholders.

The CA likewise faulted the SEC in relying on the presumption of regularity on the matter of the extension of RUBY's corporate

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[46] *Id.* at 65-66.

term through the filing of amended articles of incorporation. In doing so, the CA totally disregarded the evidence which rebutted said presumption, as demonstrated by Lim: (1) it was the board of directors and not the stockholders which conducted the meeting without the approval of the MANCOM; (2) there was no written waivers of the minority stockholders' pre-emptive rights and thus it was irregular to merely notify them of the board of directors' meeting and ask them to exercise their option; (3) there was an existing permanent injunction against any additional capital infusion on the BENHAR/RUBY Plan, while the CA and this Court both rejected the Revised BENHAR/RUBY Plan; (4) there was no General Information Sheet reports made to the SEC on the alleged capital infusion, as per certification by the SEC; (5) the Certification stating the present percentage of majority shareholding, dated December 21, 1993 and signed by Yu Kim Giang — which was not sworn to before a Notary Public — was supposedly filed in 1996 with the SEC but it does not bear a stamped date of receipt, and was only attached in a 2000 motion long after the October 1991 board meeting; (6) said Certification was contradicted by the SEC list of all stockholders of RUBY, in which the majority remained at 59.828% and the minority shareholding at 40.172% as of October 27, 1991; (7) certain receipts for the amount of ₱1.7 million was presented by the majority stockholders only in the year 2000, long after Lim questioned the inclusion of extension of corporate term in the Notice of Meeting when Lim filed before the CA a motion to cite for contempt (CA-G.R. Nos. 32404, 32469 and 32483); and (8) this Court's decisions in the cases elevated to it had recognized the 40% stockholding of the minority. Upon the foregoing grounds, the CA said that the SEC should have invalidated the resolution extending the corporate term of RUBY for another twenty-five (25) years.

With the expiration of the RUBY's corporate term, the CA ruled that it was error for the SEC in not commencing liquidation proceedings. As to the dismissal of RUBY's petition for suspension of payments, the CA held that the SEC erred when it retroactively applied Sec. 4-9 of the Rules of Procedure on Corporate Recovery. Such retroactive application of procedural rules admits of

exceptions, as when it would impair vested rights or cause injustice. In this case, the CA emphasized that the two decisions of this Court still have to be implemented by the SEC, but to date the SEC has failed to unwound the illegal assignments and order the assignees to surrender the Deeds of Assignment to the MANCOM.

On the issue of violation of the rule against forum shopping, the CA held that this is not applicable because the parties in CA-G.R. SP No. 73169 (filed by MANCOM) and CA-G.R. SP No. 73195 (filed by Lim) are not the same and they do not have the same interest. This issue was in fact already resolved in G.R. Nos. 124185-87 wherein this Court, citing *Ramos, Sr. v. Court of Appeals*[47] declared that private respondents Lim, the unsecured creditors (ALFC) and MANCOM cannot be considered to have engaged in forum shopping in filing separate petitions with the CA as each have distinct rights to protect.

The CA also found that the belated submission of the special power of attorney executed by the other minority stockholders representing 40.172% of RUBY's ownership has no bearing to the continuation of the petition filed with the appellate court. Moreover, since the petition is in the nature of a derivative suit, Lim clearly can file the same not only in representation of the minority stockholders but also in behalf of the corporation itself which is the real party in interest. Thus, notwithstanding that Lim's ownership in RUBY comprises only 1.4% of the outstanding capital stock, as claimed by the majority stockholders, his petition may not be dismissed on this ground.

The Consolidated Petitions

From the Decision of the CA, China Bank and the Majority Stockholder joined by RUBY, filed separate petitions before this Court.

In G.R. No. 165887, petitioners Majority Stockholders and RUBY raised the following grounds for the reversal of the assailed

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[47] G.R. Nos. 80908 & 80909, May 24, 1989, 173 SCRA 550, cited in *Ruby Industrial Corporation v. Court of Appeals, supra* note 1, at 462-463.

decision and the reinstatement of the SEC's September 18, 2002 Order:

First Reason

THE COURT OF APPEALS ERRED – AND WHEN IT DID, IT ACTED CONTRARY TO LAW AND PRECEDENTS – WHEN IT GAVE DUE COURSE TO, AND, THEREAFTER, SUSTAINED, A FORMALLY AND SUBSTANTIALLY DEFECTIVE PETITION FOR REVIEW.

Second Reason

THE COURT OF APPEALS ERRED – AND WHEN IT DID, IT ACTED IN A MANNER AT WAR WITH ORDERLY PROCEDURE AND APPLICABLE JURISPRUDENCE – WHEN IT REVERSED THE ORDER OF DISMISSAL OF THE SECURITIES AND EXCHANGE COMMISSION AND SUBSTITUTED ITS JUDGMENT FOR THAT OF THE LATTER IN THE DETERMINATION OF ISSUES WELL WITHIN THE EXPERTISE OF THE COMMISSION.

Third Reason

THE COURT OF APPEALS ERRED – AND WHEN IT DID, IT ACTED IN GRAVE ABUSE OF ITS DISCRETION AND, IN FACT, IN EXCESS OR LACK OF JURISDICTION — WHEN IT SUSTAINED COLLATERAL ATTACKS OF FINAL ADJUDICATIONS OF THE SECURITIES AND EXCHANGE COMMISSION.[48]

On the other hand, petitioner China Bank in G.R. No. 165929 puts forth the argument that the principle of *stare decisis* cannot be given effect in this case considering the prevailing factual circumstances, as to do so would result in manifest injustice. It contends that the reason for the declaration of nullity of the Deed of Assignment pronounced more than a decade ago, has become legally inefficacious by its obsolescence. The creditors of RUBY have the right to recover their credit. But when the CA ordered the nullification of China Bank's Deed of Assignment in favor of Greener Investment Corporation, it practically dashed its last hope for ever recovering its credit.

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[48] *Rollo* (G.R. No. 165887), p. 11.

China Bank is of the view that the CA overstretched the import of this Court's January 20, 1998 decision in G.R. Nos. 124185-87 when the SEC was ordered to "conduct further proceedings," as to include the unwinding of the alleged illegal assignment of credits. The rehabilitation of RUBY, if it still may be capable of, is not made dependent on the unwinding by the SEC of the illegal assignments, as the same concerns only the issue of who shall now become the creditors of RUBY, and does not alter the fact that RUBY has hefty loan obligations and it has not enough cash flow to pay for the same.

Deploring the principal parties' penchant for prolonged litigation resulting considerably in irreversible losses to RUBY, China Bank maintains that from the report submitted by the MANCOM to the SEC, it can be clearly seen that no attempt at rehabilitation whatsoever had been pursued. Given the current situation, China Bank prays that the CA Decision be reversed and its Deed of Assignment in favor of Greener Investment Corporation be recognized and given full legal effect.

In fine, main issues to be resolved are: (1) whether private respondents MANCOM and Lim engaged in forum shopping when they filed separate petitions before the CA assailing the September 18, 2002 SEC Order; (2) whether the defects in the certification of non-forum shopping submitted by Lim warrant the dismissal of his petition before the CA; (3) whether the CA was correct in reversing the SEC's order dismissing the petition for suspension of payment.

Our Ruling

The petitions have no merit.

On the charge of forum shopping, we have already ruled on the matter in G.R. Nos. 124185-87. Thus:

> We hold that private respondents are not guilty of forum-shopping. In *Ramos, Sr. v. Court of Appeals*, we ruled:
>
> > "The private respondents can be considered to have engaged in forum shopping if all of them, acting as one group, filed identical special civil actions in the Court of Appeals and in this Court. There must be identity of parties or interests

represented, rights asserted and relief sought in different tribunals. In the case at bar, *two groups of private respondents appear to have acted independently of each other when they sought relief from the appellate court. Both groups sought relief from the same tribunal.*

"It would not matter even if there are several divisions in the Court of Appeals. The adverse party can always ask for the consolidation of the two cases. x x x"

In the case at bar, private respondents represent different groups with different interests – the minority stockholders' group, represented by private respondent Lim; the unsecured creditors group, Allied Leasing & Finance Corporation; and the old management group. Each group has distinct rights to protect. In line with our ruling in *Ramos*, the cases filed by private respondents should be consolidated. In fact, BENHAR and RUBY did just that – in their urgent motions filed on December 1, 1993 and December 6, 1993, respectively, they prayed for the consolidation of the cases before the Court of Appeals.[49]

In the present case, no consolidation of CA-G.R. SP Nos. 73169 (filed by MANCOM) which was earlier assigned to the Thirteenth Division and CA-G.R. SP No. 73195 (filed by Lim) decided by the Second Division, took place. In their Comment filed before CA-G.R. SP No. 73169, the Majority Stockholders and RUBY (private respondents therein) prayed for the dismissal of said case arguing that MANCOM, of which Lim is a member, circumvented the proscription against forum shopping. The CA's Thirteenth Division, however, disagreed with private respondents and granted the motion to withdraw petition filed by MANCOM which manifested that the Second Division in CA-G.R. SP No. 73195 by Decision dated May 26, 2004 had granted the reliefs similar to those prayed for in their petition, said decision being binding on MANCOM which was also impleaded in said case (CA-G.R. SP No. 73195). The Thirteenth Division also cited our pronouncement in G.R. Nos. 124185-87 to the effect that there was no violation on the rule on forum shopping because MANCOM and Lim or the minority shareholders of RUBY represent different interests.[50]

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[49] *Supra* note 1, at 462-463.

[50] *Rollo* (G.R. No. 165887), pp. 719-721.

As to the alleged defects in the certificate of non-forum shopping submitted by Lim, we find no error committed by the CA in holding that the belated submission of a special power of attorney executed in Lim's favor by the minority stockholders has no bearing to the continuation of the case as supported by ample jurisprudence. To appreciate the liberal stance adopted by the CA, one must take into account the previous history of the petitions for review before the CA involving the SEC September 18, 2002 Order. It was actually the *third* time that Lim and/or MANCOM have challenged certain acts perpetrated by the majority stockholders which are prejudicial to RUBY, such as the execution of deeds of assignment during the effectivity of the suspension order in pursuit of two rehabilitation plans submitted by them together with BENHAR. The assignment of RUBY's credits to BENHAR gave the secured creditors undue advantage over RUBY's prime properties and put these assets beyond the reach of the unsecured creditors. Each time they go to court, Lim and MANCOM essentially advance the interest of the corporation itself. They have consistently taken the position that RUBY's assets should be preserved for the equal benefit of *all* its creditors, and vigorously resisted any attempt of the controlling stockholders to favor any or some of its creditors by entering into questionable deals or financing schemes under two BENHAR/RUBY Plans. Viewed in this light, the CA was therefore correct in recognizing Lim's right to institute a stockholder's action in which the real party in interest is the corporation itself.

A derivative action is a suit by a shareholder to enforce a corporate cause of action.[51] It is a remedy designed by equity and has been the principal defense of the minority shareholders against abuses by the majority.[52] For this purpose, it is enough that a member or a minority of stockholders file a derivative

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[51] *Chua v. Court of Appeals*, G.R. No. 150793, November 19, 2004, 443 SCRA 259, 267.

[52] *Western Institute of Technology, Inc. v. Salas*, G.R. No. 113032, August 21, 1997, 278 SCRA 216, 225.

suit for and in behalf of a corporation.[53] An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party in interest.[54]

Now, on the third and substantive issue concerning the SEC's dismissal of RUBY's petition for suspension of payment.

The SEC based its action on Sec. 4-9 of the Rules of Procedure on Corporate Recovery,[55] which provides:

> SEC. 4-9. *Period of Suspension Order.* – The suspension order shall be effective for a period of sixty (60) days from the date of its issuance. The order shall be automatically vacated upon the lapse of the sixty-day period unless extended by the Commission. Upon motion, the Commission may grant an extension thereof for a period of not more than sixty (60) days in each application if the Commission is satisfied that the debtor and its officers have been acting in good faith and with due diligence, and that the debtor would likely be able to make a viable rehabilitation plan. After the lapse of one hundred and eighty (180) days from the issuance of the suspension order, no extension of the said order shall be granted by the Commission if opposed in writing by a majority of any class of creditors. The Commission may grant an extension beyond one hundred eighty (180) days only if it appears by convincing evidence that there is a good chance for the successful rehabilitation of the debtor and the opposition thereto by the creditor appears manifestly unreasonable.
>
> In any event, **the petition is deemed *ipso facto* denied and dismissed if no Rehabilitation Plan was approved by the**

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[53] *R.N. Symaco Trading Corporation v. Santos*, G.R. No. 142474, August 18, 2005, 467 SCRA 312, 329.

[54] Jose Campos, Jr. & Maria Clara L. Campos, *THE CORPORATION CODE: COMMENTS, NOTES AND SELECTED CASES*, Vol. I (1990 ed.), p. 820, citing *Gamboa v. Victoriano,* No. L-40620, May 5, 1979, 90 SCRA 40, 47.

[55] Approved on December 21, 1999.

Commission upon the lapse of the order or the last extension thereof. In such case, the debtor shall come under the dissolution and liquidation proceedings of Rule V of these Rules. (Emphasis supplied.)

According to the SEC, even if the 180 days maximum period of suspension order is counted from the finality of this Court's decision in G.R. Nos. 124185-87 in December 1998, still this case had gone beyond the period mandated in the Rules for a corporation under suspension of payment to have a rehabilitation plan approved by the Commission.

While it is true that the Rules of Procedure on Corporate Recovery authorizes the dismissal of a petition for suspension of payment where there is no rehabilitation plan approved within the maximum period of the suspension order, it must be recalled that there was in fact not one, but *two rehabilitation plans* (BENHAR/RUBY Plan and Revised BENHAR/RUBY Plan) submitted by the majority stockholders which were approved by the SEC. The implementation of the first plan was enjoined when it was seriously challenged in the courts by the minority stockholders through Lim. The second revised plan superseded the first plan, but eventually nullified by the CA and the CA decision declaring it void was affirmed by this Court in G.R. Nos. 124185-87. Given this factual milieu, the automatic application of the lifting of the suspension order as interpreted by the SEC in its September 18, 2002 Order would be unfair and highly prejudicial to the financially distressed corporation.

Moreover, records reveal that the delay in the proceedings after the case was set for hearing following this Court's final judgment in G.R. Nos. 124185-87, was not due to any fault or neglect on the part of MANCOM or the minority stockholders. The idea propounded by the petitioners majority stockholders that this case is about a minority in a corporation holding hostage the majority indefinitely by simple assertion that the former's rights have been transgressed by the latter is, downright misleading.

First, the SEC did not even mention in its September 18, 2002 Order that when this Court remanded to it the case for

further proceedings, there remained only the Alternative Plan of RUBY's minority stockholders which had earlier been forwarded to the SEC Hearing Panel. With the CA Decision setting aside the SEC approval of the Revised BENHAR/RUBY Plan, as affirmed by this Court, it behooves on the SEC to recognize the fact that the Alternative Plan was endorsed by 90% of the RUBY's creditors who had objected to the Revised BENHAR/RUBY Plan. Yet, not a single step was taken by the SEC to address those findings and conclusions made by the CA and this Court on the highly disadvantageous and onerous provisions of the Revised BENHAR/RUBY Plan.

Moreover, the SEC failed to act on motions filed by Lim and MANCOM to implement this Court's January 20, 1998 Decision in G.R. Nos. 124185-87, by declaring all deeds of assignment with BENHAR and/or the conduits of Henry Yu of no force and legal effect, which of course necessitates the surrender by the concerned creditors of those void deeds of assignment. Petitioner China Bank dismisses it as unnecessary and immaterial to the continued inability of RUBY to settle its long overdue debts. However, the CA said that the foregoing acts should have been done by the SEC for proper documentation and orderly settlement after proper accounting of the assignment transactions. The appellate court then concluded that dismissal of the petition under Sec. 4-9 of the Rules of Procedure on Corporate Recovery would impair the vested rights of the minority stockholders under this Court's decision invalidating the aforesaid deeds of assignment, thus:

> We agree with the observations of the petition that if the illegal assignments not having been unwound and the mortgages not cancelled, the majority, their alter ego, and/or cohorts will claim to be secured creditors and freely collect extra-judicially the obligations covered by the illegal assignments. Ruby has very little money compared to the ₱200 Million probable liability to the illegal assignees as unilaterally stated by Ruby without audit (previously merely totaled to ₱34 Million in 1998 as stated in the revised rehabilitation plan). Foreclosure of the mortgages by the illegal assignees will follow; Ruby will lose all its prime properties; there will be no assets left

for unsecured creditors; and there will be no residual ₱600 Million assets to divide.[56]

Evidently, the minority stockholders and MANCOM had already foreseen the impossibility of implementing a viable rehabilitation plan if the illegal assignments made by its creditors with BENHAR and the majority stockholders, and subsequently, with conduits of RUBY or Henry Yu, are not properly unwound and those directors responsible for the void transactions not required to make a full accounting. Contrary to petitioner China Bank's insinuation that the minority stockholders merely want to prolong the litigation to the great prejudice and damage to RUBY's creditors, MANCOM and Lim had determined and moved for SEC-supervised liquidation proceedings as the more prudent course of action for an orderly and equitable settlement of RUBY's liabilities.

Records likewise revealed that the SEC chose to keep silent and failed to assist the MANCOM and minority stockholders in their efforts to demand compliance from the majority stockholders or Yu Kim Giang (who headed the first MANCOM) with the December 22, 1989 Order directing them to turn over the cash, financial records and documents of RUBY, including certificates of title over RUBY's real properties, and render an accounting of all moneys received and payments made by RUBY. On January 18, 2002, the MANCOM even filed a Motion[57] to require Yu Kim Giang to render report/accounting of RUBY from 1983 to the 1st quarter of 1990, stating that despite a commitment from Mr. Giang, he has seemingly delayed his compliance, hence frustrating the desire of MANCOM to submit a comprehensive and complete report for the whole period of 1983 up to the present. To underscore the importance of making the said records available for scrutiny of the SEC and MANCOM, Lim manifested before the SEC that—

Indeed, the majority is actually unwilling (and not merely unable) to submit such records because these will show, among others:

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[56] *Rollo* (G.R. No. 165887), p. 61.

[57] SEC records (Vol. 12), pp. 4079-4080.

(1) The majority to minority ratio in the corporate ownership is 59.828%:40.172%;

(2) The actual amounts of the bank loans paid off by Benhar International[,] Inc. and/or Henry Yu would be very low;

(3) The illegal payment of the bank loans and illegal assignments of the mortgages to Benhar/Henry Yu are contrary to the Honorable Commission's Order of 20 December 1983 for suspension of payments;

(4) The earnings of the corporation from 1983 to 1989 amounted to millions and cannot be accounted for by the majority and the first Mancom;

(5) The money may have been spent to pay off some of the loans to the bank but Benhar and Henry Yu fraudulently claim credit therefor.[58]

It must be noted that MANCOM had rejected the two rehabilitation plans proposed by BENHAR and the majority stockholders. In shifting the blame to the MANCOM and minority stockholders for the delay in the approval of a viable rehabilitation plan, the SEC apparently overlooked that from the time the SEC approved the Revised BENHAR/RUBY Plan and dissolved the MANCOM, the majority stockholders has denied MANCOM access to corporate papers, documents evidencing the amounts actually paid to creditor banks/assignors, financial statements and titles over RUBY's real properties.

Although the SEC granted MANCOM and Lim's request for a hearing and direct a representative from BPI to bring all documents relative to the assignment of RUBY's credit, said hearing did not materialize after the majority stockholders proposed a compromise agreement with the minority stockholders. But as it turned out, this development only caused further delay because the majority stockholders were unwilling to turn over documents, funds and properties in their possession, and would neither make a full accounting or disclosure of RUBY's transactions, especially the actual amounts paid and rates of interest on the loan assignments. In this state of things, the

[58] *Id.* at 4288-4289.

MANCOM and minority stockholders resolved that the more reasonable and practical option is to move for a SEC-supervised liquidation proceedings.

The other ground invoked by Lim and MANCOM for the propriety of liquidation is the expiration of RUBY's corporate term. The SEC, however, held that the filing of the amendment of articles of incorporation by RUBY in 1996 complied with all the legal requisites and hence the presumption of regularity stands. Records show that the validity of the infusion of additional capital which resulted in the alleged increase in the shareholdings of petitioners majority stockholders in October 1991 was questioned by MANCOM and Lim even before the majority stockholders filed their motion to dismiss in the year 2000.

A stock corporation is expressly granted the power to issue or sell stocks.[59] The power to issue shares of stock in a corporation is lodged in the board of directors and no stockholders' meeting is required to consider it because additional issuances of shares of stock does not need approval of the stockholders.[60] What is only required is the board resolution approving the additional issuance of shares. The corporation shall also file the necessary application with the SEC to exempt these from the registration requirements under the Revised Securities Act (now the Securities Regulation Code).

The new management committee created pursuant to SEC Order dated September 18, 1991 apparently had no participation in the October 2, 1991 board resolution approving the issuance of additional shares. The move was part of the board's assertion of control over the management in RUBY following the approval of the Revised BENHAR/RUBY Plan. The minority stockholders registered their objection during the said meeting by asking the board to defer action as the SEC September 18, 1991 Order was still on appeal with the SEC *En Banc*. When the SEC *En Banc* denied their appeal and motion for reconsideration under

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[59] CORPORATION CODE, Sec. 36, par. 6.

[60] *Dee v. Securities and Exchange Commission*, G.R. Nos. 60502 and 63922, July 16, 1991, 199 SCRA 238, 252.

its July 30, 1993 and October 15, 1993 orders, Lim, MANCOM and ALFC filed petitions for review with the CA which set aside the said orders. As already mentioned, this Court affirmed the CA ruling in G.R. Nos. 124185-87.

Contrary to the assertion of petitioners majority stockholders, our decision in G.R. Nos. 124185-87 nullified the deeds of assignment *not* solely on the ground of violation of the injunction orders issued by the SEC and CA. As earlier mentioned, we affirmed the CA's finding that the re-lending scheme under the Revised BENHAR/RUBY Plan will not only make rehabilitation more costly for RUBY, but also worsen its financial condition because of the mortgage of its assets to a new creditor. To better illumine this point, we quote from the CA decision in CA-G.R. SP Nos. 32404, 32469 and 32483 comparing the provisions of the rehabilitation proposals submitted by the majority stockholders (Revised BENHAR/RUBY Plan) and the minority stockholders (Alternative Plan):

…there is no need for Benhar to act as financier, as Ruby itself can very well secure such credit accommodation using its assets as collateral. Verily, Benhar's pretext at magnanimity is deception of the highest order considering that: (1) as embodied in the heading Sources and Uses of Funds in the Revised Benhar/Ruby Plan, the ₱80-Million loan/credit facility to be extended by Benhar will be used to pay ₱60.437-Million loans of Ruby. Of the ₱60.437-Million, ₱34.068-Million will be paid to Benhar as payment for the amounts it paid in consideration of the nullified assignments; (2) The Deed of Assignment of Credit Facility will be executed by Benhar in favor of Ruby only upon payment of Ruby of such amount already advanced by Benhar, *i.e*. the ₱34.068-Million credit assigned to Benhar by the seven (7) secured creditors.

The Revised Benhar/Ruby Plan, in fact, gives Benhar undue preference on the matter of repayment. Under the said plan, the creditors of Ruby will be paid in accordance with the following schedules:

"Secured Creditors China Banking Corp. BPI Philippine Orient	₱17.022M	To be paid in cash with 12% interest p.a.

Unsecured Creditors Allied Leasing Filcor Finance	₱ 9.347M	To be paid in cash interest-f[r]ee
Benhar For having paid Ruby obligations to 7 creditors	₱34.068M	To be paid in cash with interest charge
Trade/Other Creditors	₱ 2.871M (p.a. for 3 years)	Totalling ₱8.614M to be paid in 3-year installment, interest-free"

(*Rollo*, CA-G.R. SP No. 32404, p. 727)

Needless to state, **the foregoing payment schedules as embodied in the said plan which gives Benhar undue advantage over the other creditors goes against the very essence of rehabilitation, which requires that no creditor should be preferred over the other**. Indeed, a comparison of the salient features of the Revised Benhar/Ruby Plan and the Alternative Plan will readily show just how stacked in favor of Benhar are the provisions of the former plan:

Benhar/Ruby Plan	Alternative Plan
1. Benhar plays a major role. It will be paid ₱34.068M out of ₱60.437 M total amount due to creditors but not explained as to how arrived at.	1. The original creditors are the ones recognized. The amount payable is lower because interests are not capitalized.
2. Benhar will not assign the credit facility of ₱80M unless the ₱34.068M above stated is paid.	2. Direct credit of ₱80M loan and will be borrowed from the bank(s) like Allied, UCPB, Metrobank or Equitable Bank or even China Bank.

3.	The main assets are to be mortgaged to the creditor-assignor of Benhar and if the illegal assignments are recognized, then Benhar shall have to be recognized as mortgagee even when it is a disqualified creditor and/or mortgagee.	3. Mortgaged to bank(s) directly.
4.	Start up cost ₱16,880 and based on 1988 figures and projections.	4. Plant B = ₱25,640 Year IV estimated ₱40. M Plant A = 22.40 Year V estimated ₱30. M
5.	Rehabilitation only of Plant B.	5. Rehabilitation of both plants.
6.	Recognition of Benhar re-lender/financier.	6. None
7.	Because of the SEC Order he got an MC seat and the Pilipinas Shell representative of trade creditors was retained.	7. Pilipinas Shell representative be retained.
8.	Credit facility is being assigned or re-lent by Benhar.	8. Credit facility directly to Ruby.
9.	Authorized Benhar to mortgage assets of Ruby itself. Only remaining unencumbered asset is one (1) real property. Two (2) prime properties already encumbered to Assignor of Benhar.	9. None going to the minority but to actual lenders.

10. Capacity of only one (1) plant stated at 72% (overrated)	10. Capacity of two (2) plants progressive to 75% or 80% with purchase of new machines.
11. Projection figures based on May, 1990 forex exchange rate. Cost of importation and other local supplier currently cannot be met.	11. Minority RP can be updated at current foreign exchange rate.
12. Market and economic slow down not taken into consideration.	12. Taken into consideration so will upgrade to meet competition.
13. Discriminatory to creditors Benhar-capitalized with undisclosed rates of interest.	13. Not discriminatory.
14. Original Figures of illegally assigned loans from FEBTC, PCIB, PTC which totaled to ₱11,419,036.87 but now entered as ₱21,378,002.71. The interest is undisclosed and may have been capitalized. Figures for the other four (4) secured lenders not available individually. Total of seven (7) secured lenders given as ₱34.068 M.	14. Original figures will be used original figures plans 12% interest only.
15. Interest is 28% with Benhar as conduit.	15. Interest is 25% payable to the bank. This is still subject to current market rates to be negotiated by the minority.

16. Call on unissued shares for ₱11.814 M and if minority will take up their pre-emptive rights and dilute minority shareholdings.	15. Additional subscription of ₱16M within 6 months by the minority stockholders.	
x x x	x x x	x x x[61]

Prior to the September 18, 1991 Order approving the Revised BENHAR/RUBY Plan and dissolving the MANCOM, majority of RUBY's creditors (90%) have already withdrawn their support to the revised plan and manifested that they were only lately informed about another plan submitted by the minority stockholders. Hence, these creditors wrote individual letters to the SEC Hearing Panel expressing their agreement with and endorsement of the Alternative Plan of the minority stockholders.[62]

The Revised BENHAR/RUBY Plan had proposed the calling for subscription of unissued shares through a Board Resolution from the ₱11.814 million of the ₱23.7 million ACS "in order to allow the long overdue program of the REHAB Program." RUBY will offer for subscription 118,140 shares of stocks at par value of ₱100 each to all stockholders on record, payable within 15 days, or within a reasonable period from SEC approval of the revised plan.[63] This was implemented by the October 2, 1991 meeting of the Board of Directors led by Yu Kim Giang. The minority directors claimed they were not notified of said board meeting. At any rate, the CA decision nullifying the Revised BENHAR/RUBY Plan was affirmed by this Court on January 20, 1998. Hence, the legitimate concerns of the minority stockholders and MANCOM who objected to the capital infusion which resulted in the dilution of their shareholdings, the expiration of RUBY's corporate term and the pending incidents on the void deeds of assignment of credit – all these should have been

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[61] CA *rollo*, pp. 263-266.

[62] SEC records (Vol. 9), pp. 2955-2965, 2842-2850, 2976-2985, 3058-3065.

[63] SEC records (Vol. 7), p. 2156.

duly considered and acted upon by the SEC when the case was remanded to it for further proceedings. With the final rejection of the courts of the Revised BENHAR/RUBY Plan, it was grave error for the SEC not to act decisively on the motions filed by the minority stockholders who have maintained that the issuance of additional shares did not help improve the situation of RUBY except to stifle the opposition coming from the MANCOM and minority stockholders by diluting the latter's shareholdings. Worse, the SEC ignored the evidence adduced by the minority stockholders indicating that the correct amount of subscription of additional shares was not paid by the majority stockholders and that SEC official records still reflect the 60%-40% percentage of ownership of RUBY.

The SEC remained indifferent to the reliefs sought by the minority stockholders, saying that the issue of the validity of the additional capital infusion was belatedly raised. Even assuming the October 2, 1991 board meeting indeed took place, the SEC did nothing to ascertain whether indeed, as the minority claimed: (1) the minority stockholders were not given notice as required and reasonable time to exercise their pre-emptive rights; and (2) the capital infusion was not for the purpose of rehabilitation but a mere ploy to divest the minority stockholders of their 40.172% shareholding and reduce it to a mere 25.25%.

The foregoing matters, along with the persistent refusal of the majority stockholders, led by Yu Kim Giang, to give a full accounting of their transactions involving RUBY's credits and properties, were extensively argued by the minority stockholders in their opposition to the motions to dismiss/vacate suspension order filed by the majority stockholders and BPI, as follows:

> Their receipts only show supposed payment by the majority of a total of ₱1,759,150.00 out of the correct amount of ₱7,068,079.92.00 (*sic*) (59.828% of ₱11.814 million required capital infusion under the MRP and RRP) which should have been the amount paid by them under the RRP *which requires full payment.* Thus, they sought to attain a 74.75% equity from a 59.828% original equity by playing more tricks and stating that, under the general rule, they are supposedly allowed to pay-up only 25% of their subscription.

Unfortunately for them, in a rehabilitation supervised by the SEC and with an existing Mancom, the general rule does not apply. What is stated in the rehabilitation plan must be strictly followed provided the rehabilitation plan has been finally approved.

It must be remembered that in October 2 to 17, 1991, the amounts owed by Ruby to the banks who illegally assigned their loans/credit was stated at ₱34 Million. Operations needed another ₱20 Million plus. *A capital infusion of ₱1,759,150.00 was so miniscule and clearly not for rehabilitation but was intended to deprive the minority of its blocking position and property rights since distribution after liquidation is based on the percentage of stockholdings. It is not only unfair, inequitable and not meaningful – it is clearly dishonest.*

x x x x x x x x x

Assuming *arguendo* that the Board of Directors could act independently and this did not violate any injunction, if the capital infusion was actually made, the Board of Directors had the duty to report this to the Mancom because they would then fall under "existing assets" and would be part of the evaluation of the proposed RRP, necessary for management and in the overall plan of rehabilitation. Nothing of this kind happened and the belated proof cannot correct this situation.

x x x x x x x x x

It is not true that there is benevolence on the part of the majority when they maneuvered the illegal assignments and paid the banks. *The loan obligations remain as accounts payable of Ruby and have even been bloated to gigantic proportions and yet the SEC does not even ask them to account how much these obligations are now and the majority should have reported these to the Mancom, but the majority has not. These anomalous situations have been made to continue long enough and, we pray, should be addressed by the Honorable Commission.*

x x x x x x x x x

…The SEC must understand that, being head of the first Mancom, YU KIM GIANG had the same obligation to render a report to the SEC as the present Mancom now. To single out the present Mancom to do this when a complete report cannot be made without these starting records is discriminatory, unfair and violates the rules of

accountancy. For example, where is the report on the illegal assignments and mortgages complete with details? Where did the rentals for the period from 1983 to 1989 go? This amounted to millions. There are no reports on these. **By not requiring the first Mancom to Report, the SEC is preventing the complete picture on the liabilities and finances of Ruby from being seen and is sheltering Ruby and the majority.**[64] (Additional emphasis supplied.)

Pre-emptive right under Sec. 39 of the Corporation Code refers to the right of a stockholder of a stock corporation to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings. The right may be restricted or denied under the articles of incorporation, and subject to certain exceptions and limitations. The stockholder must be given a reasonable time within which to exercise their preemptive rights. Upon the expiration of said period, any stockholder who has not exercised such right will be deemed to have waived it.[65]

The validity of issuance of additional shares may be questioned if done in breach of trust by the controlling stockholders. Thus, even if the pre-emptive right does not exist, either because the issue comes within the exceptions in Section 39 or because it is denied or limited in the articles of incorporation, an issue of shares may still be objectionable if the directors acted in breach of trust and their primary purpose is to perpetuate or shift control of the corporation, or to "freeze out" the minority interest.[66] In this case, the following relevant observations should have signaled greater circumspection on the part of the SEC — upon the third and last remand to it pursuant to our January 20, 1998 decision — to demand transparency and accountability from the majority stockholders, in view of the illegal assignments and objectionable features of the Revised BENHAR/RUBY Plan, as found by the CA and as affirmed by this Court:

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[64] SEC records (Vol. 13), pp. 4403, 4408 and 4443.

[65] Jose Campos, Jr. & Maria Clara L. Campos, *THE CORPORATION CODE: COMMENTS, NOTES AND SELECTED CASES*, Vol. II (1990 ed.), p. 58.

[66] *Id.* at 62-63.

There can be no gainsaying the well-established rule in corporate practice and procedure that the will of the majority shall govern in all matters within the limits of the act of incorporation and lawfully enacted by-laws not proscribed by law. It is, however, equally true that other stockholders are afforded the right to intervene especially during critical periods in the life of a corporation like reorganization, or in this case, suspension of payments, more so, **when the majority seek to impose their will and through fraudulent means, attempt to siphon off Ruby's valuable assets to the great prejudice of Ruby itself, as well as the minority stockholders and the unsecured creditors.**

Certainly, the minority stockholders and the unsecured creditors are given some measure of protection by the law from the abuses and impositions of the majority, more so in this case, considering the **give-away signs of private respondents' perfidy strewn all over the factual landscape.** Indeed, equity cannot deprive the minority of a remedy against the abuses of the majority, and the present action has been instituted precisely for the purpose of protecting the true and legitimate interests of Ruby against the Majority Stockholders. On this score, the Supreme Court, has ruled that:

> "Generally speaking, the voice of the majority of the stockholders is the law of the corporation, but there are exceptions to this rule. There must necessarily be a limit upon the power of the majority. Without such a limit the will of the majority will be absolute and irresistible and might easily degenerate into absolute tyranny. x x x"[67] (Additional emphasis supplied.)

Lamentably, the SEC refused to heed the plea of the minority stockholders and MANCOM for the SEC to order RUBY to commence liquidation proceedings, which is allowed under Sec. 4-9 of the Rules on Corporate Recovery. Under the circumstances, liquidation was the only hope of the minority stockholders for effecting an orderly and equitable settlement of RUBY's obligations, and compelling the majority stockholders to account for all funds, properties and documents in their possession, and make full disclosure on the nullified credit

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[67] CA *rollo*, p. 266.

assignments. Oblivious to these pending incidents so crucial to the protection of the interest of the majority of creditors and minority shareholders, the SEC simply stated that in the interim, RUBY's corporate term was validly extended, as if such extension would provide the solution to RUBY's myriad problems.

Extension of corporate term requires the vote of 2/3 of the outstanding capital stock in a stockholders' meeting called for the purpose.[68] The actual percentage of shareholdings in RUBY as of September 3, 1996 — when the majority stockholders allegedly ratified the board resolution approving the extension of RUBY's corporate life to another 25 years – was seriously disputed by the minority stockholders, and we find the evidence of compliance with the notice and quorum requirements submitted by the majority stockholders insufficient and doubtful. Consequently, the SEC had no basis for its ruling denying the motion of the minority stockholders to declare as without force and effect the extension of RUBY's corporate existence.

Liquidation, or the settlement of the affairs of the corporation, consists of adjusting the debts and claims, that is, of collecting all that is due the corporation, the settlement and adjustment of claims against it and the payment of its just debts.[69] It involves the winding up of the affairs of the corporation, which means the collection of all assets, the payment of all its creditors, and the distribution of the remaining assets, if any, among the stockholders thereof in accordance with their contracts, or if there be no special contract, on the basis of their respective interests.[70]

Section 122 of the Corporation Code, which is applicable to the present case, provides:

SEC. 122. *Corporate liquidation.* — Every corporation whose charter expires by its own limitation or is annulled by forfeiture or

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[68] CORPORATION CODE, Sec. 37.

[69] *China Banking Corporation and Kahn v. M. Michelin & Cie*, 58 Phil. 261, 268 (1933).

[70] *Supra* note 65, at 415.

otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.

At any time during said three (3) years, said corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interests which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

Upon winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located.

Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities.

Since the corporate life of RUBY as stated in its articles of incorporation expired, without a valid extension having been effected, it was deemed dissolved by such expiration without need of further action on the part of the corporation or the State.[71] With greater reason then should liquidation ensue considering that the last paragraph of Sec. 4-9 of the Rules of Procedure on Corporate Recovery mandates the SEC to order the dissolution *and* liquidation proceedings under Rule VI. Sec. 6-1, Rule VI likewise authorizes the SEC on motion or

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[71] See Villanueva, *PHILIPPINE CORPORATE LAW* (2010 ed.), p. 841, citing Sec. 11, Corporation Code; *Philippine National Bank v. CFI of Rizal, Pasig, Br. XXI*, G.R. No. 63201, May 27, 1992, 209 SCRA 294.

motu proprio, or upon recommendation of the management committee, to order dissolution of the debtor corporation and the liquidation of its remaining assets, appointing a Liquidator for the purpose, if "the continuance in business of the debtor is no longer feasible or profitable or no longer works to the best interest of the stockholders, parties-litigants, creditors, or the general public."

It cannot be denied that with the current divisiveness, distrust and antagonism between the majority and minority stockholders, the long agony and extreme prejudice caused by numerous litigations to the creditors, and the bleak prospects for business recovery in the light of problems with the local government which are implementing more restrictions and anti-pollution measures that practically banned the operation of RUBY's glass plant – liquidation becomes the only viable course for RUBY to stave off any further losses and dissipation of its assets. Liquidation would also ensure an orderly and equitable settlement of *all* creditors of RUBY, both secured and unsecured.

The SEC's utter disregard of the rights of the minority in applying the provisions of the Rules of Procedure on Corporate Recovery is inconsistent with the policy of liberal construction of the said rules "to assist the parties in obtaining a *just, expeditious and inexpensive* settlement of cases.[72] Petitioners majority stockholders, however, assert that the findings and conclusions of the SEC on the matter of the dismissal of RUBY's petition are binding and conclusive upon the CA and this Court. They contend that reviewing courts are not supposed to substitute their judgment for those made by administrative bodies specifically clothed with authority to pass upon matters over which they have acquired expertise.[73] Given our foregoing findings clearly showing that the SEC acted arbitrarily and committed patent errors and grave abuse of discretion, this case falls under the exception to the general rule.

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[72] Sec. 1-2, Rules of Procedure on Corporate Recovery.

[73] *Rollo* (G.R. No. 165887), p. 744.

As we held in *Ruby Industrial Corporation v. Court of Appeals*:

> The settled doctrine is that factual findings of an administrative agency are accorded respect and, at times, finality for they have acquired the expertise inasmuch as their jurisdiction is confined to specific matters. Nonetheless, these doctrines do not apply when the board or official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion. In *Leongson vs. Court of Appeals,* we held: "once the actuation of the administrative official or administrative board or agency is tainted by a failure to abide by the command of the law, then it is incumbent on the courts of justice to set matters right, with this Tribunal having the last say on the matter."[74]

Petitioners majority stockholders further insist that the minority stockholders were mistaken when they contended that the rehabilitation of RUBY is dependent on the unwinding by the SEC of the illegal assignments and mortgages. They assert that aside from the fact that the SEC had nothing to unwind because the alleged illegal assignments and mortgages were already declared null and void, the said assignments and mortgages will not affect the rehabilitation of Ruby; the same *affecting only the issue of how, as to* ***who*** *will be its creditors.*

Such contention is untenable and contrary to our previous ruling in G.R. Nos. 124185-87. With the nullification of the deeds of assignments of credit executed by some of Ruby's secured creditors in favor of BENHAR, it logically follows that the assignors or the original bank creditors remain as the creditors on record of RUBY. We have noted that BENHAR, which is controlled by the family of Henry Yu who is also a director and stockholder of RUBY, was not listed as one of RUBY's creditors at the time RUBY filed the petition for suspension of payment. Petitioners majority stockholders' insinuation that RUBY's credits

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[74] *Supra* note 1, at 455, citing *Alejandro v. Court of Appeals,* G.R. Nos. 84572-73, November 27, 1990, 191 SCRA 700, 709-710; *Pajo, etc., et al. v. Ago and Ortiz, etc.,* 108 Phil. 905, 915-916 (1960) and No. L-32255, January 30, 1973, 49 SCRA 212, 220.

may have been assigned to third parties, if not referring to BENHAR or its conduits, implies two things: either the assignments declared void by this Court's January 20, 1998 decision continues to be recognized by the majority stockholders, in violation of the said decision, or other third parties in connivance with BENHAR and/or the controlling stockholders had subsequently entered the picture, without approval of the SEC and while *the SEC December 20, 1983 Order enjoining the disposition of RUBY's properties was in force.*

The majority stockholders' eagerness to have the suspension order lifted or vacated by the SEC without any order for its liquidation evinces a total disregard of the mandate of Sec. 4-9 of the Rules of Procedure on Corporate Recovery, and their obvious lack of any intent to render an accounting of all funds, properties and details of the unlawful assignment transactions to the prejudice of RUBY, minority stockholders and the majority of RUBY's creditors. The majority stockholders and BENHAR's conduits must not be allowed to evade the duty to make such full disclosure and account any money due to RUBY to enable the latter to effect a fair, orderly and equitable settlement of all its obligations, as well as distribution of any remaining assets after paying all its debtors.

In fine, no error was committed by the CA when it set aside the September 18, 2002 Order of the SEC and declared the nullity of the acts of majority stockholders in implementing capital infusion through issuance of additional shares in October 1991, the board resolution approving the extension of RUBY's corporate term for another 25 years, and any illegal assignment of credit executed by RUBY's creditors in favor of third parties and/or conduits of the controlling stockholders. The CA likewise correctly ordered the delivery of all documents relative to the said assignment of credits to the MANCOM or the Liquidator, the unwinding of these void deeds of assignment, and their full accounting by the majority stockholders.

The petitioners majority stockholders and China Bank cannot be permitted to raise any issue again regarding the validity of *any* assignment of credit made during the effectivity of the

suspension order and *before* the finality of the September 18, 2002 Order lifting the same. While China Bank is not precluded from questioning the validity of the December 20, 1983 suspension order on the basis of *res judicata*, it is, however, barred from doing so by the principle of *law of the case*. We have held that when the validity of an interlocutory order has already been passed upon on appeal, the Decision of the Court on appeal becomes the law of the case between the same parties. *Law of the case* has been defined as "the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court."[75]

The unwinding process of all such illegal assignment of RUBY's credits is critical and necessary, in keeping with good faith and as a matter of fairness and justice to all parties affected, particularly the unsecured creditors who stands to suffer most if left with nothing of the assets of RUBY, and the minority stockholders who waged legal battles to defend the interest of RUBY and protect the rights of the minority from the abuses of the controlling stockholders. As correctly stated by the CA:

> Liquidation is imperative because the unsecured creditor must negotiate the amount of the imputable interest rate on its long unpaid credit, the decision on which assets are to be sold to liquidate the illegally assigned credits must be made, the other secured credits and the trade credits must be determined, and most importantly, the restoration of the 40.172% minority percentage of ownership must be done.[76]

However, we do not agree that it is the SEC which has the authority to supervise RUBY's liquidation.

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[75] *Union Bank of the Philippines v. ASB Development Corporation,* G.R. No. 172895, July 30, 2008, 560 SCRA 578, 600, citing *People v. Pinuila, et al.*, 103 Phil. 992, 999 (1958).

[76] *Rollo* (G.R. No. 165887), p. 62.

In the case of *Union Bank of the Philippines v. Concepcion*,[77] the Court is presented with the issue of whether the SEC had jurisdiction to proceed with insolvency proceedings after it was shown that the debtor corporation can no longer be rehabilitated. We held that although jurisdiction over a petition to declare a corporation in a state of insolvency strictly lies with regular courts, the SEC possessed ample power under P.D. No. 902-A, as amended, to declare a corporation insolvent as an incident of and in continuation of its already acquired jurisdiction over the petition to be declared in a state of suspension of payments in the two instances provided in Sec. 5 (d)[78] thereof.

Subsequently, in *Consuelo Metal Corporation v. Planters Development Bank*[79] the Court was again confronted with the same issue. The original petition filed by the debtor corporation was for suspension of payment, rehabilitation and appointment of a rehabilitation receiver or management committee. Finding the petition sufficient in form and substance, the SEC issued an order suspending immediately all actions for claims against the petitioner pending before any court, tribunal or body until further orders from the court. It also created a management committee to undertake petitioner's rehabilitation. Four years later, upon the management committee's recommendation, the SEC issued an omnibus order directing the dissolution and liquidation of the petitioner, and that the proceedings on and implementation of the order of liquidation be commenced at

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[77] G.R. No. 160727, June 26, 2007, 525 SCRA 672, 682-683.

[78] SEC. 5. In addition to the regulatory and adjudicative functions of the [SEC] over corporations … under existing laws … decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

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d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where … [it] possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where … [it] has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree.

[79] G.R. No. 152580, June 26, 2008, 555 SCRA 465.

the Regional Trial Court to which the case was transferred. However, the trial court refused to act on the motion filed by the petitioner who requested for the issuance of a TRO against the extrajudicial foreclosure initiated by one of its creditors. The trial court ruled that since the SEC had already terminated and decided on the merits the petition for suspension of payment, the trial court no longer had legal basis to act on petitioner's motion. It likewise denied the motion for reconsideration stating that petition for suspension of payment could not be converted into a petition for dissolution and liquidation because they covered different subject matters and were governed by different rules. Petitioner's remedy thus was to file a new petition for dissolution and liquidation either with the SEC or the trial court.

When the case was elevated to the CA, the petition was dismissed affirming that under Sec. 121 of the Corporation Code, the SEC had jurisdiction to hear the petition for dissolution and liquidation. On motion for reconsideration, the CA remanded the case to the SEC for proceedings under Sec. 121 of the Corporation Code. The CA denied the motion for reconsideration filed by the respondent creditor, who then filed a petition for review with this Court.

We ruled that the SEC observed the correct procedure under the present law, in cases where it merely retained jurisdiction over pending cases for suspension of payments/rehabilitation, thus:

Republic Act No. 8799 (RA 8799) transferred to the appropriate regional trial courts the SEC's jurisdiction defined under Section 5(d) of Presidential Decree No. 902-A. Section 5.2 of RA 8799 provides:

> The Commission's jurisdiction over all cases enumerated under Sec. 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from

> the enactment of this Code. **The Commission shall retain jurisdiction over pending suspension of payments/ rehabilitation cases filed as of 30 June 2000 until finally disposed.** (Emphasis supplied)

The SEC assumed jurisdiction over CMC's petition for suspension of payment and issued a suspension order on 2 April 1996 after it found CMC's petition to be sufficient in form and substance. While CMC's petition was still pending with the SEC as of 30 June 2000, it was finally disposed of on 29 November 2000 when the SEC issued its Omnibus Order directing the dissolution of CMC and the transfer of the liquidation proceedings before the appropriate trial court. The SEC finally disposed of CMC's petition for suspension of payment when it determined that CMC could no longer be successfully rehabilitated.

However, the SEC's jurisdiction does not extend to the liquidation of a corporation. **While the SEC has jurisdiction to order the dissolution of a corporation, jurisdiction over the liquidation of the corporation now pertains to the appropriate regional trial courts**. This is the reason why the SEC, in its 29 November 2000 Omnibus Order, directed that "the proceedings on and implementation of the order of liquidation be commenced at the Regional Trial Court to which this case shall be transferred." **This is the correct procedure because the liquidation of a corporation requires the settlement of claims for and against the corporation, which clearly falls under the jurisdiction of the regular courts. The trial court is in the best position to convene all the creditors of the corporation, ascertain their claims, and determine their preferences**.[80] (Additional emphasis supplied.)

In view of the foregoing, the SEC should now be directed to transfer this case to the proper RTC which shall supervise the liquidation proceedings under Sec. 122 of the Corporation Code. Under Sec. 6 (d) of P.D. 902-A, the SEC is empowered, on the basis of the findings and recommendations of the management committee or rehabilitation receiver, or on its own findings, to determine that the continuance in business of a debtor corporation under suspension of payment or rehabilitation would not be

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[80] *Id.* at 473-474.

feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation and its remaining assets liquidated accordingly. As mentioned earlier, the procedure is governed by Rule VI of the SEC Rules of Procedure on Corporate Recovery.

However, R.A. No. 10142[81] otherwise known as the Financial Rehabilitation and Insolvency Act (FRIA) of 2010, now provides for court proceedings in the rehabilitation or liquidation of debtors, both juridical and natural persons, in a manner that will "ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure equitable treatment of creditors who are similarly situated." Considering that this case was still pending when the new law took effect last year, the RTC to which this case will be transferred shall be guided by Sec. 146 of said law, which states:

> SEC. 146. *Application to Pending Insolvency, Suspension of Payments and Rehabilitation Cases.* – This Act shall govern all petitions filed after it has taken effect. All further proceedings in insolvency, suspension of payments and rehabilitation cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the procedures set forth in prior laws and regulations shall apply.

WHEREFORE, the petitions for review on *certiorari* are *DENIED*. The Decision dated May 26, 2004 and Resolution dated November 4, 2004 of the Court of Appeals in CA-G.R. SP No. 73195 are hereby *AFFIRMED* with *MODIFICATION* in that the Securities and Exchange Commission is hereby ordered to *TRANSFER* SEC Case No. 2556 to the appropriate Regional Trial Court which is hereby *DIRECTED* to supervise the liquidation of Ruby Industrial Corporation under the provisions of R.A. No. 10142.

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[81] Lapsed into law on July 18, 2010 without the signature of the President, in accordance with Article VI, Section 27 (1) of the Constitution.

With costs against the petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 168335. June 6, 2011]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **NESTOR GALANG,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; DECLARATION OF NULLITY OF MARRIAGE BASED ON PSYCHOLOGICAL INCAPACITY; PSYCHOLOGICAL INCAPACITY; CHARACTERISTICS.— In *Leouel Santos v. Court of Appeals, et al.*, the Court first declared that psychological incapacity must be characterized by (a) **gravity**; (b) **juridical antecedence**; and (c) **incurability**. The defect should refer to "no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage." It must be confined to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage." We laid down more definitive guidelines in the interpretation and application of Article 36 of the Family Code in *Republic of the Philippines v. Court of Appeals and Roridel*

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[*] Designated additional member per Special Order No. 997 dated June 6, 2011.

Olaviano Molina x x x. These guidelines incorporate the basic requirements we established in *Santos*.

2. ID.; ID.; ID.; AN EXPERT OPINION IS NOT ABSOLUTELY REQUIRED IF THE TOTALITY OF EVIDENCE SHOWS THAT PSYCHOLOGICAL INCAPACITY EXISTS AND ITS GRAVITY, JURIDICAL ANTECEDENCE, AND INCURABILITY CAN BE DULY ESTABLISHED.— In *Brenda B. Marcos v. Wilson G. Marcos*, we further clarified that it is not absolutely necessary to introduce expert opinion in a petition under Article 36 of the Family Code if the *totality of evidence* shows that psychological incapacity exists and its gravity, juridical antecedence, and incurability can be duly established. Thereafter, the Court promulgated A.M. No. 02-11-10-SC (Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages) which provided that "the complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged."

3. ID.; ID.; ID.; THE "MOLINA GUIDELINES" CONTINUES TO APPLY BUT THE RELAXATION OF ITS STRINGENT REQUIREMENTS HAS BEEN SUGGESTED.— Our 2009 ruling in *Edward Kenneth Ngo Te v. Rowena Ong Gutierrez Yu-Te* placed some cloud in the continued applicability of the time-tested *Molina* guidelines. We stated in this case that instead of serving as a guideline, Molina unintentionally became a straightjacket; it forced all cases involving psychological incapacity to fit into and be bound by it. This is contrary to the intention of the law, since no psychological incapacity case can be considered as completely on "all fours" with another. *Benjamin G. Ting v. Carmen M. Velez-Ting* and *Jocelyn M. Suazo v. Angelito Suazo*, however, laid to rest any question regarding the continued applicability of *Molina*. In these cases, we clarified that *Ngo Te* did not abandon *Molina*. Far from abandoning *Molina, Ngo Te* simply suggested the relaxation of its stringent requirements. We also explained in *Suazo* that *Ngo Te* merely stands for a more flexible approach in considering petitions for declaration of nullity of marriages based on psychological incapacity.

4. ID.; ID.; ID.; PSYCHOLOGICAL INCAPACITY; MUST BE MORE THAN JUST A DIFFICULTY, REFUSAL OR NEGLECT IN THE PERFORMANCE OF SOME MARITAL OBLIGATIONS.— We stress that psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of some marital obligations. In *Republic of the Philippines v. Norma Cuison-Melgar, et al.*, we ruled that it is not enough to prove that a spouse failed to meet his responsibility and duty as a married person; it is essential that he or she must be shown to be **incapable** of doing so **because of some psychological, not physical, illness**. In other words, proof of a natal or supervening disabling factor in the person – an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage – had to be shown. A cause has to be shown and linked with the manifestations of the psychological incapacity. The respondent's testimony failed to show that Juvy's condition is a manifestation of a disordered personality rooted in some incapacitating or debilitating psychological condition that rendered her *unable* to discharge her essential marital obligations. In this light, the acts attributed to Juvy only showed indications of immaturity and lack of sense of responsibility, resulting in nothing more than the **difficulty, refusal or neglect** in the performance of marital obligations. In *Ricardo B. Toring v. Teresita M. Toring*, we emphasized that irreconcilable differences, sexual infidelity or perversion, emotional immaturity and responsibility, and the like do not by themselves warrant a finding of psychological incapacity, as these may only be due to a person's difficulty, refusal or neglect to undertake the obligations of marriage *that is not rooted in some psychological illness* that Article 36 of the Family Code addresses.

5. ID.; ID.; ID.; ID.; ISOLATED INCIDENTS AND NON-RECURRING ACTS OF A SPOUSE CANNOT BE AUTOMATICALLY EQUATED WITH A PSYCHOLOGICAL DISORDER; CASE AT BAR.— In like manner, Juvy's acts of falsifying the respondent's signature to encash a check, of stealing the respondent's ATM, and of squandering a huge portion of the ₱15,000.00 that the respondent entrusted to her, while no doubt reprehensible,

cannot automatically be equated with a psychological disorder, especially when the evidence shows that these were mere *isolated* incidents and not recurring acts. Neither can Juvy's penchant for playing *mahjong* and *kuwaho* for money, nor her act of soliciting money from relatives on the pretext that her child was sick, warrant a conclusion that she suffered from a mental malady *at the time of the celebration of marriage* that rendered her incapable of fulfilling her marital duties and obligations. The respondent, in fact, admitted that Juvy engaged in these behaviors (gambling and what the respondent refers to as "swindling") only **two (2) years after their marriage**, and after he let her handle his salary and manage their finances. The evidence also shows that Juvy even tried to augment the family's income during the early stages of their marriage by putting up a *sari-sari* store and by working as a manicurist.

6. ID.; ID.; ID.; A PSYCHOLOGICAL EVALUATION BASED ON ONE-SIDED DESCRIPTION ALONE CAN HARDLY BE CONSIDERED AS CREDIBLE OR SUFFICIENT.— [T]he psychologist admitted in her report that she derived her conclusions exclusively from the information given her by the respondent. Expectedly, the respondent's description of Juvy would contain a considerable degree of bias; thus, a psychological evaluation based on this one-sided description alone can hardly be considered as credible or sufficient. We are of course aware of our pronouncement in *Marcos* that the person sought to be declared psychologically incapacitated need not be examined by the psychologist as a condition precedent to arrive at a conclusion. If the incapacity can be proven by independent means, no reason exists why such independent proof cannot be admitted to support a conclusion of psychological incapacity, independently of a psychologist's examination and report. In this case, however, no such independent evidence has ever been gathered and adduced. To be sure, evidence from independent sources who intimately knew Juvy **before** and **after** the celebration of her marriage would have made a lot of difference and could have added weight to the psychologist's report.

7. ID.; ID.; ID.; THE PSYCHOLOGIST'S CONCLUSION AND REPORT IN CASE AT BAR ARE GROSSLY INADEQUATE.— Separately from the lack of the requisite factual basis, the psychologist's report simply stressed Juvy's

negative traits which she considered manifestations of Juvy's psychological incapacity (*e.g.*, laziness, immaturity and irresponsibility; her involvement in swindling and gambling activities; and her lack of initiative to change), and declared that "psychological findings tend to confirm that the defendant suffers from personality and behavioral disorders x x x she doesn't manifest any sense of responsibility and loyalty, and these disorders appear to be incorrigible." In the end, the psychologist *opined* – without stating the psychological basis for her conclusion – that "there is sufficient reason to believe that the defendant's wife is psychologically incapacitated to perform her marital duties as a wife and mother to their only son." We find this kind of conclusion and report grossly inadequate. *First*, we note that the psychologist did not even identify the types of psychological tests which she administered on the respondent and the *root cause* of Juvy's psychological condition. We also stress that the acts alleged to have been committed by Juvy all occurred *during* the marriage; there was no showing that any mental disorder existed at the inception of marriage. *Second*, the report failed to prove the gravity or severity of Juvy's alleged condition, specifically, why and to what extent the disorder is serious, and how it incapacitated her to comply with her marital duties. Significantly, the report did not even categorically state the particular type of personality disorder found. *Finally*, the report failed to establish the incurability of Juvy's condition. The report's pronouncements that Juvy "lacks the initiative to change" and that her mental incapacity "appears incorrigible" are insufficient to prove that her mental condition could not be treated, or if it were otherwise, the cure would be beyond her means to undertake.

8. ID.; ID.; ID.; PSYCHOLOGICAL INCAPACITY; ELEMENTS; NOT DULY PROVEN IN CASE AT BAR.— The psychologist's court testimony fared no better in proving the juridical antecedence, gravity or incurability of Juvy's alleged psychological defect as she merely reiterated what she wrote in her report – *i.e.*, that Juvy was lazy and irresponsible; played *mahjong* and *kuwaho* for money; stole money from the respondent; deceived people to borrow cash; and neglected her child – without linking these to an underlying psychological cause. Again, these allegations, even if true, *all occurred during*

the marriage. The testimony was totally devoid of any information or insight into Juvy's early life and associations, how she acted before and at the time of the marriage, and how the symptoms of a disordered personality developed. Simply put, the psychologist failed to trace the history of Juvy's psychological condition and to relate it to an existing incapacity at the time of the celebration of the marriage. She, likewise, failed to successfully prove the elements of gravity and incurability. In these respects, she merely stated that despite the respondent's efforts to show love and affection, Juvy was *hesitant to change*. From this premise, she jumped to the conclusion that Juvy *appeared to be incurable or incorrigible*, and would be *very hard to cure.* These unfounded conclusions cannot be equated with gravity or incurability that Article 36 of the Family Code requires. To be declared clinically or medically incurable is one thing; to refuse or be reluctant to change is another. x x x [P]sychological incapacity refers only to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.

9. ID.; ID.; MARRIAGE; IN PETITIONS FOR THE DECLARATION OF NULLITY OF MARRIAGE, THE BURDEN OF PROOF TO SHOW THE NULLITY OF MARRIAGE LIES WITH THE PLAINTIFF.— The Constitution sets out a policy of protecting and strengthening the family as the basic social institution, and marriage is the foundation of the family. Marriage, as an inviolable institution protected by the State, cannot be dissolved at the whim of the parties. In petitions for the declaration of nullity of marriage, the burden of proof to show the nullity of marriage lies with the plaintiff. Unless the evidence presented clearly reveals a situation where the parties, or one of them, could not have validly entered into a marriage by reason of a grave and serious psychological illness existing at the time it was celebrated, we are compelled to uphold the indissolubility of the marital tie.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Alberto M. Suller for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the Petition for Review on *Certiorari*[1] filed by the Republic of the Philippines (*petitioner*), challenging the decision[2] dated November 25, 2004 and the resolution[3] dated May 9, 2005 of the Court of Appeals (*CA*) in CA-G.R. CV No. 70004. The challenged decision affirmed the decision[4] of the Regional Trial Court (*RTC*), Branch 62, Angeles City, declaring the marriage of Nestor Galang (*respondent*) and Juvy Salazar null and void on the ground of the latter's psychological incapacity. The assailed resolution denied the petitioner's motion for reconsideration.

Antecedent Facts

On March 9, 1994, the respondent and Juvy contracted marriage in Pampanga. They resided in the house of the respondent's father in San Francisco, Mabalacat, Pampanga. The respondent worked as an artist-illustrator at the Clark Development Corporation, earning ₱8,500.00 monthly. Juvy, on the other hand, stayed at home as a housewife. They have one child, Christopher.

On August 4, 1999, the respondent filed with the RTC a petition for the declaration of nullity of his marriage with Juvy, under Article 36 of the Family Code, as amended. The case was docketed as Civil Case No. 9494. He alleged that Juvy was psychologically incapacitated to exercise the essential obligations of marriage, as she was a kleptomaniac and a swindler. He claimed that Juvy stole his ATM card and his parents' money,

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

[2] *Rollo*, pp. 51-58; penned by Associate Justice Edgardo P. Cruz, and concurred in by Associate Justice Godardo A. Jacinto and Associate Justice Jose C. Mendoza (now a member of this Court).

[3] *Id.* at 59.

[4] CA *rollo*, pp. 47-58; penned by Judge Melencio Claros.

and often asked money from their friends and relatives on the pretext that Christopher was confined in a hospital. According to the respondent, Juvy suffers from "mental deficiency, innate immaturity, distorted discernment and total lack of care, love and affection [towards him and their] child." He posited that Juvy's incapacity was "extremely serious" and "appears to be incurable."[5]

The RTC ordered the city prosecutor to investigate if collusion existed between the parties. Prosecutor Angelito I. Balderama formally manifested, on October 18, 1999, that he found no evidence of collusion between the parties. The RTC set the case for trial in its Order of October 20, 1999. The respondent presented testimonial and documentary evidence to substantiate his allegations.

In his testimony, the respondent alleged that he was the one who prepared their breakfast because Juvy did not want to wake up early; Juvy often left their child to their neighbors' care; and Christopher almost got lost in the market when Juvy brought him there.[6]

The respondent further stated that Juvy squandered the ₱15,000.00 he entrusted to her. He added that Juvy stole his ATM card and falsified his signature to encash the check representing his (the respondent's) father's pension. He, likewise, stated that he caught Juvy playing "*mahjong*" and "*kuwaho*" three (3) times. Finally, he testified that Juvy borrowed money from their relatives on the pretense that their son was confined in a hospital.[7]

Aside from his testimony, the respondent also presented Anna Liza S. Guiang, a psychologist, who testified that she conducted a psychological test on the respondent. According to her, she wrote Juvy a letter requesting for an interview, but the latter

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[5] Records, pp. 2-3.

[6] TSN, March 7, 2000, pp. 5-7.

[7] *Id.* at 8-12.

did not respond.[8] In her Psychological Report, the psychologist made the following findings:

> Psychological Test conducted on client Nestor Galang resembles an emotionally-matured individual. He is well-adjusted to the problem he meets, and enable to throw-off major irritations but manifest[s] a very low frustration tolerance which means he has a little ability to endure anxiety and the client manifests suppressed feelings and emotions which resulted to unbearable emotional pain, depression and lack of self-esteem and gained emotional tensions caused by his wife's behavior.
>
> The incapacity of the defendant is manifested [in] such a manner that the defendant-wife: (1) being very irresponsible and very lazy and doesn't manifest any sense of responsibility; (2) her involvement in gambling activities such as *mahjong* and *kuwaho*; (3) being an *estafador* which exhibits her behavioral and personality disorders; (4) her neglect and show no care attitude towards her husband and child; (5) her immature and rigid behavior; (6) her lack of initiative to change and above all, the fact that she is unable to perform her marital obligations as a loving, responsible and caring wife to her family. There are just few reasons to believe that the defendant is suffering from incapacitated mind and such incapacity appears to be incorrigible.
>
> x x x x x x x x x
>
> The following incidents are the reasons why the couple separated:
>
> 1. After the marriage took place, the incapacity of the defendant was manifested on such occasions wherein the plaintiff was the one who prepared his breakfast, because the defendant doesn't want to wake up early; this became the daily routine of the plaintiff before reporting to work;
> 2. After reporting from work, the defendant was often out gambling, as usual, the plaintiff was the one cooking for supper while the defendant was very busy with her gambling activities and never attended to her husband's needs;
> 3. There was an occasion wherein their son was lost in the public market because of the irresponsible attitude of the defendant;

[8] TSN, June 13, 2000, pp. 5-6.

4. That the defendant suffers from personality and behavioral disorders, there was an occasion wherein the defendant [would] steal money from the plaintiff and use them for gambling;

5. Defendant, being an *estafador* had been manifested after their marriage took place, wherein the defendant would come with stories so that people [would] feel pity on her and give her money. Through false pretenses she [would] be able to deceive and take money from neighbors, relatives and other people.

6. That the plaintiff convinced the defendant to stop her unhealthy lifestyle (gambling), but the defendant never listened to his advices;

7. That the plaintiff was the one who [was] taking care of their son, when the plaintiff will leave for work, the defendant [would] entrust their son to their neighbor and go [to] some place. This act reflects the incapacity of the defendant by being an irresponsible mother;

8. That the defendant took their son and left their conjugal home that resulted into the couple's separation.

Psychological findings tend to confirm that the defendant suffers from personality and behavioral disorders. These disorders are manifested through her grave dependency on gambling and stealing money. She doesn't manifest any sense of responsibility and loyalty and these disorders appear to be incorrigible.

The plaintiff tried to forget and forgive her about the incidents and start a new life again and hoping she would change. Tried to get attention back by showing her with special care, treating her to places for a weekend vacation, cook[ing] her favorite food, but the defendant didn't care to change, she did not prepare meals, wash clothes nor clean up. She neglected her duties and failed to perform the basic obligations as a wife.

So in the view of the above-mentioned psychological findings, it is my humble opinion that there is sufficient reason to believe that the defendant wife is psychologically incapacitated to perform her marital duties as a wife and mother to their only son.[9]

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[9] Record of Exhibits, Exhibit "K", pp. 14-16.

The RTC Ruling

The RTC nullified the parties' marriage in its decision of January 22, 2001. The trial court saw merit in the testimonies of the respondent and the psychologist, and concluded that:

> After a careful perusal of the evidence in the instant case and there being no controverting evidence, this Court is convinced that as held in *Santos* case, the psychological incapacity of respondent to comply with the essential marital obligations of his marriage with petitioner, which Dr. Gerardo Veloso said can be characterized by (a) gravity because the subject cannot carry out the normal and ordinary duties of marriage and family shouldered by any average couple existing under ordinary circumstances of life and work; (b) antecedence, because the root cause of the trouble can be traced to the history of the subject before marriage although its overt manifestations appear over after the wedding; and (c) incurability, if treatments required exceed the ordinary means or subject, or involve time and expense beyond the reach of the subject – are all obtaining in this case.
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> x x x x x x x x x
>
> WHEREFORE, premises considered, the instant petition is granted and the marriage between petitioner and defendant is hereby declared null and void pursuant to Article 36 of the Family Code of the Philippines.[10]

The CA Decision

The petitioner, through the Office of the Solicitor General, appealed the RTC decision to the CA. The CA, in its decision dated November 25, 2004, affirmed the RTC decision *in toto*.

The CA held that Juvy was psychologically incapacitated to perform the essential marital obligations. It explained that Juvy's indolence and lack of sense of responsibility, coupled with her acts of gambling and swindling, undermined her capacity to comply with her marital obligations. In addition, the psychologist characterized Juvy's condition to be permanent, incurable and

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[10] *Supra* note 4, at 55-57.

existing at the time of the celebration of her marriage with the respondent.[11]

The petitioner moved to reconsider this Decision, but the CA denied his motion in its resolution dated May 9, 2005.[12]

The Petition and the Issues

The petitioner claims in the present petition that the totality of the evidence presented by the respondent was insufficient to establish Juvy's psychological incapacity to perform her essential marital obligations. The petitioner additionally argues that the respondent failed to show the juridical antecedence, gravity, and incurability of Juvy's condition.[13] The respondent took the exact opposite view.

The issue boils down to whether there is basis to nullify the respondent's marriage to Juvy on the ground that at the time of the celebration of the marriage, Juvy suffered from psychological incapacity that prevented her from complying with her essential marital obligations.

The Court's Ruling

After due consideration, we resolve to **grant** the petition, and hold that no sufficient basis exists to annul the marriage on the ground of psychological incapacity under the terms of Article 36 of the Family Code.

Article 36 of the Family Code and Related Jurisprudence

Article 36 of the Family Code provides that "a marriage contracted by any party who, *at the time of the celebration*, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization."[14]

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[11] *Supra* note 2.

[12] *Supra* note 3.

[13] *Rollo*, pp. 10-49.

[14] *So v. Valera*, G.R. No. 150677, June 5, 2009, 588 SCRA 319, 331.

In *Leouel Santos v. Court of Appeals, et al.*,[15] the Court first declared that psychological incapacity must be characterized by (a) **gravity**; (b) **juridical antecedence**; and (c) **incurability**. The defect should refer to "no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage." It must be confined to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."[16] We laid down more definitive guidelines in the interpretation and application of Article 36 of the Family Code in *Republic of the Philippines v. Court of Appeals and Roridel Olaviano Molina,* whose salient points are footnoted below.[17] These

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[15] G.R. No. 112019, January 4, 1995, 240 SCRA 20, 34.

[16] See *Padilla-Rumbaua v. Rumbaua*, G.R. No. 166738, August 14, 2009, 596 SCRA 157, 175.

[17] G.R. No. 108763, February 13, 1997, 268 SCRA 198, 209-213.

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.

(2) The root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological - not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*,

guidelines incorporate the basic requirements we established in *Santos*.[18]

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nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. x x x

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. x x x

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.

[18] *Supra* note 15.

In *Brenda B. Marcos v. Wilson G. Marcos,*[19] we further clarified that it is not absolutely necessary to introduce expert opinion in a petition under Article 36 of the Family Code if the *totality of evidence* shows that psychological incapacity exists and its gravity, juridical antecedence, and incurability can be duly established. Thereafter, the Court promulgated A.M. No. 02-11-10-SC (Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages)[20] which provided that "the complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged."

Our 2009 ruling in *Edward Kenneth Ngo Te v. Rowena Ong Gutierrez Yu-Te*[21] placed some cloud in the continued applicability of the time-tested *Molina*[22] guidelines. We stated in this case that instead of serving as a guideline, Molina unintentionally became a straightjacket; it forced all cases involving psychological incapacity to fit into and be bound by it. This is contrary to the intention of the law, since no psychological incapacity case can be considered as completely on "all fours" with another.

Benjamin G. Ting v. Carmen M. Velez-Ting[23] and *Jocelyn M. Suazo v. Angelito Suazo,*[24] however, laid to rest any question regarding the continued applicability of *Molina*.[25] In these cases, we clarified that *Ngo Te*[26] did not abandon *Molina*.[27] Far from

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[19] G.R. No. 136490, October 19, 2000, 343 SCRA 755, 764.

[20] Took effect on March 15, 2003.

[21] G.R. No. 161793, February 13, 2009, 579 SCRA 193.

[22] *Supra* note 17.

[23] G.R. No. 166562, March 31, 2009, 582 SCRA 694.

[24] G.R. No. 164493, March 12, 2010, 615 SCRA 154.

[25] *Supra* note 17.

[26] *Supra* note 21.

[27] *Supra* note 17.

abandoning *Molina*,[28] *Ngo Te*[29] simply suggested the relaxation of its stringent requirements. We also explained in *Suazo*[30] that *Ngo Te*[31] merely stands for a more flexible approach in considering petitions for declaration of nullity of marriages based on psychological incapacity.[32]

The Present Case

In the present case and using the above guidelines, we find the totality of the respondent's evidence – the testimonies of the respondent and the psychologist, and the latter's psychological report and evaluation –insufficient to prove Juvy's psychological incapacity pursuant to Article 36 of the Family Code.

a. The respondent's testimony

The respondent's testimony merely showed that Juvy: (a) refused to wake up early to prepare breakfast; (b) left their child to the care of their neighbors when she went out of the house; (c) squandered a huge amount of the ₱15,000.00 that the respondent entrusted to her; (d) stole the respondent's ATM card and attempted to withdraw the money deposited in his account; (e) falsified the respondent's signature in order to encash a check; (f) made up false stories in order to borrow money from their relatives; and (g) indulged in gambling.

These acts, to our mind, do not *per se* rise to the level of psychological incapacity that the law requires. We stress that psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of some marital obligations. In *Republic of the Philippines v. Norma Cuison-Melgar, et al.*,[33] we ruled that it is not enough to prove that a

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[28] *Ibid.*

[29] *Supra* note 21.

[30] *Supra* note 23.

[31] *Supra* note 21.

[32] *Agraviador v. Amparo Agraviador*, G.R. No. 170729, December 8, 2010.

[33] G.R. No. 139676, March 31, 2006, 486 SCRA 177.

spouse failed to meet his responsibility and duty as a married person; it is essential that he or she must be shown to be **incapable** of doing so **because of some psychological, not physical, illness**. In other words, proof of a natal or supervening disabling factor in the person – an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage – had to be shown.[34] A cause has to be shown and linked with the manifestations of the psychological incapacity.

The respondent's testimony failed to show that Juvy's condition is a manifestation of a disordered personality rooted in some incapacitating or debilitating psychological condition that rendered her *unable* to discharge her essential marital obligation. In this light, the acts attributed to Juvy only showed indications of immaturity and lack of sense of responsibility, resulting in nothing more than the **difficulty, refusal or neglect** in the performance of marital obligations. In *Ricardo B. Toring v. Teresita M. Toring*,[35] we emphasized that irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like do not by themselves warrant a finding of psychological incapacity, as these may only be due to a person's difficulty, refusal or neglect to undertake the obligations of marriage *that is not rooted in some psychological illness* that Article 36 of the Family Code addresses.

In like manner, Juvy's acts of falsifying the respondent's signature to encash a check, of stealing the respondent's ATM, and of squandering a huge portion of the ₱15,000.00 that the respondent entrusted to her, while no doubt reprehensible, cannot automatically be equated with a psychological disorder, especially when the evidence shows that these were mere *isolated* incidents and not recurring acts. Neither can Juvy's penchant for playing *mahjong* and *kuwaho* for money, nor her act of soliciting money from relatives on the pretext that her child was sick, warrant a

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[34] See *Bier v. Bier*, G.R. No. 173294, February 27, 2008, 547 SCRA 123, 135.

[35] G.R. No. 165321, August 3, 2010, 626 SCRA 389, 408.

conclusion that she suffered from a mental malady *at the time of the celebration of marriage* that rendered her incapable of fulfilling her marital duties and obligations. The respondent, in fact, admitted that Juvy engaged in these behaviors (gambling and what the respondent refers to as "swindling") only **two (2) years after their marriage**, and after he let her handle his salary and manage their finances. The evidence also shows that Juvy even tried to augment the family's income during the early stages of their marriage by putting up a *sari-sari* store and by working as a manicurist.

b. The Psychologist's Report

The submitted psychological report hardly helps the respondent's cause, as it glaringly failed to establish that Juvy was psychologically incapacitated to perform her essential marital duties at the material time required by Article 36 of the Family Code.

To begin with, the psychologist admitted in her report that she derived her conclusions exclusively from the information given her by the respondent. Expectedly, the respondent's description of Juvy would contain a considerable degree of bias; thus, a psychological evaluation based on this one-sided description alone can hardly be considered as credible or sufficient. We are of course aware of our pronouncement in *Marcos*[36] that the person sought to be declared psychologically incapacitated need not be examined by the psychologist as a condition precedent to arrive at a conclusion. If the incapacity can be proven by independent means, no reason exists why such independent proof cannot be admitted to support a conclusion of psychological incapacity, independently of a psychologist's examination and report. In this case, however, no such independent evidence has ever been gathered and adduced. To be sure, evidence from independent sources who intimately knew Juvy **before** and **after** the celebration of her marriage would have made a lot of difference and could have added weight to the psychologist's report.

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[36] *Supra* note 19.

Separately from the lack of the requisite factual basis, the psychologist's report simply stressed Juvy's negative traits which she considered manifestations of Juvy's psychological incapacity (*e.g.*, laziness, immaturity and irresponsibility; her involvement in swindling and gambling activities; and her lack of initiative to change), and declared that "psychological findings tend to confirm that the defendant suffers from personality and behavioral disorders x x x she doesn't manifest any sense of responsibility and loyalty, and these disorders appear to be incorrigible."[37] In the end, the psychologist *opined* – without stating the psychological basis for her conclusion – that "there is sufficient reason to believe that the defendant's wife is psychologically incapacitated to perform her marital duties as a wife and mother to their only son."[38]

We find this kind of conclusion and report grossly inadequate. *First,* we note that the psychologist did not even identify the types of psychological tests which she administered on the respondent and the *root cause* of Juvy's psychological condition. We also stress that the acts alleged to have been committed by Juvy all occurred *during* the marriage; there was no showing that any mental disorder existed at the inception of the marriage. *Second*, the report failed to prove the gravity or severity of Juvy's alleged condition, specifically, why and to what extent the disorder is serious, and how it incapacitated her to comply with her marital duties. Significantly, the report did not even categorically state the particular type of personality disorder found. *Finally*, the report failed to establish the incurability of Juvy's condition. The report's pronouncements that Juvy "lacks the initiative to change" and that her mental incapacity "appears incorrigible"[39] are insufficient to prove that her mental condition could not be treated, or if it were otherwise, the cure would be beyond her means to undertake.

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[37] *Supra* note 9, Exhibit "K-1", at 15.

[38] *Supra* note 9, Exhibit "K-2", at 16.

[39] *Supra* note 37.

c. The Psychologist's Testimony

The psychologist's court testimony fared no better in proving the juridical antecedence, gravity or incurability of Juvy's alleged psychological defect as she merely reiterated what she wrote in her report – *i.e.*, that Juvy was lazy and irresponsible; played *mahjong* and *kuhawo* for money; stole money from the respondent; deceived people to borrow cash; and neglected her child – without linking these to an underlying psychological cause. Again, these allegations, even if true, *all occurred during the marriage*. The testimony was totally devoid of any information or insight into Juvy's early life and associations, how she acted before and at the time of the marriage, and how the symptoms of a disordered personality developed. Simply put, the psychologist failed to trace the history of Juvy's psychological condition and to relate it to an existing incapacity at the time of the celebration of the marriage.

She, likewise, failed to successfully prove the elements of gravity and incurability. In these respects, she merely stated that despite the respondent's efforts to show love and affection, Juvy was *hesitant to change*. From this premise, she jumped to the conclusion that Juvy *appeared to be incurable or incorrigible*, and would be *very hard to cure*. These unfounded conclusions cannot be equated with gravity or incurability that Article 36 of the Family Code requires. To be declared clinically or medically incurable is one thing; to refuse or be reluctant to change is another. To hark back to what we earlier discussed, psychological incapacity refers only to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[40]

The Constitution sets out a policy of protecting and strengthening the family as the basic social institution, and marriage is the foundation of the family. Marriage, as an inviolable institution protected by the State, cannot be dissolved at the

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[40] *Supra* note 15.

whim of the parties. In petitions for the declaration of nullity of marriage, the burden of proof to show the nullity of marriage lies with the plaintiff.[41] Unless the evidence presented clearly reveals a situation where the parties, or one of them, could not have validly entered into a marriage by reason of a grave and serious psychological illness existing at the time it was celebrated, we are compelled to uphold the indissolubility of the marital tie.[42]

WHEREFORE, in view of these considerations, we *GRANT* the petition. We *SET ASIDE* the Decision and the Resolution of the Court of Appeals, dated November 25, 2004 and May 9, 2005, respectively, in CA-G.R. CV No. 70004. Accordingly, we *DISMISS* respondent Nestor Galang's petition for the declaration of nullity of his marriage to Juvy Salazar under Article 36 of the Family Code. Costs against respondent Nestor Galang.

SO ORDERED.

Carpio Morales, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

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[41] See *Paz v. Paz*, G.R. No. 166579, February 18, 2010, 613 SCRA 195.

[42] *Supra* note 32.

[*] Designated additional member vice Associate Justice Maria Lourdes P. A. Sereno, per Special Order No. 997, dated June 6, 2011.

FIRST DIVISION

[G.R. No. 168382. June 6, 2011]

AIRLINE PILOTS ASSOCIATION OF THE PHILIPPINES, *petitioner, vs.* **PHILIPPINE AIRLINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; PRINCIPLE OF IMMUTABILITY OF JUDGMENT; ONCE A DECISION HAS ACQUIRED FINALITY, IT BECOMES IMMUTABLE AND UNALTERABLE, THUS CAN NO LONGER BE MODIFIED IN ANY RESPECT.— In the instant case, ALPAP seeks for a conduct of a proceeding to determine who among its members and officers actually participated in the illegal strike because, it insists, the June 1, 1999 DOLE Resolution did not make such determination. However, as correctly ruled by Sto. Tomas and Imson and affirmed by the CA, such proceeding would entail a reopening of a final judgment which could not be permitted by this Court. Settled in law is that once a decision has acquired finality, it becomes immutable and unalterable, thus can no longer be modified in any respect. Subject to certain recognized exceptions, the principle of immutability leaves the judgment undisturbed as "nothing further can be done except to execute it."

2. ID.; ID.; ID.; SHALL BE READ IN CONNECTION WITH THE ENTIRE RECORD AND CONSTRUED ACCORDINGLY.— [T]he dispositive portion of the DOLE Resolution does not specifically enumerate the names of those who actually participated in the strike but only mentions that those strikers who failed to heed the return-to-work order are deemed to have lost their employment. This omission, however, cannot prevent an effective execution of the decision. As was held in *Reinsurance Company of the Orient, Inc. v. Court of Appeals*, any ambiguity may be clarified by reference primarily to the body of the decision or supplementary to the pleadings previously filed in the case. In any case, especially when there is an ambiguity, "a judgment shall be read in connection with the entire record and construed accordingly."

3. ID.; ID.; ACTIONS; A PROCEEDING MAY NOT BE REOPENED UPON GROUNDS ALREADY AVAILABLE TO THE PARTIES DURING THE PENDENCY OF SUCH PROCEEDINGS; CASE AT BAR.— ALPAP harps on the inequity of PAL's termination of its officers and members considering that some of them were on leave or were abroad at the time of the strike. Some were even merely barred from returning to their work which excused them for not complying immediately with the return-to-work order. Again, a scrutiny of the records of the case discloses that these allegations were raised at a very late stage, that is, after the judgment has finally decreed that the returning pilots' termination was legal. Interestingly, these defenses were not raised and discussed when the case was still pending before the DOLE Secretary, the CA or even before this Court. We agree with the position taken by Sto. Tomas and Imson that from the time the return-to-work order was issued until this Court rendered its April 10, 2002 resolution dismissing ALPAP's petition, no ALPAP member has claimed that he was unable to comply with the return-to-work directive because he was either on leave, abroad or unable to report for some reason. These defenses were raised in ALPAP's twin motions only after the Resolution in G.R. No. 152306 reached finality in its last ditch effort to obtain a favorable ruling. It has been held that a proceeding may not be reopened upon grounds already available to the parties during the pendency of such proceedings; otherwise, it may give way to vicious and vexatious proceedings. ALPAP was given all the opportunities to present its evidence and arguments. It cannot now complain that it was denied due process.

APPEARANCES OF COUNSEL

Perlas De Guzman Antonio and Herbosa Law Offices for petitioner.

Office of the General Counsel (Lucio Tan Group of Companies) for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

A judgment that has attained finality is immutable and could thus no longer be modified.

By this Petition for Review on *Certiorari*,[1] petitioner Airline Pilots Association of the Philippines (ALPAP) assails the Decision[2] dated December 22, 2004 and Resolution[3] dated May 30, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 79686, which found no grave abuse of discretion on the part of Department of Labor and Employment (DOLE) Secretary Patricia A. Sto. Tomas (Sto. Tomas) and Acting Secretary Manuel G. Imson (Imson) in issuing their respective letters dated July 30, 2003[4] and July 4, 2003,[5] in connection with ALPAP's motions[6] filed in NCMB NCR NS 12-514-97.

Factual Antecedents

The present controversy stemmed from a labor dispute between respondent Philippine Airlines, Inc. (PAL) and ALPAP, the legitimate labor organization and exclusive bargaining agent of all commercial pilots of PAL. Claiming that PAL committed unfair labor practice, ALPAP filed on December 9, 1997, a notice of strike[7] against respondent PAL with the DOLE, docketed as NCMB NCR NS 12-514-97. Upon PAL's petition and considering that its continued operation is impressed with public interest, the DOLE Secretary assumed jurisdiction over the labor dispute per Order[8] dated December 23, 1997, the dispositive portion of which reads:

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[1] *Rollo*, pp. 66-91.

[2] Annex "B" of the Petition, *id.* at 97-106; penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Eugenio S. Labitoria and Bienvenido L. Reyes.

[3] Annex "A", *id.* at 93-95.

[4] Annex "C", *id.* at 107.

[5] Annex "D", *id.* at 108-110.

[6] ALPAP's Motion dated January 10, 2003 and Supplemental Motion dated January 27, 2003, Annexes "F" and "E", *id.* at 113-117 and 111-112, respectively.

[7] Annex "1" of PAL's Comment to the Petition, *id.* at 158.

[8] Annex "2", *id.* at 160-162.

WHEREFORE, this Office hereby assumes jurisdiction over the labor dispute at the Philippine Airlines, Inc. pursuant to Article 263 (g) of the Labor Code, as amended.

Accordingly, all strikes and lockouts at the Philippine Airlines, Inc., whether actual or impending, are hereby strictly prohibited. The parties are also enjoined from committing any act that may exacerbate the situation.

The parties are further directed to submit their respective position papers within ten (10) days from receipt of this Order.

SO ORDERED.[9]

In a subsequent Order dated May 25, 1998,[10] the DOLE Secretary reiterated the prohibition contained in the December 23, 1997 Order. Despite such reminder to the parties, however, ALPAP went on strike on June 5, 1998. This constrained the DOLE, through then Secretary Cresenciano B. Trajano, to issue a return-to-work order[11] on June 7, 1998. However, it was only on June 26, 1998 when ALPAP officers and members reported back to work as shown in a logbook[12] signed by each of them. As a consequence, PAL refused to accept the returning pilots for their failure to comply immediately with the return-to-work order.

On June 29, 1998, ALPAP filed with the Labor Arbiter a complaint for illegal lockout[13] against PAL, docketed as NLRC NCR Case No. 00-06-05253-98. ALPAP contended that its counsel received a copy of the return-to-work order only on June 25, 1998, which justified their non-compliance therewith until June 26, 1998. It thus prayed that PAL be ordered to accept unconditionally all officers and members of ALPAP without any loss of pay and seniority and to pay whatever salaries and benefits due them pursuant to existing contracts of employment.

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[9] *Id.* at 162.

[10] Annex "4", *id.* at 165-166.

[11] Annex "5", *id.* at 167-168.

[12] Annexes "8"-"8-M", *id.* at 188-201.

[13] Annex "9", *id.* at 202-205.

On PAL's motion, the Labor Arbiter consolidated the illegal lockout case with NCMB NCR NS 12-514-97 (strike case) pending before the DOLE Secretary since the controversy presented in the lockout case is an offshoot of the labor dispute over which the DOLE Secretary has assumed jurisdiction and because the factual allegations in both cases are interrelated.[14] In a Resolution dated January 18, 1999,[15] the NLRC sustained the consolidation of the illegal lockout case with the strike case, opining that the DOLE Secretary has the authority to resolve all incidents attendant to his return-to-work order.

Through then DOLE Secretary Bienvenido E. Laguesma, a Resolution[16] dated June 1, 1999 was rendered in NCMB NCR NS 12-514-97, declaring the strike conducted by ALPAP on June 5, 1998 illegal and pronouncing the loss of employment status of its officers and members who participated in the strike in defiance of the June 7, 1998 return-to-work order. The decretal portion of the Resolution reads:

> WHEREFORE, PREMISES CONSIDERED, this Office hereby:
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> a. x x x x x x x x x;
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> b. DECLARES the strike conducted by ALPAP on June 5, 1998 and thereafter as illegal for being procedurally infirm and in open defiance of the return-to-work order of June 7, 1998 and, consequently, the strikers are deemed to have lost their employment status; and
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> c. DISMISSES the complaint for illegal lockout for lack of merit.
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> SO ORDERED.[17]

In a Resolution[18] dated July 23, 1999, ALPAP's motion for reconsideration was denied. Thus, ALPAP filed a Petition for

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[14] Labor Arbiter Order dated August 21, 1998, Annex "10", *id.* at 206-211.

[15] Annex "11", *id.* at 212-224.

[16] Annex "13", *id.* at 273-279.

[17] *Id.* at 279.

[18] Annex "14", *id.* at 280-282.

Certiorari[19] with the CA assailing both the June 1, 1999 and July 23, 1999 DOLE Resolutions. The case was docketed as CA-G.R. SP No. 54880.

Meanwhile, several ALPAP members filed separate individual complaints for illegal dismissal and non-payment of monetary benefits against PAL with the Labor Arbiters of the NLRC, questioning their termination as a result of the strike staged by other ALPAP members on June 5, 1998.[20] While these cases were pending, the CA, in CA-G.R. SP No. 54880, affirmed and upheld the June 1, 1999 and July 23, 1999 DOLE Resolutions in its Decision[21] dated August 22, 2001. ALPAP then sought a review of the CA Decision, thereby elevating the matter to this Court docketed as G.R. No. 152306. On April 10, 2002, this Court dismissed ALPAP's petition for failure to show that the CA committed grave abuse of discretion or a reversible error.[22] This Court's Resolution attained finality on August 29, 2002.[23]

Proceedings before the DOLE Secretary

On January 13, 2003, ALPAP filed before the Office of the DOLE Secretary a Motion[24] in NCMB NCR NS 12-514-97, requesting the said office to conduct an appropriate legal proceeding to determine who among its officers and members should be reinstated or deemed to have lost their employment with PAL for their actual participation in the strike conducted in June 1998. ALPAP contended that there is a need to conduct a proceeding in order to determine who actually participated in

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[19] Annex "15", *id.* at 283-326.

[20] See Annexes "19", "20" and "21", *id.* at 344-355, 356-361 and 362-381, respectively; See also Annexes "K", "L" and "M" of petitioner ALPAP's Consolidated Reply, *id.* at 744-786, 787-841 and 842-854, respectively.

[21] Annex "16" of PAL's Comment to the Petition, *id.* at 327-341.

[22] See Resolution dated April 10, 2002 in G.R. No. 152306, Annex "17", *id.* at 342.

[23] See Entry of Judgment, Annex "18", *id.* at 343.

[24] ALPAP Motion dated January 10, 2003, Annex "F" of the Petition, *id.* at 113-117.

the illegal strike since not only the striking workers were dismissed by PAL but all of ALPAP's officers and members, even though some were on official leave or abroad at the time of the strike. It also alleged that there were some who joined the strike and returned to work but were asked to sign new contracts of employment, which abrogated their earned seniority. Also, there were those who initially defied the return-to-work order but immediately complied with the same after proper receipt thereof by ALPAP's counsel. However, PAL still refused to allow them to enter its premises. According to ALPAP, such measure, as to meet the requirements of due process, is essential because it must be first established that a union officer or member has participated in the strike or has committed illegal acts before they could be dismissed from employment. In other words, a fair determination of who must suffer the consequences of the illegal strike is indispensable since a significant number of ALPAP members did not at all participate in the strike. The motion also made reference to the favorable recommendation rendered by the Freedom of Association Committee of the International Labour Organization (ILO) in ILO Case No. 2195 which requested the Philippine Government "to initiate discussions in order to consider the possible reinstatement in their previous employment of all ALPAP's workers who were dismissed following the strike staged in June 1998."[25] A Supplemental Motion[26] was afterwards filed by ALPAP on January 28, 2003, this time asking the DOLE Secretary to resolve all issues relating to the entitlement to employment benefits by the officers and members of ALPAP, whether terminated or not.

In its Comment[27] to ALPAP's motions, PAL argued that the motions cannot legally prosper since the DOLE Secretary has no authority to reopen or review a final judgment of the Supreme Court relative to NCMB NCR NS 12-514-97; that the requested

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[25] See CA *rollo*, pp. 273-278.

[26] ALPAP Supplemental Motion dated January 27, 2003, Annex "E" of the Petition, *rollo* pp. 111-112.

[27] CA *rollo*, pp. 203-216.

proceeding is no longer necessary as the CA or this Court did not order the remand of the case to the DOLE Secretary for such determination; that the NLRC rather than the DOLE Secretary has jurisdiction over the motions as said motions partake of a complaint for illegal dismissal with monetary claims; and that all money claims are deemed suspended in view of the fact that PAL is under receivership.

On January 24, 2003, the DOLE called the parties to a hearing to discuss and clarify the issues raised in ALPAP's motions.[28] In a letter dated July 4, 2003[29] addressed to ALPAP President, Capt. Ismael C. Lapus, Jr., then Acting DOLE Secretary, Imson, resolved ALPAP's motions in the following manner:

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After a careful consideration of the factual antecedents, applicable legal principles and the arguments of the parties, this Office concludes that NCMB-NCR-NS-12-514-97 has indeed been resolved with finality by the highest tribunal of the land, the Supreme Court. Being final and executory, this Office is bereft of authority to reopen an issue that has been passed upon by the Supreme Court.

It is important to note that in pages 18 to 19 of ALPAP's Memorandum, it admitted that individual complaints for illegal dismissal have been filed by the affected pilots before the NLRC. It is therefore an implied recognition on the part of the pilots that the remedy to their present dilemma could be found in the NLRC.

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Thus, to avoid multiplicity of suits, splitting causes of action and forum-shopping which are all obnoxious to an orderly administration of justice, it is but proper to respect the final and executory order of the Supreme Court in this case as well as the jurisdiction of the NLRC over the illegal dismissal cases. Since ALPAP and the pilots have opted to seek relief from the NLRC, this Office should respect the authority of that Commission to resolve the dispute in the normal

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[28] TSN of January 24, 2003 hearing in NCMB NCR NS-12-514-97, Annex "G" of ALPAP's Consolidated Reply, *rollo* pp. 658-671.

[29] *Supra* note 5.

course of law. This Office will no longer entertain any further initiatives to split the jurisdiction or to shop for a forum that shall only foment multiplicity of labor disputes. Parties should not jump from one forum to another. This Office will make sure of that.

By reason of the final ruling of the Honorable Supreme Court, the erring pilots have lost their employment status and second, because these pilots have filed cases to contest such loss before another forum, the Motion and Supplemental Motion of ALPAP as well as the arguments raised therein are merely **NOTED** by this Office.

ALPAP filed its motion for reconsideration[30] arguing that the issues raised in its motions have remained unresolved hence, it is the duty of DOLE to resolve the same it having assumed jurisdiction over the labor dispute. ALPAP also denied having engaged in forum shopping as the individual complainants who filed the cases before the NLRC are separate and distinct from ALPAP and that the causes of action therein are different. According to ALPAP, there was clear abdication of duty when then Acting Secretary Imson refused to properly act on the motions. In a letter dated July 30, 2003,[31] Secretary Sto. Tomas likewise merely noted ALPAP's motion for reconsideration, reiterating the DOLE's stand to abide by the final and executory judgment of the Supreme Court.

Proceedings before the Court of Appeals

ALPAP filed a petition for *certiorari*[32] with the CA, insisting that the assailed letters dated July 4, 2003 and July 30, 2003, which merely noted its motions, were issued in grave abuse of discretion.

In their Comment,[33] Sto. Tomas and Imson argued that the matter of who among ALPAP's members and officers participated in the strike was already raised and resolved by the CA and this

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[30] CA *rollo*, pp. 34-43.

[31] *Supra* note 4.

[32] CA *rollo*, pp. 2-26.

[33] *Id.* at 296-313.

Court. By filing the motions, ALPAP, in effect, initiated a termination case which is properly cognizable by the Labor Arbiter. And since several ALPAP members have already filed complaints for illegal dismissal and claims for salaries and benefits with the Labor Arbiter, ALPAP is thus engaging in forum-shopping when it filed the subject motions.

PAL, on the other hand, also claimed in its Comment[34] that ALPAP violated the principles governing forum shopping, *res judicata* and multiplicity of suits. It opined that when ALPAP questioned the loss of employment status of "all its officers and members and asked for their reinstatement" in its appeal to reverse the Decision of the DOLE Secretary in the consolidated strike and illegal lockout cases, the matter of who should be meted out the penalty of dismissal was already resolved with finality by this Court and could not anymore be modified.

The CA, in its Decision dated December 22, 2004,[35] dismissed the petition. It found no grave abuse of discretion on the part of Sto. Tomas and Imson in refusing to conduct the necessary proceedings to determine issues relating to ALPAP members' employment status and entitlement to employment benefits. The CA held that both these issues were among the issues taken up and resolved in the June 1, 1999 DOLE Resolution which was affirmed by the CA in CA-G.R. SP No. 54880 and subsequently determined with finality by this Court in G.R. No. 152306. Therefore, said issues could no longer be reviewed. The CA added that Sto. Tomas and Imson merely acted in deference to the NLRC's jurisdiction over the illegal dismissal cases filed by individual ALPAP members.

ALPAP moved for reconsideration which was denied for lack of merit in CA Resolution[36] dated May 30, 2005.

Hence, this petition.

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[34] *Id.* at 315-345.

[35] *Supra* note 2.

[36] *Supra* note 3.

Issues

I.

WHETHER X X X THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT DECLARED THAT THE PUBLIC RESPONDENT DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT REFUSED TO ACT ON ALPAP'S MOTIONS AND MERELY NOTED THE SAME.

II.

WHETHER X X X THE HONORABLE COURT OF APPEALS COMMITTED GRAVE MISTAKE IN DECLARING THAT THE 01 JUNE 1999 RESOLUTION OF THE DEPARTMENT OF LABOR AND EMPLOYMENT HAS ALREADY TAKEN UP AND RESOLVED THE ISSUE OF WHO AMONG THE ALPAP MEMBERS ARE DEEMED TO HAVE LOST THEIR EMPLOYMENT STATUS.[37]

ALPAP contends that it was erroneous for Sto. Tomas and Imson to merely take note of the motions when the issues raised therein sprang from the DOLE Secretary's exercise of authority to assume jurisdiction over a labor dispute which have nevertheless remained unresolved. ALPAP prays that the assailed letters dated July 4, 2003 and July 30, 2003 be declared null and void. It likewise seeks for a conduct of a proceeding to determine who actually participated in the illegal strike of June 1998 and consequently who, from its vast membership, should be deemed to have lost employment status.

Our Ruling

We deny the petition.

There was no grave abuse of discretion on the part of Sto. Tomas and Imson in merely noting ALPAP's twin motions in due deference to a final and immutable judgment rendered by the Supreme Court.

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[37] *Rollo,* pp. 78-79.

From the June 1, 1999 DOLE Resolution, which declared the strike of June 5, 1998 as illegal and pronounced all ALPAP officers and members who participated therein to have lost their employment status, an appeal was taken by ALPAP. This was dismissed by the CA in CA-G.R. SP No. 54880, which ruling was affirmed by this Court and which became final and executory on August 29, 2002.

In the instant case, ALPAP seeks for a conduct of a proceeding to determine who among its members and officers actually participated in the illegal strike because, it insists, the June 1, 1999 DOLE Resolution did not make such determination. However, as correctly ruled by Sto. Tomas and Imson and affirmed by the CA, such proceeding would entail a reopening of a final judgment which could not be permitted by this Court. Settled in law is that once a decision has acquired finality, it becomes immutable and unalterable, thus can no longer be modified in any respect.[38] Subject to certain recognized exceptions,[39] the principle of immutability leaves the judgment undisturbed as "nothing further can be done except to execute it."[40]

True, the dispositive portion of the DOLE Resolution does not specifically enumerate the names of those who actually participated in the strike but only mentions that those strikers who failed to heed the return-to-work order are deemed to have lost their employment. This omission, however, cannot prevent an effective execution of the decision. As was held in *Reinsurance Company of the Orient, Inc. v. Court of Appeals*,[41] any ambiguity

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[38] *Temic Semiconductors, Inc. Employees Union (TSIEU)-FFW v. Federation of Free Workers (FFW)*, G.R. No. 160993, May 20, 2008, 554 SCRA 122, 134.

[39] Exceptions to the rule on the immutability of a final judgment are: "(1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable." (*Id.*)

[40] *Tamayo v. People,* G.R. No. 174698, July 28, 2008, 560 SCRA 312, 322-323.

[41] G.R. No. 61250, June 3, 1991, 198 SCRA 19, 28.

may be clarified by reference primarily to the body of the decision or supplementary to the pleadings previously filed in the case. In any case, especially when there is an ambiguity, "a judgment shall be read in connection with the entire record and construed accordingly."[42]

There is no necessity to conduct a proceeding to determine the participants in the illegal strike or those who refused to heed the return to work order because the ambiguity can be cured by reference to the body of the decision and the pleadings filed.

A review of the records reveals that in NCMB NCR NS 12-514-97, the DOLE Secretary declared the ALPAP officers and members to have lost their employment status based on either of two grounds, *viz*: their participation in the illegal strike on June 5, 1998 or their defiance of the return-to-work order of the DOLE Secretary. The records of the case unveil the names of each of these returning pilots. The logbook[43] with the heading "Return To Work Compliance/ Returnees" bears their individual signature signifying their conformity that they were among those workers who returned to work only on June 26, 1998 or after the deadline imposed by DOLE. From this crucial and vital piece of evidence, it is apparent that each of these pilots is bound by the judgment. Besides, the complaint for illegal lockout was filed on behalf of all these returnees. Thus, a finding that there was no illegal lockout would be enforceable against them. In fine, only those returning pilots, irrespective of whether they comprise the entire membership of ALPAP, are bound by the June 1, 1999 DOLE Resolution.

ALPAP harps on the inequity of PAL's termination of its officers and members considering that some of them were on

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[42] *Filinvest Credit Corporation v. Court of Appeals,* G.R. No. 100644, September 10, 1993, 226 SCRA 257, 267.

[43] *Supra* note 12.

leave or were abroad at the time of the strike. Some were even merely barred from returning to their work which excused them for not complying immediately with the return-to-work order. Again, a scrutiny of the records of the case discloses that these allegations were raised at a very late stage, that is, after the judgment has finally decreed that the returning pilots' termination was legal. Interestingly, these defenses were not raised and discussed when the case was still pending before the DOLE Secretary, the CA or even before this Court. We agree with the position taken by Sto. Tomas and Imson that from the time the return-to-work order was issued until this Court rendered its April 10, 2002 resolution dismissing ALPAP's petition, no ALPAP member has claimed that he was unable to comply with the return-to-work directive because he was either on leave, abroad or unable to report for some reason. These defenses were raised in ALPAP's twin motions only after the Resolution in G.R. No. 152306 reached finality in its last ditch effort to obtain a favorable ruling. It has been held that a proceeding may not be reopened upon grounds already available to the parties during the pendency of such proceedings; otherwise, it may give way to vicious and vexatious proceedings.[44] ALPAP was given all the opportunities to present its evidence and arguments. It cannot now complain that it was denied due process.

Relevant to mention at this point is that when NCMB NCR NS 12-514-97 (strike/illegal lockout case) was still pending, several complaints for illegal dismissal were filed before the Labor Arbiters of the NLRC by individual members of ALPAP, questioning their termination following the strike staged in June 1998. PAL likewise manifests that there is a pending case involving a complaint[45] for the recovery of accrued and earned benefits belonging to ALPAP members. Nonetheless, the pendency of the foregoing cases should not and could not affect the character of our disposition over the instant case. Rather, these cases

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[44] *San Pablo Oil Factory, Inc. and Schetelig v. CIR [Court of Industrial Relations] and Kapatirang Manggagawa Assn.*, 116 Phil. 941, 945 (1962).

[45] Annex "22" of PAL's Comment to the Petition, *rollo* pp. 382-387.

should be resolved in a manner consistent and in accord with our present disposition for effective enforcement and execution of a final judgment.

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision of the Court of Appeals dated December 22, 2004 and Resolution dated May 30, 2005 in CA-G.R. SP No. 79686 are *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Abad,[*] and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 175367. June 6, 2011]

DANILO A. AURELIO, *petitioner, vs.* **VIDA MA. CORAZON P. AURELIO,** *respondent.*

SYLLABUS

1. CIVIL LAW; MARRIAGE; ANNULMENT OF MARRIAGE; PSYCHOLOGICAL INCAPACITY; GUIDELINES IN DISPOSING CASES INVOLVING THE SAME.— In *Republic v. Court of Appeals*, this Court created the *Molina* guidelines to aid the courts in the disposition of cases involving psychological incapacity, to wit: (1) Burden of proof to show the nullity of the marriage belongs to the plaintiff. (2) The root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) **clearly explained in the decision**. (3) The incapacity must be proven to be existing

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[*] Per Raffle dated May 11, 2011.

at "the time of the celebration" of the marriage. (4) Such incapacity must also be shown to be medically or clinically permanent or incurable. (5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. (6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife, as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, **proven by evidence and included in the text of the decision**. (7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. (8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. **No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition**. This Court, pursuant to Supreme Court Administrative Matter No. 02-11-10, has modified the above pronouncements, particularly Section 2(d) thereof, stating that *the certification of the Solicitor General required in the Molina case is dispensed with to avoid delay.* Still, Article 48 of the Family Code mandates that the appearance of the prosecuting attorney or fiscal assigned be on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.

2. ID.; ID.; ID.; ID.; PRESENCE OF PSYCHOLOGICAL INCAPACITY IS A FACTUAL ISSUE TO BE RESOLVED BY THE TRIAL COURT BASED ON ATTENDANT FACTS OF THE CASE.— It bears to stress that whether or not petitioner and respondent are psychologically incapacitated to fulfill their marital obligations is a matter for the RTC to decide at the first instance. A perusal of the *Molina* guidelines would show that the same contemplate a situation wherein the parties have presented their evidence, witnesses have testified, and that a decision has been reached by the court after due hearing. Such process can be gleaned from guidelines 2, 6 and 8, which refer to a decision rendered by the RTC after trial on the merits. It would certainly be too burdensome to ask this Court to resolve at first instance whether the allegations contained in the petition

are sufficient to substantiate a case for psychological incapacity. Let it be remembered that each case involving the application of Article 36 must be treated distinctly and judged not on the basis of a priori assumptions, predilections or generalizations but according to its own attendant facts. Courts should interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals. It would thus be more prudent for this Court to remand the case to the RTC, as it would be in the best position to scrutinize the evidence as well as hear and weigh the evidentiary value of the testimonies of the ordinary witnesses and expert witnesses presented by the parties.

3. ID.; ID.; ID.; MOTION TO DISMISS PETITION FOR NULLITY OF MARRIAGE; DENIAL THEREOF AFFIRMED, AND ALLEGED ABUSE OF DISCRETION MUST BE GRAVE.— Given the allegations in respondent's petition for nullity of marriage, this Court rules that the RTC did not commit grave abuse of discretion in denying petitioner's motion to dismiss. *By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law*. Even assuming *arguendo* that this Court were to agree with petitioner that the allegations contained in respondent's petition are insufficient and that the RTC erred in denying petitioner's motion to dismiss, the same is merely an error of judgment correctible by appeal and not an abuse of discretion correctible by *certiorari*.

4. ID.; ID.; ID.; ID.; ID.; PROPER REMEDY FOR DENIAL OF MOTION TO DISMISS PETITION FOR NULLITY OF MARRIAGE IS TO PROCEED TO TRIAL AND IN CASE OF AN ADVERSE DECISION, APPEAL SAID DECISION IN DUE TIME.— As a general rule, the denial of a motion to dismiss, which is an interlocutory order, is not reviewable by *certiorari*. Petitioner's remedy is to reiterate the grounds in his motion to dismiss, as defenses in his answer to the petition for nullity of marriage, proceed trial and, in case of an adverse decision,

appeal the decision in due time. The existence of that adequate remedy removed the underpinnings of his petition for *certiorari* in the CA.

APPEARANCES OF COUNSEL

A.M. Sison, Jr. & Partners Law Office for petitioner.
Ching Mendoza QuilasFlorendo Biolena Ching and Partners for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari*,[1] under Rule 45 of the Rules of Court, seeking to set aside the October 6, 2005 Decision[2] and October 26, 2006 Resolution,[3] of the Court of Appeals (CA), in CA-G.R. SP No. 82238.

The facts of the case are as follows:

Petitioner Danilo A. Aurelio and respondent Vida Ma. Corazon Aurelio were married on March 23, 1988. They have two sons, namely: Danilo Miguel and Danilo Gabriel.

On May 9, 2002, respondent filed with the Regional Trial Court (RTC) of Quezon City, Branch 94, a Petition for Declaration of Nullity of Marriage.[4] In her petition, respondent alleged that both she and petitioner were psychologically incapacitated of performing and complying with their respective essential marital obligations. In addition, respondent alleged that such state of psychological incapacity was present prior and even during the

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

[2] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Marina L. Buzon and Danilo B. Pine, concurring; *id.* at 31-35.

[3] *Rollo*, pp. 36-37.

[4] *Id.* at 42-47.

time of the marriage ceremony. Hence, respondent prays that her marriage be declared null and void under Article 36 of the Family Code which provides:

> Article 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void, even if such incapacity becomes manifest only after its solemnization.

As succinctly summarized by the CA, contained in respondent's petition are the following allegations, to wit:

> x x x The said petition alleged, *inter alia*, that both husband and wife are psychologically incapable of performing and complying with their essential marital obligations. Said psychological incapacity was existing prior and at the time of the marriage. Said psychological incapacity was manifested by lack of financial support from the husband; his lack of drive and incapacity to discern the plight of his working wife. The husband exhibited consistent jealousy and distrust towards his wife. His moods alternated between hostile defiance and contrition. He refused to assist in the maintenance of the family. He refused to foot the household bills and provide for his family's needs. He exhibited arrogance. He was completely insensitive to the feelings of his wife. He liked to humiliate and embarrass his wife even in the presence of their children.
>
> Vida Aurelio, on the other hand, is effusive and displays her feelings openly and freely. Her feelings change very quickly – from joy to fury to misery to despair, depending on her day-to-day experiences. Her tolerance for boredom was very low. She was emotionally immature; she cannot stand frustration or disappointment. She cannot delay to gratify her needs. She gets upset when she cannot get what she wants. Self-indulgence lifts her spirits immensely. Their hostility towards each other distorted their relationship. Their incapacity to accept and fulfill the essential obligations of marital life led to the breakdown of their marriage. Private respondent manifested psychological aversion to cohabit with her husband or to take care of him. The psychological make-up of private respondent was evaluated by a psychologist, who found that the psychological incapacity of both husband and wife to perform their marital obligations is grave, incorrigible and incurable. Private respondent suffers from a Histrionic Personality Disorder with Narcissistic features; whereas petitioner suffers from passive aggressive (negativistic) personality

disorder that renders him immature and irresponsible to assume the normal obligations of a marriage.[5]

On November 8, 2002, petitioner filed a Motion to Dismiss[6] the petition. Petitioner principally argued that the petition failed to state a cause of action and that it failed to meet the standards set by the Court for the interpretation and implementation of Article 36 of the Family Code.

On January 14, 2003, the RTC issued an Order[7] denying petitioner's motion.

On February 21, 2003, petitioner filed a Motion for Reconsideration, which was, however, denied by the RTC in an Order[8] dated December 17, 2003. In denying petitioner's motion, the RTC ruled that respondent's petition for declaration of nullity of marriage complied with the requirements of the *Molina* doctrine, and whether or not the allegations are meritorious would depend upon the proofs presented by both parties during trial, to wit:

> A review of the petition shows that it observed the requirements in Republic vs. Court of Appeals (268 SCRA 198), otherwise known as the Molina Doctrine. There was allegation of the root cause of the psychological incapacity of both the petitioner and the respondent contained in paragraphs 12 and 13 of the petition. The manifestation of juridical antecedence was alleged in paragraphs 5 and 6 of the petition. The allegations constituting the gravity of psychological incapacity were alleged in paragraph 9 (a to l) of the petition. The incurability was alleged in paragraph 10 of the petition. Moreover, the clinical finding of incurability was quoted in paragraph 15 of the petition. There is a cause of action presented in the petition for the nullification of marriage under Article 36 of the Family Code.
>
> Whether or not the allegations are meritorious depends upon the proofs to be presented by both parties. This, in turn, will entail the

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[5] *Id.* at 32.

[6] *Id.* at 49-57.

[7] *Id.* at 58.

[8] *Id.* at 59-60.

presentation of evidence which can only be done in the hearing on the merits of the case. If the Court finds that there are (sic) preponderance of evidence to sustain a nullification, then the cause of the petition shall fail. Conversely, if it finds, through the evidence that will be presented during the hearing on the merits, that there are sufficient proofs to warrant nullification, the Court shall declare its nullity.[9]

On February 16, 2004, petitioner appealed the RTC decision to the CA *via* petition for *certiorari*[10] under Rule 65 of the Rules of Court.

On October 6, 2005, the CA rendered a Decision dismissing the petition, the dispositive portion of which reads:

WHEREFORE, premises considered, [the] instant petition is DISMISSED.

SO ORDERED.[11]

In a Resolution dated October 26, 2004, the CA dismissed petitioner's motion for reconsideration.

In its Decision, the CA affirmed the ruling of the RTC and held that respondent's complaint for declaration of nullity of marriage when scrutinized in juxtaposition with Article 36 of the Family Code and the *Molina* doctrine revealed the existence of a sufficient cause of action.

Hence, herein petition, with petitioner raising two issues for this Court's consideration, to wit:

I.

WHETHER OR NOT THE COURT OF APPEALS VIOLATED THE APPLICABLE LAW AND JURISPRUDENCE WHEN IT HELD THAT THE ALLEGATIONS CONTAINED IN THE PETITION FOR DECLARATION OF THE NULLITY OF MARRIAGE ARE

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[9] *Id.* at 59-60.

[10] CA *rollo*, pp. 2-22.

[11] *Rollo*, p. 35.

SUFFICIENT FOR THE COURT TO DECLARE THE NULLITY OF THE MARRIAGE BETWEEN VIDA AND DANILO.

II.

WHETHER OR NOT THE COURT OF APPEALS VIOLATED THE APPLICABLE LAW AND JURISPRUDENCE WHEN IT DENIED PETITIONER'S ACTION FOR *CERTIORARI* DESPITE THE FACT THAT THE DENIAL OF HIS MOTION TO DISMISS BY THE TRIAL COURT IS PATENTLY AND UTTERLY TAINTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; AND THAT APPEAL IN DUE COURSE IS NOT A PLAIN, ADEQUATE OR SPEEDY REMEDY UNDER THE CIRCUMSTANCES.[12]

Before anything else, it bears to point out that had respondent's complaint been filed after March 15, 2003, this present petition would have been denied since Supreme Court Administrative Matter No. 02-11-10[13] prohibits the filing of a motion to dismiss in actions for annulment of marriage. Be that as it may, after a circumspect review of the arguments raised by petitioner herein, this Court finds that the petition is not meritorious.

In *Republic v. Court of Appeals*,[14] this Court created the *Molina* guidelines to aid the courts in the disposition of cases involving psychological incapacity, to wit:

(1) Burden of proof to show the nullity of the marriage belongs to the plaintiff.

(2) The root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint,

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[12] *Id* at 17.

[13] **A.M. No. 02-11-10-SC (RE: PROPOSED RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES)**

Section 7. *Motion to Dismiss.* - No motion to dismiss the petition shall be allowed, except on the ground of lack of jurisdiction over the subject matter or over the parties; provided, however, that any other ground that might warrant a dismissal of the case may be raised as an affirmative defense in an answer.

[14] 335 Phil. 664 (1997).

(c) sufficiently proven by experts and (d) **clearly explained in the decision**.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable.

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife, as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, **proven by evidence and included in the text of the decision**.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts.

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. **No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition**.[15]

This Court, pursuant to Supreme Court Administrative Matter No. 02-11-10, has modified the above pronouncements, particularly Section 2(d) thereof, stating that *the certification of the Solicitor General required in the Molina case is dispensed with to avoid delay.* Still, Article 48 of the Family Code mandates that the appearance of the prosecuting attorney or fiscal assigned be on behalf of the State to take steps to prevent collusion

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[15] *Id.* at 676-679. (Emphasis supplied).

between the parties and to take care that evidence is not fabricated or suppressed.[16]

Petitioner anchors his petition on the premise that the allegations contained in respondent's petition are insufficient to support a declaration of nullity of marriage based on psychological incapacity. Specifically, petitioner contends that the petition failed to comply with three of the *Molina* guidelines, namely: that the root cause of the psychological incapacity must be alleged in the complaint; that such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage; and that the non-complied marital obligation must be stated in the petition.[17]

First, contrary to petitioner's assertion, this Court finds that the root cause of psychological incapacity was stated and alleged in the complaint. We agree with the manifestation of respondent that the family backgrounds of both petitioner and respondent were discussed in the complaint as the root causes of their psychological incapacity. Moreover, a competent and expert psychologist clinically identified the same as the root causes.

Second, the petition likewise alleged that the illness of both parties was of such grave a nature as to bring about a disability for them to assume the essential obligations of marriage. The psychologist reported that respondent suffers from Histrionic Personality Disorder with Narcissistic Features. Petitioner, on the other hand, allegedly suffers from Passive Aggressive (Negativistic) Personality Disorder. The incapacity of both parties to perform their marital obligations was alleged to be grave, incorrigible and incurable.

Lastly, this Court also finds that the essential marital obligations that were not complied with were alleged in the petition. As can be easily gleaned from the totality of the petition, respondent's

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[16] *Antonio v. Reyes*, G.R. No. 155800, March 10, 2006, 484 SCRA 353, 375.

[17] *Rollo*, p. 25.

allegations fall under Article 68 of the Family Code which states that "the husband and the wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support."

It bears to stress that whether or not petitioner and respondent are psychologically incapacitated to fulfill their marital obligations is a matter for the RTC to decide at the first instance. A perusal of the *Molina* guidelines would show that the same contemplate a situation wherein the parties have presented their evidence, witnesses have testified, and that a decision has been reached by the court after due hearing. Such process can be gleaned from guidelines 2, 6 and 8, which refer to a decision rendered by the RTC after trial on the merits. It would certainly be too burdensome to ask this Court to resolve at first instance whether the allegations contained in the petition are sufficient to substantiate a case for psychological incapacity. Let it be remembered that each case involving the application of Article 36 must be treated distinctly and judged not on the basis of a priori assumptions, predilections or generalizations but according to its own attendant facts. Courts should interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals.[18] It would thus be more prudent for this Court to remand the case to the RTC, as it would be in the best position to scrutinize the evidence as well as hear and weigh the evidentiary value of the testimonies of the ordinary witnesses and expert witnesses presented by the parties.

Given the allegations in respondent's petition for nullity of marriage, this Court rules that the RTC did not commit grave abuse of discretion in denying petitioner's motion to dismiss. *By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary*

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[18] *Ngo Te v. Rowena Yu-Te*, G.R. No. 161793, February 13, 2009, 579 SCRA 193, 228.

or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[19] Even assuming *arguendo* that this Court were to agree with petitioner that the allegations contained in respondent's petition are insufficient and that the RTC erred in denying petitioner's motion to dismiss, the same is merely an error of judgment correctible by appeal and not an abuse of discretion correctible by *certiorari*.[20]

Finally, the CA properly dismissed petitioner's petition. As a general rule, the denial of a motion to dismiss, which is an interlocutory order, is not reviewable by *certiorari*. Petitioner's remedy is to reiterate the grounds in his motion to dismiss, as defenses in his answer to the petition for nullity of marriage, proceed trial and, in case of an adverse decision, appeal the decision in due time.[21] The existence of that adequate remedy removed the underpinnings of his petition for *certiorari* in the CA.[22]

WHEREFORE, premises considered the petition is *DENIED*. The October 6, 2005 Decision and October 26, 2006 Resolution of the Court of Appeals, in CA-G.R. SP No. 82238, are *AFFIRMED*.

SO ORDERED.

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

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[19] *Solvic Industrial Corporation v. National Labor Relations Commission*, G.R. No. 125548, September 25, 1998, 296 SCRA 432, 44 (Italics supplied); *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, 374 Phil 859, 864 (1999).

[20] *Philippine National Bank v. Sanao Marketing Corporation*, G.R. No. 153951, July 29, 2005, 465 SCRA 287, 306.

[21] *Harrison Foundry Machinery v. Harrison Foundry Workers' Association*, No. L-18432, June 29, 1963, 8 SCRA 430, 434.

[22] Rules of Court, Rule 65, Sec. 1.

THIRD DIVISION

[G.R. Nos. 178701 and 178754. June 6, 2011]

ZAFIRO L. RESPICIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); CORRUPT PRACTICES OF PUBLIC OFFICERS; WHERE A PUBLIC OFFICER ON DUTY ACTED WRONGFULLY, THUS CAUSED UNDUE INJURY OR GAVE UNWARRANTED BENEFIT; ELEMENTS.— Section 3(e) of RA 3019, violation for which petitioner was charged, provides: SEC. 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 (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions. The elements of the offense are thus: a) the accused is a public officer discharging administrative, judicial or official functions; b) one must have acted with manifest partiality, evident bad faith or inexcusable negligence; c) the action caused undue injury to any party including the Government, or has given any party unwarranted benefit, advantage or preference in the discharge of his functions.

2. ID.; ID.; ID.; ID.; ID.; ON ACTING WITH MANIFEST PARTIALITY OR EVIDENT BAD FAITH; DIFFERENTIATED AND BOTH APPRECIATED IN CASE AT BAR.— Partiality is differentiated from bad faith in this wise: "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "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 sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." The presence of manifest partiality and evident bad faith on the part of petitioner is gathered from his hardshell stance that he never was aware of a case filed in court [against deported Indians]. Even if indeed that were true, he had *priorly* been informed x x x that the Indians were undergoing preliminary investigation. In fact, at the witness stand, after vacillating, he *finally admitted* that the criminal charges against the Indians were "under preliminary investigation." x x x That petitioner's approval of the [Deportation] Order caused injury to the government, more particularly to its right and duty to prosecute a heinous crime, over and above the supposed "costs to our government" in having a "protracted court investigation as to [the Indians'] culpability," is without question. Needless to state, the deportation benefitted the Indians who would otherwise have stood trial.

3. ID.; FALSIFICATION; ELEMENTS; PRESENT IN CASE AT BAR.— The elements of falsification under paragraph 4 of Article 171of the Revised Penal Code for which petitioner was likewise charged are: a) the offender is a public officer; b) the accused takes advantage of his official position; c) accused knows that what he imputes is false; d) the falsity involves a material fact; e) there is a legal obligation for him to narrate the truth; f) and such untruthful statements are not contained in an affidavit or a statement required by law to be sworn in. x x x Here, petitioner untruthfully stated that there is no indication from the records that the Indians are the subject of any written complaints before any government agency nor before any private person. [T]hat statement is belied by documentary evidence.

APPEARANCES OF COUNSEL

Augusto Jimenez for petitioner.

D E C I S I O N

CARPIO MORALES, *J.*:

Zafiro L. Respicio (petitioner) appeals the October 13, 2006 Decision and July 3, 2007 Resolution of the Sandiganbayan[1] which found him guilty of violating Section 3(e) of Republic Act No. 3019[2] and of falsification under Article 171 of the Revised Penal Code.

From the six-volume records of the cases, the following facts are gathered:

Petitioner was the Commissioner of the Bureau of Immigration and Deportation (BID) when 11 Indian nationals (the Indians),[3] who were facing criminal charges for drug trafficking, left the country on August 12, 1994 on the basis of a BID Self-Deportation Order (SDO) No. 94-685 dated August 11, 1994

SDO No. 94-685 (the Order) reads:

O R D E R

It appears that on 09 August 1994, respondents filed their respective requests for self-deportation. They attached their airline tickets and travel documents.

The Bureau has not received any prior written request to hold the departure of the respondents from any government enforcement agency nor from any private person. *Moreover,* there is no indication from the records that the respondents are the subject of *any written complaints before any government agency*

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[1] Penned by Associate Justice Teresita V. Diaz-Baldos with the concurrence of Associate Justices Ma. Cristina Cortez Estrada and Roland B. Jurado.

[2] ANTI-GRAFT AND CORRUPT PRACTICES ACT.

[3] They are PRAMOD SHIRIAD JOGDEO, SHAIK EASAF, SUNKAVALIVENKATA LAKSHIMANARAYA, AUGUSTINE RAJESH, NAGAYYA VANAM, MOHAMMAD RAFIQUE, KAUSAR ALI, NABI PASHAKHAN GULAM, MENGESH BENDU JADHAV, LAXMAN KUSHABA KADAM and CAJETAN MERWYN MLVARES

nor before any private person. Hence, the Board of Commissioners subject to the Immigration Act, Sections 38 and 229-A, hereby authorizes the respondents' requests for self-deportation on the following conditions:

1) The respondents shall exhibit their outbound tickets prior to their release from detention;

2) The respondents shall pay an overtime fee in the amount of One Thousand Pesos (₱1,000.00) each which shall be remitted to the Bureau's Trust Fund; and

3) The respondents shall be escorted to the NAIA by authorized officers of the Bureau, the former being barred from returning to the Philippines.

x x x (emphasis, italics and underscoring supplied),

The Order was signed by petitioner and then Associate Commissioners Bayani Subido, Jr. (Subido) and Manuel C. Roxas (Roxas).[4]

The issuance by petitioner, Subido and Roxas of the Order resulted in the filing before the Sandiganbayan by the Office of the Special Prosecutor of Information dated October 10, 1994 against them, docketed as **Criminal Case No. 21545**, charging them of falsification of official document under Art. 171 of the Revised Penal Code as follows:

That on or about August 9, 1994, prior or subsequent thereto at the Bureau of Immigration and Deportation with its office situated in Intramuros, Manila, Philippines and within the jurisdiction of this Honorable Court, the following accused officials of the Bureau of Immigration and Deportation, namely: then Commissioner ZAFIRO L. RESPICIO; Associate Commissioner BAYANI M. SUBIDO, JR.; and Associate Commissioner MANUEL C. ROXAS, conspiring and confederating with each other, while in the performance of their officials [sic] functions, taking advantage of their official positions, and committing the crime in relation to their office, did then and there **falsify** Self-Deportation Order No. 84-685 dated August 9, 1994, a public document granting deportation of the eleven (11)

[4] Exhibit "O" for the prosecution; Exhibit "8" for the defense.

Indian Nationals, by stating therein that 'there is no indication from the records that the respondents eleven (11) Indian nationals are subject of any written complaints before any government agency,' when in truth and in fact as above-named public officials are fully aware, a preliminary investigation is being conducted by State Prosecutor Reynaldo Lugtu against said eleven (11) Indian nationals for violation of Republic Act 6425, as amended (Dangerous Drugs Act), which case was ultimately filed before the Regional Trial Court of Las Pi[ñ]as, Metro Manila, last July 29, 1994, the truth thereof they have a duty to disclose, to the damage and prejudice of the government.[5]

Contrary to law. (emphasis and underscoring supplied)

Petitioner Subido and Roxas were likewise, by Information also dated October 10, 1994, docketed as **Criminal Case No. 21546**, charged, together with them National Bureau of Investigation (NBI) Deputy Director and Chief of the Intelligence Service Arturo Figueras (Figueras) and John Does, of violating Section 3(e)[6] of Republic Act No. 3019 as follows:

That on or about August 9 to 11, 1994, prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused officials of the Bureau of Immigration and Deportation, in Intramuros Manila namely: then Commissioner ZAFIRO L. RESPICIO; Associate Commissioner BAYANI M. SUBIDO, JR.; Associate Commissioner MANUEL C. ROJAS, ARTURO A. FIGUERAS, Deputy Director and Chief of the Domestic Intelligence Service, National Bureau of Investigation, Manila; and JOHN DOES, while in the performance of their official functions as such, acting **with evident bad faith and manifest partiality**, conspiring and confederating with each other, did then and there, willfully and criminally **issue** BID Self-Deportation Order No. 94-685 dated August 9, 1994 authorizing the release of the following

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[5] Records, Vol. I pp. 1-2.

[6] 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.

eleven (11) Indian nationals, namely: PRAMOD SHIRIAD JOGDEO, SHAIK EASAF, SUNKAVALIVENKATA LAKSHIMANARAYA, AUGUSTINE RAJESH, NAGAYYA VANAM, MOHAMMAD RAFIQUE, KAUSAR ALI, NABI PASHAKHAN GULAM, MENGESH BENDU JADHAV, LAXMAN KUSHABA KADAM, CAJETAN MERWYN MLVARES who, with the prior knowledge of the aforenamed accused, were all facing criminal charges for violation of RA 6425, as amended (Dangerous Drugs Act), a heinous crime punishable with death, before the Regional Trial Court of Las Piñas, Metro Manila, and held without bail and placed in the custody of the National Bureau of Investigation – Domestic Intelligence Service (NBI-DIS), headed by accused ARTURO A. FIGUERAS, thereby giving unwarranted benefits to the above-named eleven (11) Indian nationals and depriving the government the right to prosecute them, to the prejudice of the public interest and the government.

CONTRARY TO LAW.[7] (emphasis and underscoring supplied)

The Indians, who were arrested and detained by the NBI for manufacturing *methaqualone*, were, on July 5, 1994, charged for violation of the Dangerous Drugs Act before the Department of Justice (DOJ) before which they were subjected to preliminary investigation. On even date, NBI Deputy Director Arturo Figueras (Figueras) wrote petitioner requesting

[i]n connection with the investigation [which] this Bureau is presently undertaking, [that the NBI] be furnished with a certification and/or all information in [the Bureau of Immigration] files concerning the status of the following Indian Nationals, to wit:

x x x[8] (emphasis and underscoring supplied)

Atty. Ernesto Zshornack Jr. (Atty. Zshornack), counsel for the Indians, later requested, by letter of July 13, 1994, the Secretary of Justice to deport his clients as a "protracted court investigation as to their culpability will serve no practical or useful purpose…and will entail costs to our government…"[9]

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[7] Records, Vol. III, pp. 4-5.

[8] Exhibit "C-7".

[9] Exhibit "F" and Exhibit "1" (Respicio).

Then DOJ Undersecretary Ramon Esguerra (Usec. Esguerra) endorsed Atty. Zshornack's letter to then NBI Director Epimaco Velasco who in turn forwarded it to Figueras.[10]

Acting on the request of Atty. Zshornack, Figueras, by Disposition Form dated July 25, 1994,[11] recommended to the NBI Director the deportation of the Indians for violating immigration laws. Usec. Esguerra thereupon, by 3rd Indorsement dated July 28, 1994,[12] **endorsed the matter to petitioner for appropriate action** "with the information that the criminal cases against [the Indians] are under preliminary investigation being conducted by State Prosecutor Reynaldo J. Lugtu."

It appears that on July 28, 1994, after concluding the preliminary investigation, State Prosecutor Reynaldo J. Lugtu (Prosecutor Lugtu) filed an Information against the Indians with the Regional Trial Court of Las Piñas for violation of the Dangerous Drugs Act.[13]

Petitioner later, by 4th Indorsement of August 4, 1994, referred Figueras' recommendation for the deportation of the Indians to Prosecutor Lugtu for appropriate action. Petitioner's Indorsement reads:

> Respectfully forwarded to HON. REYNALDO J. LUGTU, State Prosecutor's Office, Manila, for appropriate action the enclosed letter dated 13 July 1994 of Atty. Ernesto T. Zshornack, Jr., counsel for PRAMOD SHRIAD JOGORU, *et al*. **who are facing investigation for violation of Article III Section 14-A and 16 of Republic Act 6425 (Dangerous Drugs Act)** together with the 1st, 2nd and 3rd Indorsement[s] appended to said letter. **Anent the comment submitted by Atty. Arturo A. Figueras, CID Policy Guidelines of October 10, 1972 provides that:**

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[10] By 1st and 2nd Indorsements dated July 21, 1994 and July 26, 1994, respectively. *Vide* Exhibits "G" and "K" for the prosecution.

[11] Exhibit "H"; Exhibit "3" (Respicio); and Exhibit "10" (Figueras).

[12] Exhibit "L"; Exhibit "5" (Respicio); Exhibit "11" (Figueras); and Exhibit "12" (Roxas).

[13] Transcript of Stenographic Notes (TSN), August 11, 1998, pp. 15-17.

"**(6) A complaint charging a crime shall be referred to the proper Fiscal's Office unless it has already been filed therewith or is pending in court. Meanwhile, the deportation case shall be provisionally dismissed.**" (emphasis and underscoring supplied)

The August 4, 1994 4th Indorsement of petitioner was received by Prosecutor Lugtu on August 16, 1994.[14] Before that or on August 9, 1994, the Indians signed their respective requests for self-deportation, which requests were received by the BID on August 11, 1994[15] on which latter date petitioner's office prepared the Order to deport the Indians as in fact they left the country on August 12, 1994.

At the trial of subject cases, before the Sandiganbayan, Subido narrated how he came to sign the Order as follows: After partaking lunch on August 11, 1994 with petitioner, whose birthday fell on that day, together with other BID personnel at petitioner's Office, he (Subido) repaired back to his office. He was soon presented the Order by Levi Navata (Navata), a staff member of petitioner, for his signature. Noting that the Order had already been signed by petitioner, and recalling the verbal assurance of then DOJ Secretary Silvestre Bello III (Secretary Bello) also on that day that there were no pending charges against the Indians and that the "preliminary investigation was of no moment to the deportation request," he signed the Order.[16]

Roxas for his part related that on the request of petitioner, he proceeded to the latter's office where he saw Secretary Bello and several other guests. He was there presented the Order for his signature. Noting from the Order that there was no pending case nor any Hold Departure Order against the Indians and that the Order already bore the signatures of petitioner and Subido, he affixed his.[17]

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[14] Exhibit "M-1". *Vide* Sworn Statement of Prosecutor Lugtu.

[15] Exhibits "N", "N-1", "N-2", "N-3", "N-4", "N-5", "N-6", "N-7", "N-8", "N-9" and "N-10".

[16] TSN, August 14, 2005, pp. 11-15; TSN, April 21, 2005, pp. 13-15. *Vide*: Exhibit "X" to "X-3", inclusive (Affidavit of Mr. Bayani Subido Jr.).

[17] TSN, March 3, 2001, pp. 21-30.

As for petitioner, he declared that upon receipt of the Indians' requests for self-deportation, he requested his technical assistant Arthel Caronongan (Caronongan) and the Chief of the Intelligence Division Remigio Sta. Ana (Sta. Ana) to review them. After Sta. Ana verbally communicated to him that there were no pending cases against the Indians,[18] he asked Navata and Caronongan to prepare the Order.

Petitioner disclaimed knowledge that the Indians were already charged before the RTC of Las Piñas, Prosecutor Lugtu never having communicated to him that he had, on July 28, 1994, filed a charge against the Indians before the RTC of Las Piñas City.[19] He *admitted, however, being aware* that the Indians had been undergoing preliminary investigation.[20]

Corroborating petitioner, Caronongan declared that petitioner instructed him on August 10, 1994 to conduct a record check of the Indians; that he referred the matter to Sta. Ana who informed him that the Indians had "no criminal records"; and that when he and Sta. Ana met with petitioner the next day, August 11, 1994, petitioner directed him to prepare the necessary order for the deportation of the Indians.[21]

Caronongan clarified that the BID only maintains "derogatory records" of aliens in its watch list, black list or hold departure list, but not criminal or administrative records.[22] Albeit he admitted being aware that the Indians were apprehended by the NBI for the manufacture of illegal drugs, he took Sta. Ana's word that there was no pending criminal case against any of them.[23]

On the basis of the Order, the NBI, through Figueras, turned over on August 12, 1994, at 1:00 p.m., to the BID agents the

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[18] *Id.* at p. 16.

[19] TSN, May 29, 2003, pp. 23-24.

[20] TSN, September 22, 2003, pp. 6-7.

[21] TSN, July 6, 2004, pp. 10-12.

[22] TSN, October 14, 2004, pp.

[23] *Id.* at 18-20.

custody of the Indians who at once proceeded to the airport for their 3:30 p.m. flight.[24]

As earlier stated, the Office of the Special Prosecutor filed before the Sandiganbayan Information for violation of Section 3(e) of RA 3019 against petitioner, Subido, Roxas, Figueras and John Does, and another for falsification of official document under Article 171 of the Revised Penal Code against petitioner, Subido and Roxas.

All of the accused pleaded not guilty to the charges.[25]

Pending trial or on February 27, 2003,[26] Figueras died. The case against him for violation of Section 3(e) of RA No. 3019 was thus dismissed.

By Decision of October 13, 2006, the Sandiganbayan in both cases **exonerated Subido and Roxas but found petitioner guilty**, disposing as follows:

> WHEREFORE, premises considered, the Court hereby finds **COMMISSIONER ZAFIRO L. RESPICIO *GUILTY*** beyond reasonable doubt of the offenses of Violation of Section 3 (e) of R.A. No. 3019 and Falsification of Official Document under Article 171, paragraph 4 of the Revised Penal Code, and after applying the Indeterminate Sentence Law, imposes upon him the following penalties:
>
> 1) Imprisonment for a period ranging from six (6) years and one (1) month as minimum to twelve (12) years as maximum in Criminal Case No. 21546 for Violation of Section 3 (e) of R.A. No. 3019; and
>
> 2) Imprisonment for a period ranging from six (6) months and one (1) day of *prision correccional* as minimum to six (6) years and one (1) day of *prision mayor* as maximum and a fine of ₱5,000.00 in Criminal Case No. 21545 for

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[24] After Deportation Report of Rodelio Silapian, Chief, Civil Security Unit of BID; Exhibit "Q".

[25] Records, Vol. I, pp. 155, 206 and 207; and II Records, p. 102.

[26] Records, Vol. IV, p. 345.

Falsification of Public Document under Article 171, paragraph 4 of the Revised Penal Code.

Further, he is henceforth perpetually disqualified from holding public office.

The prosecution having failed to prove beyond reasonable doubt the guilt of **COMMISSIONER BAYANI SUBIDO, JR.** and **COMMISSIONER MANUEL C. ROXAS**, they are hereby ***ACQUITTED*** of both charges in Criminal Cases Nos. 21545 and 21546.

The cash bonds posted for the provisional liberty of Commissioners Subido, Jr. and Roxas are hereby ordered returned to them, subject to the usual accounting and auditing procedures. The Hold-Departure Order issued against them is hereby lifted and set aside.

The case against NBI Deputy Director **ARTURO A. FIGUERAS** is hereby ***DISMISSED***, pursuant to Article 89, paragraph 1 of the Revised Penal Code.

SO ORDERED.[27] (emphasis, capitalization and italics in the original)

In convicting petitioner of violation of Section 3 (e) of RA No. 3019, the Sandiganbayan declared:

It cannot therefore be categorically stated that Commissioner Respicio had ample information or knowledge about the case of the eleven Indians, starting from the query of NBI Deputy Director Figueras, on to the 3rd Indorsement of Undersecretary Esguerra and his own 4th Indorsement. Despite such official communication, however, he never relayed any information about the eleven Indians to Remigio Sta. Ana, who was tasked with obtaining and keeping information about aliens in the country. This is quite uncanny because as head of the agency, he should have exercised his responsibility of coursing valuable information to the Intelligence Service in order that records of the Bureau would be updated. Instead, he merely contented himself with going through the motions of having Mr. Sta. Ana assure him verbally that they had no derogatory record, when requests for self-deportation were filed with the BID.

x x x x x x x x x

[27] *Rollo*, pp. 99-100.

Granting, however, that the eleven Indians had no derogatory record, as the phrase is understood within the BID to mean any violation of immigration laws, undesirability, term of residency or permission to work of an alien, the Self-Deportation Order should have specifically mentioned that fact, because that was in essence Mr. Sta. Ana's report, instead of phrasing it in an extenuating statement that the records of the Bureau did not indicate any written complaint filed against them with any government agency. For obvious reasons, ***having no derogatory record*** and ***having no written complaint filed*** refer to two different things. x x x (emphasis and italics supplied)

x x x x x x x x x

True, it is the filing in court of a case that may bar deportation, based on Memorandum Order No. 02-94 of the BID and as argued by Commissioner Respicio, but the tenacity of his argument pales in the light of his statement in his 4th Indorsement that a complaint charging a crime shall be referred to the proper Fiscal's Office unless it has already been filed therewith or is pending in Court and that meanwhile, the deportation case shall be provisionally dismissed. **The necessary implication of this statement is that since no copy of the resolution of State Prosecutor Lugtu recommending the filing of charges in court against the eleven Indians has been furnished the Bureau, and that as such, the Bureau was not aware of the action of the Prosecutor conducting the preliminary investigation, the deportation would remain unavailing to the eleven Indians. However, the reverse situation happened.**

x x x[28] (emphasis and underscoring supplied)

In convicting petitioner of the falsification charge, the Sandiganbayan declared:

. . . [T]he statement contained in Self-Deportation Order No. 94-685, that "there is no indication from the records that the respondents (eleven Indian nationals) are subject of any written complaints before any written complaints before any government agency", is absolutely false because the truth is that these eleven Indians were the subject of preliminary investigation being conducted by State Prosecutor Lugtu, and more importantly, when the requests for self-deportation

[28] *Id.* at 86-89.

of the eleven Indians were referred to Commissioner Respicio on August 4, 1994, earlier **communications had indeed already been sent to him containing the precise information that a preliminary investigation was being conducted by State Prosecutor Lugtu** against Pramod Shriad Jogoru, *et al*. Nevertheless, he approved and signed their self-deportation order without batting an eyelash. **It must be emphasized that Commissioner Respicio could not have been oblivious to such information which he received through the 3rd Indorsement of Undersecretary Esguerra and to which he responded through his own 4th Indorsement addressed to State Prosecutor Lugtu**.

x x x[29] (emphasis and underscoring supplied)

His motion for reconsideration having been denied, petitioner filed the present petition for review, imputing error to the Sandiganbayan's Decision and Resolution as

. . . not [being] in accord with and/or not sustained by applicable decision[s] of this Honorable Court [for] being based on insufficient evidence/overlooking vital facts and circumstances which if given their proper perspective and significance would negate the alleged finding of guilt.[30]

To petitioner, the prosecution failed to present any evidence pointing to his receipt or knowledge of Figueras' letter dated July 5, 1994. In any event, he assists that the conduct of a preliminary investigation is not a bar to a self-deportation order in light of Memorandum Order No. 04-92, the pertinent provision[31] of which reads:

Section 1. Offer of self-deportation.—An offer of self-deportation by the alien shall be granted **provided there is no pending case in court against him**. **Self-deportation shall *not* be allowed as a means of evading criminal prosecution or civil liability.**

The offer of self-deportation shall be approved by the Commissioner upon the favorable recommendation of the Special

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[29] *Id.* at 95.

[30] *Id.* at 19-20.

[31] Rule XI, Section 1.

Prosecutor, the Chief of the Intelligence Division or the Board of Special Inquiry, as the case may be. (emphasis, italics and underscoring supplied)

The immediately-quoted rule, petitioner argues, pertains only to an actual case filed in court, but no evidence was presented that he was aware of the filing of a case in court against the Indians. He thus maintains that he relied on the representations of his subordinates Caronongan and Sta. Ana about the lack of any criminal record of the Indians; and that he had discretion whether to grant or deny requests for self-deportation provided that there is no pending court case against the requesting party.[32]

Petitioner goes on to posit that the prosecution failed to present any evidence of any ulterior motive on his part in allowing the deportation of the Indians as in fact it was advantageous to the government to deport the aliens.

Petitioner furthermore posits that the Order bore the approval and signature of the two other commissioners.[33]

Petitioner thus concludes that in light of the foregoing circumstances, he had no legal obligation to disclose the truth of something that he had no knowledge about.[34]

The Office of the Special Prosecutor counters that it was able to prove all the elements of the offense under Section 3 (e) of RA No. 3019 and that of falsification. It asserts that it proved bad faith on the part of petitioner, as despite the July 5, 1994 letter to him of Figueras inquiring about the status of the Indians who were "presently" under investigation by the NBI, and the July 27, 1994 3rd Indorsement to him of Usec. Esguerra about the "criminal cases against [the Indians which were] under preliminary investigation . . . by State Prosecutor . . . Lugtu," petitioner issued the Order.

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

[33] *Id.* at 26.

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

With the deportation of the Indians, the Office of the Special Prosecutor laments that prosecution of the criminal charge filed in court against the Indians had been barred.[35]

The Office of the Special Prosecutor additionally contends that the issuance of the Order required petitioner's intervention on account of his position and that the statement in the Order that "there is no indication from the records that the eleven Indian [n]ationals are subject of any written complaints before any government agency" is false because petitioner was in fact informed that they were under preliminary investigation. The Office thus concludes that petitioner indubitably made an untruthful statement on the matter.[36]

The petition fails.

Section 3(e) of RA 3019, violation for which petitioner was charged, provides:

> SEC. 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.

The elements of the offense are thus:

a) the accused is a public officer discharging administrative, judicial or official functions;
b) one must have acted with manifest partiality, evident bad faith or inexcusable negligence;

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[35] *Id.* at 176-178.

[36] *Id.* at 179-181.

c) the action caused undue injury to any party including the Government, or has given any party unwarranted benefit, advantage or preference in the discharge of his functions.[37]

The elements of falsification under paragraph 4 of Article 171 of the Revised Penal Code for which petitioner was likewise charged are:

a) the offender is a public officer;

b) the accused takes advantage of his official position;

c) accused knows that what he imputes is false;

d) the falsity involves a material fact;

e) there is a legal obligation for him to narrate the truth;

f) and such untruthful statements are not contained in an affidavit or a statement required by law to be sworn in.[38]

The two offenses share two common elements—that the accused is a public officer and that the assailed act is related to the public officer's position. These two common elements are present in the two cases against petitioner as he was a public officer at the time he signed the Order and his intervention in issuing it was in relation to his position as a public office- BID Commissioner.

RESPECTING THE CHARGE OF VIOLATING 3(E) OF RA 3019, the elements which must be indubitably proved are whether petitioner acted with manifest partiality or evident bad faith, and whether such action caused undue injury to any party including the Government, or gave any party unwarranted benefit, advantage or preference in the discharge of his functions. Both elements are present in this case.

Partiality is differentiated from bad faith in this wise:

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[37] *Evangelista v. People*, 392 Phil. 449, 456 (2000).

[38] *Lecaroz v. Sandiganbayan*, 364 Phil. 890 (1999).

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "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 sworn duty through some motive or intent or ill will; it partakes of the nature of fraud."[39]

The presence of manifest partiality and evident bad faith on the part of petitioner is gathered from his hardsell stance that he never was aware of a case filed in court. Even if indeed that were true, he had *priorly* been informed by Usec. Esguerra's 3rd Indorsement of July 27, 1994 that the Indians were undergoing preliminary investigation. In fact, at the witness stand, after vacillating, he *finally admitted* that the criminal charges against the Indians were "under preliminary investigation." Consider petitioner's testimony:

JUSTICE NAZARIO:

Q But you were aware of a reinvestigation (*sic*) being conducted even before the deportation order, is it not?

A Yes, your Honor, but our regulations require the filing of a case in court.

Q At the time there was a preliminary investigation being conducted, **did it not occur to you to inquire from Lugtu what happened to the preliminary investigation before you signed the self-deportation order**?

A Your Honor, **I must admit that I did not bother to call Prosecutor Lugtu because he never communicated with us** and besides, the 11 Indians were arrested upon the surveillance of the NBI and the NBI also through Lugtu knew about the cases filed against the 11 Indians and we were never informed about these cases, your Honor.

Q Yes, but don't you think prudence would dictate to you that since you were aware of this investigation being conducted about the 11 Indians, you should have told them "what happened

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[39] *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010.

to the preliminary investigation you informed us?" before you signed the self-deportation order on August 9, 1994?

A I relied on the recommendation of my Special Assistant Atty. Karunungan (sic) and Chief [of] Intelligence Mr. Sta. Ana.[40] (emphasis and underscoring supplied)

On further questioning, petitioner became evasive and wavered in his testimony.

PROS. TURALBA

Q: But can you recall that 4th Indorsement dated August 4, 1994 addressed to Prosecutor Reynaldo Lugtu?

A: May I see it, sir?

x x x x x x x x x

WITNESS

A: Yes, sir. It appears to be an Indorsement **signed by me last August 4, 1994**.

PROS. TURALBA

Q: And you have mentioned in your Indorsement of the letter of Atty. Ernesto Zshornack, Jr., counsel for Promod Shiriad Jogdeo, and others who are facing investigation for Violation of Article III, Sec. 14-A and 16 of Republic Act 6425, otherwise known as the Dangerous Drugs Act?

A: That is the content of the Indorsement, sir.

Q: So, are you now confirming that *before* August 11 you were already informed of a pending investigation against these 11 Indians by Prosecutor Reynaldo Lugtu of the DOJ?

WITNESS

A: Sir, our regulation requires the filing of the case not just an investigation that is why we approved the Deportation Order.

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[40] TSN, May 29, 2003, pp. 23-25.

PROS. TURALBA

Q: I would like to read to you the second paragraph of your Indorsement which says:

"A complaint charging a crime shall be referred to the proper Fiscal's Office unless it has already been filed therewith or is pending in court."

Do you remember having stated this in your Indosement?

A: Yes, sir. But at the time when I sent that Indorsement, we were not yet informed of the filing of the case in court.

Q: But would you agree with me that these are supposed to be alternative situations? It is either filed with the Fiscal's Office or is pending in court?

A: Our regulation is more on pending in court, sir.

Q: But you have mentioned in this Indorsement the paragraph of your Guidelines dated October 10, 1972, is that correct?

A: May I read the Indorsement, sir.

"A complaint charging a crime shall be referred to the proper Fiscal's Office unless it has already been filed therewith or is pending in court."

That is all what it means.

x x x x x x x x x

Q: By the way, but you were aware that there was a pending preliminary investigation before the Fiscal's Office?

A: No, your Honor. We just assumed that since it was with the NBI, some kind of an investigation must be ongoing but actually, we have not received any communication from them informing us of a pendency of a—

Q: An investigation?

A: Yes, Your Honor. That is why we approved the Order of Deportation.

x x x x x x x x x

PROS. TURALBA

Q: Mr. Witness, **do you remember having answered during the direct examination when asked by the Honorable Justice if you were aware of a reinvestigation and you answered "yes"**?

x x x x x x x x x

A: We were never informed, sir.

Q: You were never informed?

A: Yes, before we approved the Deportation Order, sir.

Q: When for the first time did you learn of the pending case before Prosecutor Lugtu?

A: That was *after we approved* the Deportation Order last August 11, sir.[41] (emphasis, italics and underscoring supplied)

As reflected above, petitioner *eventually* admitted knowledge of the pendency of a preliminary investigation of the criminal cases against the Indians *before* he issued the Order.

PROS. TURALBA

x x x x x x x x x

Q: Will you agree with me that in this particular indorsement [dated August 4, 1994] you already knew of the investigation being conducted against these eleven (11) Indians for Violation of Article 3, Sec[tions] 14-a and 16 of Republic Act [No.] 6425?

A: **Yes, Sir**, but please remember that under our guidelines what was prohibited was the filing of a case in court.

Q: Can you still recall in this answer of yours appearing on page 18 that there was no mention of a pending case before the court?

A: Yes, Sir. At the time when we approved the order, we were not informed about the pendency of a case in court.

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[41] TSN, Sept. 11, 2003, pp. 35-40.

Q: But you knew of a pending investigation before the prosecutor of the [DOJ][?]

A: It was mentioned that there was a preliminary investigation.

Q: In other words, you were already aware of the charges against these eleven (11) Indians, is that not correct?

A: ***We knew only of the preliminary investigation***, Sir…

PROS. TURALBA

Q: When for the first time did you learn of a pending investigation against these eleven (11) Indians?

A: Sometime in the *4th of August before I approved that* …[42] (emphasis, italics and underscoring supplied)

That petitioner's approval of the Order caused injury to the government, more particularly to its right and duty to prosecute a heinous crime, over and above the supposed "costs to our government" in having a "protracted court investigation as to [the Indians'] culpability," is without question. Needless to state, the deportation benefitted the Indians who would otherwise have stood trial.

RESPECTING THE CHARGE FOR FALSIFICATION, petitioner untruthfully stated that there is no indication from the records that the Indians are the subject of any written complaints before any government agency nor before any private person. For that statement is belied by documentary evidence — the July 5, 1994 letter of Figueras to petitioner, the July 28, 1994 Indorsement of Usec. Esguerra to petitioner (of Figueras recommendation for the deportation of the Indians) and petitioner's own August 4, 1994 4th Indorsement to Lugtu.

Petitioner's refuge by blaming his subordinates does not lie. For one, he failed to disclose to Caronongan or to Sta. Ana the information which he had received about the Indians undergoing preliminary investigation. Such omission is telling. For another,

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[42] TSN, Sept. 22, 2003, pp. 7-8.

while the BID may indeed have had only in its possession at that time only "derogatory records" of aliens but not criminal or administrative as Caronongan claimed, since the BID is an attached agency of the DOJ, petitioner could have easily requested information on the outcome of the preliminary investigation, of which he was informed about, or if a case had already been filed in court against the Indians.

Petitioner's reliance on the earlier-quoted pertinent provision of Memorandum Order No. 04-94 fails. It bears emphasis that petitioner's justification in issuing the Order was the lack of "any written complaints before any government agency nor before any private person" against the Indians, which was not the case. Recall that petitioner himself quoted in his August 4, 1994 Indorsement to Prosecutor Lugtu the BID policy that[43] a deportation case should be provisionally dismissed *when a criminal complaint charging a crime has been referred to the proper [Prosecutor]'s Office* ***or*** *is pending in court*."

In another vein, petitioner harps on the supposed absence of a request by Prosecutor Lugtu to prevent the flight of the Indians. In laying the blame on Prosecutor Lugtu, petitioner proffers an August 15, 1990 DOJ Circular No. 38[44] that directs prosecutors

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[43] CID Policy Guidelines of October 10, 1972, quoted above.

[44] Exhibit "9" (Respicio). DOJ Circular No. 38 reads:

It has been observed that many persons accused of serious offenses seek refuge in other countries where the Philippines has no extradition treaty in order to escape prosecution and enjoy thereby the fruits of their crimes. This kind of situation should not be allowed to continue for it will embolden the criminally minded into committing more crimes, knowing that they can get away with their misdeeds in a foreign country. It is thus imperative for prosecutors to ensure that criminal offenders are punished and put in their proper places by taking the steps to prevent them from leaving for abroad during the pendency of criminal proceedings.

Towards this end and so as not to frustrate the ends of justice, you are hereby directed to move for the issuance by the court of Hold Departure Order (HDO) against the accused and for the Bureau of Immigration to implement, in the following cases:

1) x x x x x x x x x
2) x x x x x x x x x

to move for the issuance of a hold departure order "to ensure that criminal offenders are punished and put in their proper places by taking the steps to prevent them from leaving for abroad during the pendency of criminal proceedings."

Petitioner's stance fails too. Whether the Prosecutor moved to obtain a hold departure order is beside the point, what is material being that there was a pending preliminary investigation against the Indians, contrary to the statement in the Order that "there is no indication from the records that the [Indians] are the subject of any written complaint . . . ," which pending preliminary investigation called for the provisional dismissal of the deportation case.

In any event, the cited August 15, 1990 DOJ Circular No. 38 cannot be made to apply in the instant case as it clearly pertains to Filipinos, and not to foreigners, who opt to fly the coop to evade criminal prosecution.

The untruthful assertion of petitioner not having been made in an affidavit or in a statement required by law to be sworn in, he is, without any doubt, liable for falsification under paragraph 4 of Article 171 of the Revised Penal Code.

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3) x x x x x x x x x

4) Violations of Dangerous Drugs Act of 1972, as amended, when the charge is cognizable by Regional Trial Courts under Batas Pambansa Blg. 29.

5) x x x x x x x x x

6) x x x x x x x x x

7) x x x x x x x x x

In cases where accused has jumped bail and fled to another country, the same shall be immediately reported to the Chief State Prosecutor who shall, with the approval of the Secretary of Justice, make appropriate representations with the Department of Foreign Affairs for the cancellation of accused's passport and other travel documents so as to make him an undocumented alien in the host country subject to deportation.

Strict compliance herewith is enjoined.

FRANKLIN M. DRILON (Sgd.)
Secretary

WHEREFORE, the petition is *DENIED*. The Decision and Resolution of the Sandiganbayan in Criminal Case Nos. 21545 and 21546 are, in light of the foregoing discussions, *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 182918. June 6, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EFREN PATELAN LAMBERTE @ "KALBO" and MARCELINO RUIZ NIMUAN @ "CELINE,"** *accused,* **MARCELINO RUIZ NIMUAN,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; CONSPIRACY; IT DOES NOT MATTER WHO ACTUALLY SHOT THE VICTIM IN THE MURDER CASE AT BAR AS EACH OF THE ACCUSED IS EQUALLY GUILTY OF THE CRIME.— The testimonies of the prosecution witnesses clearly prove that a conspiracy existed in the commission of the crime. Garcia testified that the appellant and Lamberte had the common design of killing the victim. The fact that each one was armed with a firearm shows that they acted with the singular purpose of killing the victim. Both accused threatened workers Manolong, Yaranon and Anasario with harm should they tell anyone that they (accused)

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[*] Additional member Per Special Order No. 997 dated June 6, 2011 in lieu of Associate Justice Ma. Lourdes P.A. Sereno.

killed the victim. Under these facts, it does not matter who actually shot the victim because of the conspiracy that existed. In conspiracy, the act of one is the act of all; each of the accused is equally guilty of the crime committed.

2. ID.; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; APPRECIATED AS THE VICTIM WAS SHOT AT THE BACK.— The CA correctly appreciated the qualifying circumstance of treachery as the victim was shot at the back. The attack was deliberate, sudden and unexpected; it afforded the unsuspecting victim no opportunity to resist or defend himself.

3. ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; NOT APPRECIATED ABSENT SUFFICIENT LAPSE OF TIME BETWEEN THE DETERMINATION TO KILL AND ITS EXECUTION.— For evident premeditation to be appreciated, there must be proof, as clear as the evidence of the crime itself, of (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) a sufficient lapse of time between determination and execution to allow himself time to reflect upon the consequences of his act. In this case, there is dearth of evidence on when the accused first conceived of killing the victim and that they were afforded sufficient time to reflect on the consequences of their contemplated crime before its final execution. Moreover, the span of time (less than thirty minutes), from the time the accused showed their determination to kill the victim (when they told Garcia that they were "going to kill the doctor") up to the time they shot the victim, could not have afforded them full opportunity for meditation and reflection on the consequences of the crime they committed. Thus, the circumstance of evident premeditation cannot be appreciated.

4. ID.; MITIGATING CIRCUMSTANCES; INTOXICATION; IT MUST BE SHOWN THAT THE WILL POWER OF ACCUSED WAS IMPAIRED THAT HE DID NOT KNOW WHAT HE WAS DOING.— For intoxication to be considered as a mitigating circumstance, it must be shown the intoxication impaired the willpower of the accused that he did not know what he was doing or could not comprehend the wrongfulness of his acts. In this case, there is no convincing proof of the

nature and effect of the appellant's intoxication. The mitigating circumstance of intoxication cannot be appreciated in the appellant's favor merely on the testimony of a prosecution witness that he was drunk during the incident. Such testimony does not warrant a conclusion that the degree of the accused's intoxication had affected his faculties.

5. ID.; MURDER; PENALTY.— The penalty for murder is *reclusion perpetua* to death under Article 248 of the Revised Penal Code, as amended. Since neither aggravating nor mitigating circumstances attended the commission of the felony, the proper imposable penalty on the appellant is *reclusion perpetua*. Lastly, we find it necessary to increase to ₱30,000.00 the amount of exemplary damages, to conform with recent jurisprudence.

APPEARANCES OF COUNSEL

Office of 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 Marcelino Ruiz Nimuan (*appellant*)[1] from the November 23, 2007 Decision of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 02352.[2]

The Factual Antecedents

On November 25, 2004, the appellant, together with Efren Patelan Lamberte,[3] was charged with murder[4] before the Regional

[1] *Alias* "Celine."

[2] Penned by Associate Justice Portia Aliño-Hormachuelos, and concurred in by Associate Justice Lucas P. Bersamin (now a member of this Court) and Associate Justice Arturo G. Tayag of the Special Second Division of the Court of Appeals; *rollo*, pp. 2-25.

[3] *Alias* "Kalbo."

[4] Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659 or the Death Penalty Law.

Trial Court (*RTC*), Branch 31, Agoo, La Union.[5] A year and a half later, on April 7, 2006, the appellant was arrested.[6] On April 12, 2006, the prosecution filed an amended information charging the appellant and Lamberte with the same crime of murder.[7] The appellant pleaded not guilty when arraigned.[8] His co-accused, Lamberte, remained at large. At the trial that followed, the prosecution established the facts outlined below.

At about 6:00 p.m. of September 22, 2004, Eulalia Garcia was tending her *sari-sari* store along the National Highway in San Eugenio, Aringay, La Union when the appellant and Lamberte

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[5] Docketed as Criminal Case No. A-5111; original records, p. 92.

[6] Original records, p. 99.

[7] The accusatory portion of the Amended Information reads:

That on or about the 22nd day of September 2004, in the Municipality of Aringay, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and conspiring, confederating and mutually aiding each other and being then armed with a highpowered firearm, a 12-gauge shotgun, did then and then (sic) willfully, unlawfully and feloniously shoot with the said firearm one DR. JOSE VILLANUEVA, thereby inflicting gunshot wounds on various parts of the latter's body that were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the aforenamed DR. JOSE VILLANUEVA.

That in the commission of the offense, the qualifying circumstances of treachery and evident premeditation are present *as evidenced by the suddenness of the attack upon the person of the deceased victim which eliminated any possibility of his defense and that the accused employed means, methods or forms in the execution thereof specially to ensure its execution without risk to themselves and that the killing was carefully planned by the accused.*

That the qualifying aggravating circumstance of nighttime is present as the accused specially sought and took advantage of the darkness of the night and it facilitated the commission of the crime.

That the aggravating circumstance of use of unlicensed firearm is present as the accused used an unlicensed 12-gauge shotgun in shooting the victim as provided for under Section 1, paragraph 3 of the (sic) Republic Act No. 8294.

CONTRARY TO LAW. (Original records, pp. 103-104).

[8] Original records, p. 107.

came to borrow her gas lamp. She noticed that both were drunk and armed. They said they were looking for a bullet that fell on the ground. After finding the bullet, she asked them where they were going and they answered, "We are going to kill the doctor." The two then waited under a mango tree. Shortly thereafter, the victim (Dr. Jose Villanueva), on board a truck, passed by Garcia's store on the way to his poultry farm. The appellant and Lamberte followed on foot. Ten (10) minutes later, Garcia heard two (2) gunshots coming from the direction of the poultry farm.[9]

It appears that the victim arrived at his poultry farm at around 7:00 p.m. to deliver medicines and bread to his workers, Alvin Manolong, Crispino Yaranon and Ferrer Anasario. After the delivery, the victim instructed the workers to resume their work. The workers then proceeded to Building 1 and left the victim standing beside his truck near Building 5.[10]

Subsequently, the workers heard gunfire coming from the victim's direction. Manolong went down to investigate. On hearing a second shot, Manolong ran towards the parked truck and saw the victim lying on the ground with a gunshot wound in his stomach. Manolong called his companions, yelling that the victim had been shot.[11]

On hearing Manolong's cries for help, Yaranon and Anasario ran toward Building 5. On the way, they met the appellant and Lamberte. The appellant kicked Yaranon three times and hit him on the stomach with the butt of the carbine he was holding, while Lamberte poked a shotgun at Anasario. The appellant and Lamberte threatened Yaranon and Anasario with harm should they tell anyone that they (the appellant and Lamberte) were responsible for the killing of the victim. The appellant and Lamberte then left, going northward in the direction of the mango

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[9] TSN, April 28, 2006, pp. 16-27.

[10] TSN, April 27, 2006, pp. 2-6, 25-27 and 41-43.

[11] *Id.* at 7-9, 28-29 and 44-45.

plantation, owned by Atty. Paulino Cases, where both worked as security guards.[12]

A postmortem examination confirmed that the victim died from shotgun wounds in the back.[13] The victim's widow, Dr. Eufemia Villanueva, presented in court the official receipts, amounting to ₱56,500.00, for the victim's funeral and burial,[14] and the victim's 2003 and 2004 income tax returns to establish loss of earning capacity.[15]

The appellant denied any participation in the killing of the victim, and pointed to Lamberte as the person solely responsible. He claimed that he merely accompanied Lamberte to the victim's farm when the latter suddenly shot the victim; Lamberte threatened him with death if he (appellant) did not escape with him.[16]

The RTC Ruling

In its May 31, 2006 Decision, the RTC found the appellant guilty of murder. It gave credence to the positive testimony of the prosecution witnesses who saw the accused before and after the shooting incident, thus pointing to a conspiracy in the killing of the victim. It rejected the appellant's denial of criminal liability. In imposing the death penalty, the RTC appreciated the qualifying and aggravating circumstances of treachery, evident premeditation and nighttime, without, however, explaining its reasons. The RTC ordered the appellant to pay the heirs of the victim ₱3 million in lost income, ₱8 million as moral damages, ₱2 million as exemplary damages, ₱100,000.00 as civil indemnity, and ₱60,000.00 as actual damages.[17]

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[12] *Id.* at 10-18, 29-34 and 45-49.

[13] Exhibit "A", original records, p. 141.

[14] Exhibits "E" and "F", original records, p. 144.

[15] Exhibits "C" and "D", original records, pp. 142-143.

[16] TSN, May 23, 2006, pp. 3-8.

[17] Original records, pp. 185-223.

The CA Ruling

On intermediate appellate review, the CA fully agreed with the RTC's appreciation of the adduced evidence. While the appellate court appreciated the qualifying circumstance of treachery because the appellant was shot at the back, it disregarded nighttime as an aggravating circumstance because it is absorbed by treachery. The CA appreciated evident premeditation because the accused had sufficient time to reflect on the consequences of their acts from the time they told Garcia that they would kill the victim to the time of killing. It likewise appreciated in the appellant's favor the mitigating circumstance of intoxication because Garcia testified that the accused were drunk. Since the mitigating circumstance of intoxication offsets the aggravating circumstance of evident premeditation, the CA sentenced the appellant to suffer the penalty of *reclusion perpetua*.

On civil indemnity, the appellate court modified the amounts awarded by the RTC. Civil indemnity and moral damages were reduced to ₱50,000.00 each, while the amount of exemplary damages was reduced to ₱25,000.00, consistent with prevailing jurisprudence. The amount of actual damages was reduced to ₱56,150.00, based on actual receipted expenses.[18] The amount for loss of earning capacity was reduced to ₱622,453.95,[19] based on the victim's income tax returns[20] from 2002 to 2004.[21]

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[18] *Supra* note 14.

[19] The appellate court computed the amount as follows:

Net Earning Capacity = [2/3 x (80-57) x (₱81,207.29 – 40,603.65)
= 2/3(23) x 40,603.65
= 15.33 x 40,603.65
= ₱622,453.95 (*Rollo*, p. 24.)

[20] The net income for the years 2002, 2003 and 2004 were ₱99,206.63, ₱78,408.64, and ₱66,006.61, or an average net income of ₱81,207.29; *supra* note 15.

[21] The dispositive portion of the CA Decision reads:

WHEREFORE, all the foregoing considered, the Decision of the Regional Trial Court of Agoo, La Union, Branch 267 dated May 31, 2006 is hereby

From the CA, the case is now with us for final review.

Our Ruling

We affirm the appellant's conviction for murder.

The testimonies of the prosecution witnesses clearly prove that a conspiracy existed in the commission of the crime. Garcia testified that the appellant and Lamberte had the common design of killing the victim. The fact that each one was armed with a firearm shows that they acted with the singular purpose of killing the victim. Both accused threatened workers Manolong, Yaranon and Anasario with harm should they tell anyone that they (accused) killed the victim. Under these facts, it does not matter who actually shot the victim because of the conspiracy that existed. In conspiracy, the act of one is the act of all; each of the accused is equally guilty of the crime committed.[22]

The CA correctly appreciated the qualifying circumstance of treachery as the victim was shot at the back.[23] The attack was deliberate, sudden and unexpected; it afforded the unsuspecting victim no opportunity to resist or defend himself.[24]

Nonetheless, we find that the CA misappreciated the aggravating circumstance of evident premeditation. For evident premeditation

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AFFIRMED with MODIFICATION. Appellant Marcelo (sic) Ruiz Nimuan is found GUILTY beyond reasonable doubt of MURDER as defined in Article 248 of the Revised Penal Code as amended by Republic Act No. 7659, attended by circumstances heretofore discussed, and is hereby sentenced to suffer the penalty of *Reclusion Perpetua*. The appellant is ORDERED to pay the heirs of Dr. Jose Villanueva the amounts of ₱50,000.00 as civil indemnity; ₱56,150.00 as actual damages; ₱50,000.00 as moral damages; ₱25,000.00 as exemplary damages; and ₱622,453.95 as indemnification for loss of earning capacity.

SO ORDERED. (*Rollo*, pp. 24-25.)

[22] *People v. Glino*, G.R. No. 173793, December 4, 2007, 539 SCRA 432, 455.

[23] Per police sketch marked Exhibit "G", original records, p. 10.

[24] *People v. Lacaden*, G.R. No. 187682, November 25, 2009, 605 SCRA 784, 805; and *Gandol v. People*, G.R. No. 178233, and *People v. Gandol*, G.R. No. 180510, December 4, 2008, 573 SCRA 108, 124.

to be appreciated, there must be proof, as clear as the evidence of the crime itself, of (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) a sufficient lapse of time between determination and execution to allow himself time to reflect upon the consequences of his act.[25]

In this case, there is dearth of evidence on when the accused first conceived of killing the victim and that they were afforded sufficient time to reflect on the consequences of their contemplated crime before its final execution. Moreover, the span of time (less than thirty minutes), from the time the accused showed their determination to kill the victim (when they told Garcia that they were "going to kill the doctor") up to the time they shot the victim, could not have afforded them full opportunity for meditation and reflection on the consequences of the crime they committed.[26] Thus, the circumstance of evident premeditation cannot be appreciated.

We also find that the CA erred in crediting the appellant with the mitigating circumstance of intoxication simply because Garcia testified that "the accused were both drunk."[27] For intoxication to be considered as a mitigating circumstance, it must be shown that the intoxication impaired the willpower of the accused that he did not know what he was doing or could not comprehend the wrongfulness of his acts.[28]

In this case, there is no convincing proof of the nature and effect of the appellant's intoxication. The mitigating circumstance of intoxication cannot be appreciated in the appellant's favor merely on the testimony of a prosecution witness that he was

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[25] *People v. De Guzman*, G.R. No. 173477, February 4, 2009, 578 SCRA 54, 66; and *People v. Escarlos*, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 482.

[26] See *People v. Zeta*, G.R. No. 178541, March 27, 2008, 549 SCRA 541, 563, citing *People v. Discalsota*, 430 Phil. 407.

[27] *Rollo*, p. 21.

[28] *Licyayo v. People*, G.R. No. 169425, March 4, 2008, 547 SCRA 598, 613; and *People v. Nabong*, G.R. No. 172324, April 3, 2007, 520 SCRA 437, 456.

drunk during the incident.[29] Such testimony does not warrant a conclusion that the degree of the accused's intoxication had affected his faculties.[30]

The penalty for murder is *reclusion perpetua* to death under Article 248 of the Revised Penal Code, as amended. Since neither aggravating nor mitigating circumstances attended the commission of the felony, the proper imposable penalty on the appellant is *reclusion perpetua*.

Lastly, we find it necessary to increase to ₱30,000.00 the amount of exemplary damages, to conform with recent jurisprudence.[31]

WHEREFORE, the November 23, 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 02352 is hereby *AFFIRMED* with *MODIFICATION*. Appellant Marcelino Ruiz Nimuan is found guilty of murder as defined and penalized under Article 248 of the Revised Penal Code, and is sentenced to *reclusion perpetua.* He is further ordered to pay the heirs of Dr. Jose Villanueva ₱50,000.00 as civil indemnity *ex delicto*, ₱56,150.00 as actual damages, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱622,453.95 as indemnification for loss of earning capacity.

SO ORDERED.

Carpio Morales (Chairperson), Peralta,[*] *Abad,*[**] and *Villarama, Jr., JJ.,* concur.

Bersamin, J., inhibit.

Sereno, J., sick leave.

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[29] *Licyayo v. People, supra.* See also *People v. Pinca*, G.R. No. 129256, November 17, 1999, 318 SCRA 270; *People v. Belaro*, G.R. No. 99869, May 26, 1999, 307 SCRA 591; and *People v. Ventura*, G.R. No. 90015, April 10, 1992, 208 SCRA 55, 61-62.

[30] *Licyayo v. People, supra.*

[31] *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.

[*] Designated additional member per raffle dated June 1, 2011.

[**] Designated additional member vice Associate Justice Maria Lourdes P. A. Sereno, per Special Order No. 997, dated June 6, 2011.

THIRD DIVISION

[G.R. No. 185211. June 6, 2011]

PEOPLE OF THE PHILIPPINES, *appelle, vs.* **ARNEL BENTACAN NAVARRETE,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); BUY-BUST OPERATION; COMPLIANCE WITH THE SPECIFIC PROCEDURES ON THE SEIZURE AND CUSTODY OF DRUGS TO SAFEGUARD THE RIGHTS OF PEOPLE UNDER CRIMINAL INVESTIGATION, EMPHASIZED.— Owing to the built-in dangers of abuse that a buy-bust operation entails, the law prescribes specific procedures on the seizure and custody of drugs, independently of the general procedures geared to ensure that the rights of people under criminal investigation and of the accused facing a criminal charge are safeguarded. [B]y the very nature of anti-narcotic operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

2. ID.; ID,; ID.; ID.; NON-COMPLIANCE MAY BE EXEMPTED BUT ONLY WITH THE PRESENCE OF JUSTIFIABLE GROUND THEREFOR AND THE INTEGRITY OF THE EVIDENCE PROPERLY PRESERVED.— Non-compliance with the procedure laid down in Sec. 21 of the Comprehensive Drugs Act of 2002 is not, of course, always fatal as the law admits of exceptions: Non-compliance by the apprehending/ buy-bust team with Section 21 is not fatal as long as there is **justifiable ground** therefor, **and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team.** Its non-compliance will not render an accused's arrest illegal or

the items seized/confiscated from him inadmissible. What is of utmost importance is the **preservation of the integrity and the evidentiary value of the seized items**, as the same would be utilized in the determination of the guilt or innocence of the accused. The apprehending team in the present case has not, however, shown any justifiable ground to exempt it from complying with the legal requirements. To impose benediction on such shoddy police work, absent exempting circumstances, would only spawn further abuses. x x x IN FINE, the unjustified failure of the police officers to show that the integrity of the object evidence-*shabu* was properly preserved negates the presumption of regularity accorded to acts undertaken by police officers in the pursuit of their official duties.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

Arnel Bentacan Navarrete (appellant) assails the April 22, 2008 Decision[1] of the Court of Appeals (Cebu City) in CA-G.R. CR-H.C. No. 00484 which affirmed that of Branch 58 of the Regional Trial Court (RTC) of Cebu City convicting him of violating Section 5, Article II of Republic Act (R.A.) No. 9165 (the *Comprehensive Dangerous Drugs Act of 2002*) – selling 0.05 gram of *shabu*.

The inculpatory portion of the March 14, 2005 Information indicting appellant reads:

That on or about the 12th day of March 2005, at about 4:15 o'clock in the afternoon, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate

[1] Penned by Associate Priscilla Baltazar-Padilla, with the concurrence of Associate Justices Franchito Diamante and Florito Macalino; CA *rollo*, pp. 73-83.

intent, and without authority of law, did then and there sell, deliver or give away to poseur buyer one (1) heat sealed transparent plastic packet of white crystalline substance weighing 0.05 gram, locally known as *shabu*, containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[2]

Based on the documentary and testimonial evidence for the prosecution consisting of the testimonies of Police Chief Inspector Mutchit Salinas (Inspector Salinas),[3] Forensic Chemist of the Philippine National Police (PNP) Crime Laboratory in Cebu City, SPO1 Willard Selibio (SPO1 Selibio),[4] Elmer Abelgas (SPO1 Abelgas)[5] and PO2 Rene Labiaga (PO2 Labiaga),[6] all members of the PNP assigned at Police Station 6, Cebu City, the following version is established:

After conducting a quick surveillance operation to ascertain the veracity of a report made by a confidential agent/informant on March 12, 2005 about appellant's alleged drug-related activities, a team composed of the above-named prosecution witness, together with the informant, proceeded at 4:15 p.m. on even date to Magsaysay St., Barangay Suba, Cebu City to conduct a buy-bust operation against appellant.

On reaching Barangay Suba, the informant, who was designated as poseur-buyer and given a one hundred peso bill bearing Serial No. XT848358,[7] approached appellant at an alley near his house as the team members hid about eight meters away but within sight of the site where the two met.

As the informant-poseur-buyer handed the marked one hundred peso bill to appellant, the latter in turn handed to him a small

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[2] Records, p. 1.

[3] TSN, October 18, 2005, pp. 2-5.

[4] TSN, November 8, 2005, pp. 2-13

[5] TSN, November 22, 2005, pp. 2-8; December 6, 2005, pp. 2-8.

[6] TSN, December 13, 2005, pp. 2-8; January 17, 2006, pp. 2-8.

[7] Exhibit "D", records, p. 8.

plastic sachet containing white crystalline substance believed to be *shabu*. At that instant, the poseur-buyer executed the pre-arranged signal, and the team members rushed to the scene whereupon they arrested appellant after recovering the marked money and apprising him of his constitutional rights. The poseur-buyer thereupon turned over the plastic sachet containing *shabu* to SPO1 Selibio.[8]

With the seized items, the team members brought appellant to the Cebu City Police Station where P/Supt. Antonio Lao Obenza prepared a memorandum dated March 12, 2005[9] addressed to the Regional Chief of the PNP Crime Laboratory in Cebu City requesting for a laboratory examination of the substance contained in the plastic sachet. The team members subsequently executed a Joint Affidavit[10] subscribed and sworn to on March 14, 2005 recounting the details of the operation leading to appellant's arrest.

Upon receipt of the letter-request and the plastic sachet also on March 12, 2005 at 5:20 p.m., Inspector Salinas, Forensic Chemical Officer of the PNP Crime Laboratory Office 7 in Cebu City, conducted a laboratory examination of the sachet's contents which disclosed the following findings, as recorded in Chemistry Report No. D-305-2005 dated March 13, 2005:[11]

SPECIMEN SUBMITTED:

"A" – One (1) heat-sealed transparent plastic packet, labeled with "ANB", containing 0.05 gram of white crystalline substance, placed in a small plastic pack. x x x

PURPOSE OF EXAMINATION:

To determine the presence of dangerous drugs.

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[8] TSN, November 22, 2005, pp. 6-7.

[9] Exhibit "A", records, p. 43.

[10] Records, p. 4.

[11] Exhibit "C", *id.* at 44.

FINDINGS:

Qualitative analysis conducted on the above-mentioned specimen gave **POSITIVE** result for the presence of Methylamphetamine hydrochloride. x x x

C O N C L U S I O N:

Specimen A contains Methylamphetamine hydrochloride, a dangerous drug (emphasis and underscoring supplied)

Denying the accusation, appellant[12] gave his version as follows:

At around 2:00 p.m. on March 12, 2005, while he was working as a caretaker of two video *carrera* machines installed in the house of one Alice Tetet, police officers kicked the door of the house and arrested him, over his resistance, as the police officers demanded for coins from the proceeds of the machines. He was thereafter brought to the Office of the City Prosecutor before undergoing medical examination, and he was later brought to the Bagong Buhay Rehabilitation Center.

In fine, appellant claimed that the charge against him was fabricated.

By Decision[13] of March 28, 2006, the trial court found appellant guilty as charged, disposing as follows:

Foregoing considered, this court finds the accused GUILTY as charged, and hereby sentences him to suffer LIFE IMPRISONMENT and to pay a fine of ₱500,000.00.

The pack of dangerous drugs (Exh. B) shall be forfeited in favor of the state for proper disposition.

SO ORDERED.[14]

In *affirming* the trial court's decision, the Court of Appeals, by Decision of April 22, 2008, held that, contrary to appellant's claim, the chain of custody over the seized illegal drug consonant with the procedure laid down in Section 21 of R.A. No. 9165

[12] TSN, March 14, 2006, pp. 1-12.

[13] Rendered by Judge Gabriel Ingles; records, pp. 53-56.

[14] *Id.* at 56.

had been preserved, the prosecution having clearly established that the plastic pack containing *shabu* was recovered by SPO1 Selibio, who handed it to SPO1 Abelgas who thereupon prepared the request for a laboratory analysis which PO1 Vicada delivered, together with the specimen, to the PNP Crime Laboratory.

The appellate court held too that the prosecution had amply proven that the plastic pack of *shabu* presented before the trial court was the same pack seized from appellant bearing the marking "ANB" and duly identified in court; and that the failure of the apprehending team to conduct a physical inventory and photograph of the seized drug is not fatal to sustain a conviction.[15]

In brushing aside appellant's frame-up defense as self-serving and uncorroborated, it noted that appellant failed to adduce evidence on the possible motive for the police officers to fabricate the charge against him.

Hence, the present appeal.

Owing to the built-in dangers of abuse that a buy-bust operation entails, the law prescribes specific procedures on the seizure and custody of drugs, independently of the general procedures geared to ensure that the rights of people under criminal investigation and of the accused facing a criminal charge are safeguarded.[16]

> [B]y the very nature of anti-narcotic operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.[17] (underscoring supplied)

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[15] CA *rollo*, pp. 81-82.

[16] *People v. Sanchez,* G.R. No. 175832, October 15, 2008, 569 SCRA 194, 208.

[17] *People v. Tan*, G. R. No. 133001, December 14, 2000, 401 Phil. 259, 273, citing *People v. Pagaura*, 334 Phil. 683 (1997) and *People v. Gireng*, 311 Phil. 12 (1995).

The records of the case indicate that even the basics of the outlined procedure in the custody of seized drugs was not observed. Consider the team members' Joint Affidavit executed and sworn to by them two days after the operation or on March 14, 2005, *viz*, quoted *verbatim*:

x x x x x x x x x

4. While positioning ourselves at a place where we can sufficiently see and observed the movement of my poseur buyer we saw the latter approached an amputated left arm man and after a brief transaction, the latter handed to our poseur buyer a small transparent plastic sachet, containing white crystalline substance, believed to be *shabu*, in exchange of our buy bust money;
5. At this instance, our poseur [buyer] quickly executed our pre-arranged signal by placing his right hand on his head, prompting us to hurriedly rushed towards them and placed Arnel Navarette under arrest and recovered from his possession and control the buy bust money described above;
6. After apprising him of his constitutional rights, we brought Arnel Navarette to our Station while the confiscated packet of white crystalline substance which our poseur buyer bought from him was later submitted for examination at the PNP Crime Laboratory 7.[18]

Consider too team member SPO1 Selibio's testimony *viz*:

PROSECUTOR ALEXANDER ACOSTA:

Q: How far were you from the subject when you went to the place?

SPO1 WILLARD SELIBIO:

A: Approximately 8 meters.

Q: So you could see the subject?

A: Yes, sir.

x x x x x x x x x

[18] Records, p. 4.

A: The confidential agent was already instructed that after the transaction is completed the poseur buyer will have to place his right hand on the head as pre-arranger signal.

Q: How did he approach the accused?

A: He went to the subject and the transaction was going on considering that there was already an exchange of the buy bust money and the *shabu*.

x x x x x x x x x

Q: After that pre-arranged signal, what happened next?

A: We rushed to the position of the subject then we arrested the said person after we recovered the buy bust money from the accused.

x x x x x x x x x

Q: What happened after that?

A: We confiscated the said shabu and the buy bust money.

Q: And then what happened?

A: We arrested the said person and informed him of his constitutional rights.

x x x x x x x x x

Q: You said you got the items, to whom did you turn over the same?

A: It was turned over to SPO1 Abelgas for him to make some request to the Crime Laboratory.

x x x x x x x x x

Q: Showing to you Exhibit "B" one heat-sealed plastic pack, tell this Honorable Court if this is the same shabu that was purchased at the time of the buy bust operation?

A: Yes, sir.

Q: How did you [know] that this [plastic pack] is the one?

A: Because of the marked [*sic*].

Q: What was the marking?

A: Arnel B. Navarrete.[19] (emphasis and underscoring supplied)

There was thus a blanket declaration that the team members confiscated the *shabu*. The Public Prosecutor took pains to "supply" the vital detail of who marked the initials "ANB" on the plastic sachet allegedly obtained by the poseur-buyer from appellant. And when the marking of "ANB" was allegedly affixed to the sachet before the sachet was sent for testing to the crime laboratory was not indicated too.

Consider further the testimony of team leader SPO1 Abelgas:

PROSECUTOR ALEXANDER ACOSTA:

Q: After that what happened?

A: We rushed to the suspect and it was Selibio who recovered from the possession of the suspect the buy bust money and after that we arrested him and informed him of his constitutional rights and we brought him to the police station including the *shabu* and submitted it to the PNP Crime Laboratory.

Q: You said the poseur buyer was able to purchased [*sic*] pack of shabu to whom did the poseur buyer turn over the said *shabu*?

A: **To Selibio.**

Q: From the time of the arrest of the accused and the said *shabu* was turned over to Selibio, who was then in possession of the *shabu* from the place where you arrested the suspect up to your office?

A: **It was Selibio**.

Q: In your office what did you do then?

A: We prepared a request for PNP Crime Laboratory for examination.

x x x x x x x x x

[19] TSN, November 8, 2005, pp. 5-7, 9.

Q: How about the *shabu* that was purchased from the poseur buyer can you still identify the same?

A: Yes, sir.

Q: Showing to you this plastic pack, tell this Honorable Court if this is the same *shabu*?

A: Yes sir, this is the same.

Q: How did you know that this is the same?

A: Because of the markings.

Q: What is the marking?

A: **A N B**

Q: Have you seen the markings?

A: Yes, sir.[20] (emphasis and underscoring supplied)

PO2 Labiaga merely echoed that of SPO1 Abelgas'.

Oddly, while SPO1 Selibio claimed at the witness stand to have marked the sachet with "ANB," **not one of his team mates related having seen him mark it**. Serious doubts necessarily arise as to whether the sachet and its contents submitted for laboratory examination were the same as that claimed to have been taken from appellant.

Non-compliance with the procedure laid down in Sec. 21 of the Comprehensive Drugs Act of 2002 is not, of course, always fatal as the law admits of exceptions:

> Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is **justifiable ground** therefor, **and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team.** Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the **preservation of the integrity and the evidentiary value of the seized items**, as the same would be utilized in the determination of the guilt or

[20] TSN, November 22, 2005, pp. 5-8.

innocence of the accused.[21] (citation omitted, underscoring and emphasis supplied)

The apprehending team in the present case has not, however, shown any justifiable ground to exempt it from complying with the legal requirements. To impose benediction on such shoddy police work, absent exempting circumstances, would only spawn further abuses.

In *People v. Orteza*,[22] the Court did not hesitate to strike down the conviction of the therein accused for failure of the police officers to observe the procedure laid down under the Comprehensive Dangerous Drugs Law, thus:

> First, there appears nothing in the records showing that police officers complied with the proper procedure in the custody of seized drugs as specified in *People v. Lim*, *i.e.*, any apprehending team having initial control of said drugs and/or paraphernalia should, immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. The failure of the agents to comply with the requirement raises doubt whether what was submitted for laboratory examination and presented in court was actually recovered from appellant. It negates the presumption that official duties have been regularly performed by the police officers.
>
> In *People v. Laxa*, where the buy-bust team failed to mark the confiscated marijuana immediately after the apprehension of the accused, the Court held that the deviation from the standard procedure in anti-narcotics operations produced doubts as to the origins of the marijuana. Consequently, the Court concluded that the prosecution failed to establish the identity of the *corpus delicti*.
>
> The Court made a similar ruling in *People v. Kimura*, where the Narcom operatives failed to place markings on the seized marijuana

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[21] *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843 citing *People v. Sta. Maria*, G.R. No. 171019, February 23, 2007, 516 SCRA 621.

[22] G.R. No. 173051, July 31, 2007, 528 SCRA 750, 758-759.

at the time the accused was arrested and to observe the procedure and take custody of the drug.

More recently, in *Zarraga v. People*, the Court held that the material inconsistencies with regard to when and where the markings on the *shabu* were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the *corpus delicti*. The Court thus acquitted the accused due to the prosecution's failure to indubitably show the identity of the *shabu*.

IN FINE, the unjustified failure of the police officers to show that the integrity of the object evidence-shabu was properly preserved negates the presumption of regularity accorded to acts undertaken by police officers in the pursuit of their official duties.[23]

Appellant's contention that the apprehending police officers were gravely remiss in complying with the statutory requirements imposed under Section 21 is thus well-taken. His acquittal, on grounds of reasonable doubt, must follow.

WHEREFORE, the assailed decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. For failure of the prosecution to prove his guilt beyond reasonable doubt, appellant, Arnel Bentacan Navarrete is *ACQUITTED* of the crime charged.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, who is *ORDERED* to cause the immediate release of appellant, unless he is being lawfully held for another cause, and to inform this Court of action taken thereon within ten (10) days from notice.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

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[23] *People v. Santos, Jr.*, G.R. No. 175593, October 17, 2007, 536 SCRA 489, 505.

[*] Additional member per Special Order No. 997 dated June 6, 2011.

SECOND DIVISION

[G.R. No. 188897. June 6, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **IRENO BONAAGUA *y* BERCE,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES.— To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched 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 accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, 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 merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. ID.; ID.; TESTIMONY OF YOUNG RAPE VICTIM, APPRECIATED.— Time and again, this Court has consistently held that in rape cases, the evaluation of the credibility of witnesses is best addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect because the judge had the direct opportunity to observe them on the stand and ascertain if they were telling the truth or not. Generally, appellate courts will not interfere with the trial court's assessment in this regard, absent any indication or showing that the trial court has overlooked some material facts of substance or value, or gravely abused its discretion. It is well entrenched in this jurisdiction that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true. A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble

and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her. Moreover, the Court has repeatedly held that the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction.

3. ID.; ID.; ALLEGED ILL MOTIVE OF THE MOTHER OF THE VICTIM, NOT APPRECIATED.— Even Ireno's contention that the charges against him were merely fabricated by his wife because she suspects that he is having an affair with another woman deserves scant consideration. Aside from the fact that the said allegation was not proved, it must be emphasized that no member of a rape victim's family would dare encourage the victim to publicly expose the dishonor to the family unless the crime was in fact committed, especially in this case where the victim and the offender are relatives. It is unnatural for a mother to use her daughter as an engine of malice, especially if it will subject her child to embarrassment and lifelong stigma.

4. ID.; ID.; AFFIDAVIT OF DESISTANCE; NOT ADMISSIBLE AS GROUND FOR DISMISSAL OF INSTITUTED RAPE CASE WHICH IS NOW CLASSIFIED AS A CRIME AGAINST PERSONS.— Rape is no longer a crime against chastity for it is now classified as a crime against persons. Consequently, rape is no longer considered a private crime or that which cannot be prosecuted, except upon a complaint filed by the aggrieved party. Hence, pardon by the offended party of the offender in the crime of rape will not extinguish the offender's criminal liability. Moreover, an Affidavit of Desistance even when construed as a pardon in the erstwhile "private crime" of rape is not a ground for the dismissal of the criminal cases, since the actions have already been instituted. To justify the dismissal of the complaints, the pardon should have been made prior to the institution of the criminal actions. As correctly concluded by the CA, the said affidavit was executed in connection with another accusation of rape which Ireno committed against AAA in Candelaria, Quezon and not the four cases of rape subject of this appeal. In addition, AAA's mother testified that she executed the said affidavit to regain custody of her children who were brought to Bicol by Ireno's siblings.

5. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER POSITIVE TESTIMONY.— Amidst the overwhelming evidence against him, Ireno offered nothing but his bare denial of the accusations against him and that he was someplace else when the dastardly acts were committed. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove, and for which reason it is generally rejected. It has been consistently held that denial and alibi are the most common defenses in rape cases. Denial could not prevail over complainant's direct, positive and categorical assertion. As between a positive and categorical testimony which has the ring of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail.

6. ID.; CRIMINAL PROCEDURE; APPEAL OF CRIMINAL CASE OPENS THE ENTIRE RECORDS FOR EXAMINATION.— Verily, in criminal cases, an examination of the entire records of a case may be explored for the purpose of arriving at a correct conclusion, as an appeal in criminal cases throws the whole case open for review, it being the duty of the court to correct such error as may be found in the judgment appealed from.

7. CRIMINAL LAW; ACTS OF LASCIVIOUSNESS COMMITTED AGAINST A CHILD; ELEMENTS; PRESENT IN CASE AT BAR.— Section 5 (b), Article III of R.A. No. 7610, defines and penalizes acts of lasciviousness committed against a child. x x x Paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. It covers not only a situation where a child is abused for profit, but also where one — through coercion, intimidation or influence — engages in sexual intercourse or lascivious conduct with a child. However, pursuant to the foregoing provision, before an accused can be convicted of child abuse through lascivious conduct committed against a minor below 12 years of age, the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of R.A. No. 7610. x x x "Lascivious conduct" is defined under Section 2 (h) of the rules and regulations of R.A. No. 7610. x x x Undeniably, all the afore-stated elements are present in Criminal Case

No. 03-0255. Ireno committed lascivious acts against AAA by touching her breasts and licking her vagina and the lascivious or lewd acts were committed against AAA, who was 8 years old at the time as established by her birth certificate. Thus, the CA correctly found Ireno guilty of the crime of Acts of Lasciviousness under Section 5 (b) of R.A. No. 7610.

8. ID.; RAPE BY SEXUAL ASSAULT; PROPER PENALTY WHERE AGGRAVATING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP ARE PRESENT; CASE AT BAR.— Under Article 266-B of the RPC, the penalty for rape by sexual assault is *reclusion temporal* "if the rape is committed by any of the 10 aggravating/qualifying circumstances mentioned in this article." In Criminal Case Nos. 03-0254, 03-0256, and 03-0257, the aggravating/qualifying circumstance of minority and relationship are present, considering that the rape was committed by a parent against his minor child. *Reclusion temporal* ranges from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the RPC. Other than the aggravating/qualifying circumstances of minority and relationship which have been taken into account to raise the penalty to *reclusion temporal*, no other aggravating circumstance was alleged and proven. Hence, the penalty shall be imposed in its medium period, or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. On the other hand, the minimum term of the indeterminate sentence should be within the range of the penalty next lower in degree than that prescribed by the Code which is *prision mayor* or six (6) years and one (1) day to twelve (12) years. Thus, Ireno should be meted the indeterminate penalty of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum. x x x As to civil liabilities, the damages awarded in the form of civil indemnity in the amount of ₱50,000.00 and moral damages, also in the amount of ₱50,000.00, for each count of Rape must be both reduced to ₱30,000.00, respectively, in line with current jurisprudence. Also, the amount of exemplary damages awarded in the amount of ₱25,000.00 must be increased to ₱30,000.00 for each count of Rape.

9. ID.; SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT; APPLIED FOR SEXUAL ABUSE COMMITTED BY A FATHER AGAINST HIS CHILD OF ONLY EIGHT (8) YEARS OLD; PENALTY.— It is beyond cavil that when the sexual abuse was committed by Ireno, AAA was only eight (8) years old. Hence, the provisions of R.A. No. 7610, or *The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,* should be applied. Thus, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. As the crime was committed by the father of the offended party, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as Acts of Lasciviousness, relationship is always aggravating. Therefore, Ireno should be meted the indeterminate penalty of thirteen (13) years, nine (9) months and eleven (11) days of *reclusion temporal*, as minimum, to sixteen (16) years, five (5) months and ten (10) days of *reclusion temporal,* as maximum. Moreover, the award in the amount of ₱15,000.00 as moral damages and a fine in the amount of ₱15,000.00, is proper in line with current jurisprudence. However, civil indemnity *ex delicto* in the amount of ₱20,000.00 should also be awarded. In view of the presence of the aggravating circumstance of relationship, the amount of ₱15,000.00 as exemplary damages should likewise be awarded.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Ireno Bonaagua (Ireno) seeks the reversal of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03133 convicting him with three (3) counts of Statutory Rape under Paragraph 2, Article 266-A of the Revised Penal Code (RPC), as amended, in relation to Republic Act No. 7610 (R.A. No. 7610) and Acts of Lasciviousness under Section 5 (b) of R.A. No. 7610.

The factual and procedural antecedents are as follows:

In four (4) separate Informations, Ireno was charged by the Office of the City Prosecutor of Las Piñas City with four (4) counts of Rape under Paragraph 2, Article 266-A of the RPC, as amended, in relation to R.A. No. 7610, for inserting his tongue and his finger into the genital of his minor daughter, AAA.[2]

The accusatory portion of the Information in Criminal Case No. 03-0254 against Ireno reads:

That on or about the month of December 1998 in the City of Las Piñas and within the jurisdiction of this Honorable Court, the above-named accused, with abuse of influence and moral ascendancy, by

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[1] Penned by Associate Justice Mariano C. del Castillo (now a member of this Court), with Associate Justices Isaias P. Dicdican and Ramon M. Bato, Jr., concurring; *rollo*, pp. 2-19.

[2] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously insert his tongue and finger into the genital of his daughter, [AAA], a minor then eight (8) years of age, against her will and consent.

CONTRARY TO LAW and with the special aggravating/qualifying circumstance of minority of the private offended party, [AAA], being then only eight (8) years of age and relationship of the said private offended party with the accused, Ireno Bonaagua *y* Berce, the latter being the biological father of the former.[3]

The Information in Criminal Case No. 03-0255[4] has the same accusatory allegations while the Informations in Criminal Case Nos. 03-0256[5] and Criminal Case Nos. 03-0257[6] are similarly worded, except for the date of the commission of the crime and the age of AAA, which are December 2000 and ten (10) years old, respectively.

The cases were later consolidated[7] and upon his arraignment, Ireno pleaded not guilty to the four (4) counts of rape with which he was charged. Consequently, trial on the merits ensued.

At the trial, the prosecution presented the testimonies of the victim, AAA; the victim's mother; and Dr. Melissa De Leon. The defense, on the other hand, presented the lone testimony of the accused as evidence.

Evidence for the Prosecution

The prosecution established that in 1998, AAA and her mother left their house in Candelaria, Quezon to spend the Christmas with accused-appellant in Las Piñas City. They stayed in the house of a certain Lola Jean, the godmother in the wedding of her parents, at Sta. Cecilia Subdivision, Las Piñas City.

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[3] Records, Criminal Case No. 03-0254, pp. 4-5.

[4] Records, Criminal Case No. 03-0255, pp. 1-3

[5] Records, Criminal Case No. 03-0256, pp. 1-3.

[6] Records, Criminal Case No. 03-0255, pp. 1-3.

[7] Records, Criminal Case No. 03-0254, p. 39.

AAA was inside a room lying in bed one afternoon while her younger brothers were playing outside the house and her mother was not home. Accused-appellant entered the room. He approached her, rolled her shirt upward, and removed her shorts and panty. She tried to resist by putting her clothes back on, but her father's strength prevailed. Thereafter, accused-appellant touched and caressed her breasts. He licked her vagina then inserted his finger into it.

In the evening of the same day, the accused-appellant raped AAA again in the same manner and under the same circumstances. AAA did not tell her mother that she was raped because accused-appellant threatened to kill her mother by placing the latter's body in a drum and have it cemented if she would report the incidents. She returned to Quezon with her mother before the end of the Christmas season.

In December 1999, AAA was raped by accused-appellant for the third time when he went to Candelaria, Quezon. In December 2000, AAA and her mother spent the Yuletide season with accused-appellant in Pulanglupa, Las Piñas City. In a single day, AAA was raped for the fourth and fifth time. While spending the afternoon inside her father's room at the car-wash station, he removed her shorts and panty then proceeded to touch and insert his finger into her vagina. Accused-appellant repeated the same sexual assault shortly thereafter. AAA again did not report these incidents for fear that her mother would be killed and cemented inside a drum.

On January 26, 2001, AAA complained of severe abdominal pain which prompted her mother to take her to Gregg Hospital in Sariaya, Quezon. AAA was transferred to the Quezon Memorial Hospital in Lucena City where Dr. Melissa De Leon performed on her a physical examination. The results revealed that there was a healed superficial laceration at the 9 o'clock position on the hymen of AAA. This medical finding forced AAA to reveal to her mother all the incidents of rape committed by accused-appellant.

After being discharged from the hospital, AAA's mother took her to the Police Headquarters of Sariaya, Quezon to file a complaint for rape against accused-appellant. AAA's mother also took her to the office of the National Bureau of Investigation in Legaspi City where she executed a sworn statement against accused-appellant.[8]

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[8] *Rollo*, pp. 4-6.

Evidence for the Defense

Accused-appellant denied committing the charges of rape hurled against him. He claimed to be working in Las Piñas City while AAA, her mother and siblings where (sic) in Sariaya, Quezon at the time the alleged rapes occurred. While he admitted that there were times when AAA and her mother would visit him in Las Piñas City, he nonetheless averred that they would leave on the same day they arrived after he gives them money.

Accused-appellant asserted further that the charges of rape against him were fabricated by AAA's mother, who suspected him of having an affair with another woman in Las Piñas City.[9]

On August 6, 2007, the Regional Trial Court (RTC), after finding the evidence for the prosecution overwhelming against the accused's defense of denial and alibi, rendered a Decision[10] convicting Ireno with four (4) counts of Rape, the dispositive portion of which reads:

WHEREFORE, premises considered, there being proof beyond reasonable doubt that accused IRENO BONAAGUA, has committed four (4) counts of RAPE under par. 2 of Article 266-A of the Revised Penal Code, as amended, in relation to R.A. 7610, as charged, the Court hereby pronounced him GUILTY and sentences him to suffer the penalty of *RECLUSION PERPETUA* for each case and to pay private complainant [AAA], the amount of Php50,000 for each case, or a total of Php200,000, by way of civil indemnity plus Php50,000 for each case or a total of Php200,000 as moral damages.

Costs against the accused.

SO ORDERED.[11]

Aggrieved, Ireno appealed the Decision before the CA, which appeal was later docketed as CA-G.R. CR-H.C. No. 03133.

On March 31, 2009, the CA rendered a Decision[12] affirming the decision of the RTC with modifications on the imposable

[9] *Id.* at 6-7.

[10] CA *rollo*, pp. 12-32.

[11] *Id.* at 32.

[12] *Rollo*, pp. 2-19.

penalty in Criminal Case Nos. 03-0254, 03-0256, and 03-0257, and finding Ireno guilty of Acts of Lasciviousness under Section 5 (b) of R.A. No. 7610, instead of Rape, in Criminal Case Nos. 03-0255, the decretal portion of which reads:

> WHEREFORE, the Decision of the Regional Trial Court of Las Piñas City, Branch 254, finding Ireno Bonaagua *y* Berce guilty beyond reasonable doubt of the crime of rape is **AFFIRMED with MODIFICATIONS**:
>
> 1. Ireno Bonaagua *y* Berce is hereby sentenced to suffer the indeterminate penalty of 12 years of *prision mayor,* as minimum, to 20 years of *reclusion temporal,* as maximum, for each rape in Criminal Case Nos. 03-0254, 03-0256 and 03-0257 and is ordered to pay AAA the amount of ₱25,000.00 as exemplary damages in each case, apart from the civil indemnity and moral damages that have already been awarded by the trial court;
>
> 2. Ireno Bonaagua *y* Berce is hereby held guilty beyond reasonable doubt of the crime of acts of lasciviousness in Criminal Case No. 03-0255, with relationship as an aggravating circumstance. He is, accordingly, sentenced to suffer the indeterminate penalty of 12 years and 1 day to 17 years and 4 months of *reclusion temporal* in its minimum and medium periods and ordered to pay AAA the amount of PhP15,000 as moral damages and a fine of PhP15,000.00.
>
> SO ORDERED.[13]

In fine, the CA found Ireno's defense of denial and alibi inherently weak against the positive identification of AAA that he was the culprit of the horrid deed. Thus, aside from modifying the imposable penalty in Criminal Case Nos. 03-0254, 03-0256 and 03-0257, the CA affirmed the decision of the RTC finding Ireno guilty of the crime of Rape Through Sexual Assault.

In Criminal Case No. 03-0255, however, after a diligent review of the evidence adduced by the prosecution, the CA only found

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

Ireno guilty of the crime of Acts of Lasciviousness under Section 5 (b) of R.A. No. 7610. The CA opined that since the prosecution failed to establish the act of insertion by Ireno of his finger into the vagina of AAA, Ireno could only be found guilty of Acts of Lasciviousness, a crime which is necessarily included in the Information filed against him in Criminal Case No. 03-0255.

Ireno now comes before this Court for relief.

In a Resolution[14] dated December 16, 2009, the Court informed the parties that they may file their respective supplemental briefs if they so desire. In their respective Manifestations,[15] the parties waived the filing of their supplemental briefs and, instead, adopted their respective briefs filed before the CA.

Hence, Ireno raises the lone error:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[16]

Simply put, Ireno maintains that the testimony of AAA was replete with inconsistencies and was extremely unbelievable. Ireno insists that the allegation that he inserted his tongue and finger into the genital of AAA was manifestly incredible as the deed is physiologically impossible. Moreover, the medical findings are grossly inconclusive to prove that AAA was raped, since it only established that there was only one healed superficial laceration.

This Court, however, finds the arguments raised by Ireno untenable. To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched

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[14] *Id.* at 34-35.

[15] *Id.* at 36-38; 41-43.

[16] CA *rollo*, p. 52.

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 accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, 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 merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[17]

After perusing the testimony of the victim, AAA, the prosecution has indubitably established that Ireno was the one who sexually assaulted her. AAA categorically narrated that Ireno sexually abused her on several occasions and even threatened AAA that he would kill her mother if she would report the incidents.

Time and again, this Court has consistently held that in rape cases, the evaluation of the credibility of witnesses is best addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect because the judge had the direct opportunity to observe them on the stand and ascertain if they were telling the truth or not. Generally, appellate courts will not interfere with the trial court's assessment in this regard, absent any indication or showing that the trial court has overlooked some material facts of substance or value, or gravely abused its discretion.[18]

It is well entrenched in this jurisdiction that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true.[19] A young

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[17] *People v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653, 664-665.

[18] *People v. Alcazar*, G.R. No. 186494, September 15, 2010, 630 SCRA 622, 632.

[19] *Flordeliz v. People*, G.R. No. 186441, March 3, 2010, 614 SCRA 225, 234.

girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her.[20] Moreover, the Court has repeatedly held that the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction.[21]

Moreover, contrary to Ireno's contention, the medical findings of Dr. Melissa De Leon did not refute AAA's testimony of defilement, but instead bolstered her claim. The RTC correctly concluded:

> It is true that Dr. Melissa De Leon, when called to the witness stand to substantiate the same medical certification, did not rule out the possibility that the laceration might have been inflicted through some other causes and that there could have been only one instance of finger insertion into the vagina of private complainant. However, it is equally true that Dr. De Leon also did not rule out the possibility that finger insertion might have been the cause of the laceration (pp. 7-12, TSN, January 31, 2006). Dr. De Leon also clarified that only one laceration may be inflicted although a finger is inserted into the vagina on separate instances (pp. 19-26, *supra*). According to Dr. De Leon, this instance depends on the force exerted into the vagina and on whether or not the hymen is membranous or firm and thick. A membranous hymen is easily lacerated and so when a force is exerted into it on several occasions, several lacerations may occur. A thick and firm hymen is not easily lacerated and so a force exerted into it on several occasions may cause only one laceration. Private complainant has thick and firm hymen and this may explain why there is only (sic) laceration on her hymen although she claimed her father inserted into her vagina his finger several times (pp. 19-29, *supra*).
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> This non-categorical stance of Dr. De Leon is nonetheless understandable because Dr. De Leon has no personal knowledge of

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[20] *People v. Matunhay*, G.R. No. 178274, March 5, 2010, 614 SCRA 307, 316-317.

[21] *Id.* at 317, citing *People v. Quiñanola*, 366 Phil. 390 (1999).

what actually happened to private complainant that she (complainant) suffered hymenal laceration. However, there is one thing very certain though in the testimony of Dr. De Leon – that she medically examined [AAA], herein private complainant, because of the information that [AAA] was sexually abused by her [AAA's] own father (pp. 5-6, *supra*). And indeed, as already discussed lengthily above, there is no reason to doubt the veracity of AAA's allegation.[22]

The same conclusion was also arrived at by the CA, to wit:

> While the medico-legal findings showed a single healed superficial laceration on the hymen of AAA, Dr. De Leon clarified that it is not impossible for a hymen to sustain only one laceration despite the fact that a finger had been inserted into the vagina on several accounts. This situation may arise depending on the force extended into the vagina and on whether or not the hymen of the victim is membranous or firm and thick. A membranous hymen is easily lacerated; thus, when a force is exerted into it on several occasions, several lacerations may occur. On the other hand, a thick and firm hymen is not easily lacerated; a force exerted into it on several occasions may cause only one laceration. According to Dr. De Leon, AAA has thick and firm hymen and this may explain why it has only one laceration despite her claim that accused-appellant inserted his finger inside her vagina several times.[23]

Even Ireno's contention that the charges against him were merely fabricated by his wife because she suspects that he is having an affair with another woman deserves scant consideration. Aside from the fact that the said allegation was not proved, it must be emphasized that no member of a rape victim's family would dare encourage the victim to publicly expose the dishonor to the family unless the crime was in fact committed, especially in this case where the victim and the offender are relatives.[24] It is unnatural for a mother to use her daughter as an engine of malice, especially if it will subject her child to embarrassment and lifelong stigma.[25]

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[22] CA *rollo*, pp. 29-30.

[23] *Rollo*, pp. 11-12.

[24] *People v. Flores*, 448 Phil. 840, 855-846 (2003).

[25] *People v. Ibarrientos*, 476 Phil. 493, 512 (2004).

Also, Ireno cannot likewise rely on the Affidavit of Desistance stating that AAA and her mother are no longer interested in pursuing the case filed against him.

Rape is no longer a crime against chastity for it is now classified as a crime against persons.[26] Consequently, rape is no longer considered a private crime or that which cannot be prosecuted, except upon a complaint filed by the aggrieved party. Hence, pardon by the offended party of the offender in the crime of rape will not extinguish the offender's criminal liability. Moreover, an Affidavit of Desistance — even when construed as a pardon in the erstwhile "private crime" of rape — is not a ground for the dismissal of the criminal cases, since the actions have already been instituted. To justify the dismissal of the complaints, the pardon should have been made prior to the institution of the criminal actions.[27] As correctly concluded by the CA, the said affidavit was executed in connection with another accusation of rape which Ireno committed against AAA in Candelaria, Quezon and not the four cases of rape subject of this appeal. In addition, AAA's mother testified that she executed the said affidavit to regain custody of her children who were brought to Bicol by Ireno's siblings.[28]

It has been repeatedly held by this Court that it looks with disfavor on affidavits of desistance. As cited in *People v. Alcazar*,[29] the rationale for this was extensively discussed in *People v. Junio*:[30]

x x x We have said in so many cases that retractions are generally unreliable and are looked upon with considerable disfavor by the courts. The unreliable character of this document is shown by the fact that it is quite incredible that after going through the process

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[26] Republic Act No. 8353.

[27] *People v. Montes*, 461 Phil. 563, 584 (2003).

[28] *Rollo*, p. 11.

[29] *Supra* note 18, at 635-636.

[30] G.R. No. 110990, October 28, 1994, 237 SCRA 826.

of having the [appellant] arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, [the rape victim] would suddenly turn around and declare that [a]fter a careful deliberation over the case, (she) find(s) that the same does not merit or warrant criminal prosecution.

Thus, we have declared that at most the retraction is an afterthought which should not be given probative value. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who gave it later on changed his mind for one reason or another. Such a rule [would] make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. Because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, the Court has invariably regarded such affidavits as exceedingly unreliable.[31]

Amidst the overwhelming evidence against him, Ireno offered nothing but his bare denial of the accusations against him and that he was someplace else when the dastardly acts were committed. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove, and for which reason it is generally rejected.[32] It has been consistently held that denial and alibi are the most common defenses in rape cases. Denial could not prevail over complainant's direct, positive and categorical assertion. As between a positive and categorical testimony which has the ring of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail.[33] All said, as found by the CA, the prosecution has convincingly proved and more than sufficiently established that: (1) Ireno committed the accusations of Rape Through Sexual Assault against AAA in Criminal Cases Nos. 03-0254, 03-0256, and 03-0257; (2) that AAA was a minor when Ireno committed the sexual assault

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[31] *Id.* at 834. (Emphasis omitted.)

[32] *People v. Balunsat*, G.R. No. 176743, July 28, 2010, 626 SCRA 77, 97-98.

[33] *Supra* note 20, at 317.

against her;[34] and (3) that Ireno was the biological father of AAA.[35]

Verily, in criminal cases, an examination of the entire records of a case may be explored for the purpose of arriving at a correct conclusion, as an appeal in criminal cases throws the whole case open for review, it being the duty of the court to correct such error as may be found in the judgment appealed from.[36] Since the CA found Ireno guilty of Acts of Lasciviousness under Section 5 (b) of R.A. No. 7610 in Criminal Case No. 03-0255 instead of rape, the Court should thus determine whether the evidence presented by the prosecution was sufficient to establish that the intentional touching of the victim by Ireno constitutes lascivious conduct and whether the CA imposed the appropriate penalties.

As aptly found by the CA:

> A diligent review of the evidence adduced by the prosecution, however, shows that accused-appellant cannot be held guilty as charged for the crime of rape in Criminal Case No. 03-0255. The prosecution failed to establish insertion by accused-appellant of his finger into the vagina of AAA, who testified on direct examination that accused-appellant "touched my private part and licked it ***but he did not insert his finger inside my vagina***." In fact, even the trial court asked AAA if accused-appellant inserted his finger inside her vagina. She answered in the negative and averred that he licked her vagina and touched her breasts. In reply to the prosecution's query if accused-appellant did anything else aside from licking her organ, she said he also touched it. During cross-examination, AAA testified that accused-appellant "merely touched her vagina but did not insert his finger."[37]

Section 5 (b), Article III of R.A. No. 7610, defines and penalizes acts of lasciviousness committed against a child as follows:

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[34] Record, Criminal Case No. 03-0254, pp. 48 and 107.

[35] *Id.*; TSN, June 13, 2006, p. 6.

[36] *Gelig v. People*, G.R. No. 173150, July 28, 2010, 626 SCRA 48, 49.

[37] *Rollo*, p. 13. (Emphasis theirs).

Section 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or *due to the coercion or influence of any adult*, syndicate or group, indulge in sexual intercourse or *lascivious conduct*, are deemed to be children exploited in prostitution and other sexual abuse.

x x x x x x x x x

(b) Those who commit the act of sexual intercourse or *lascivious conduct* with a child exploited in prostitution or subject to other sexual abuse; *Provided*, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.[38]

Paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. It covers not only a situation where a child is abused for profit, but also where one — through coercion, intimidation or influence — engages in sexual intercourse or lascivious conduct with a child.[39]

However, pursuant to the foregoing provision, before an accused can be convicted of child abuse through lascivious conduct committed against a minor below 12 years of age, the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of R.A. No. 7610.[40]

Acts of Lasciviousness, as defined in Article 336 of the RPC, has the following elements:

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[38] Emphasis supplied.

[39] *Flordeliz v. People*, *supra* note 19, at 240.

[40] *Navarrete v. People*, G.R. No. 147913, January 31, 2007, 513 SCRA 509, 517.

(1) That the offender commits any act of lasciviousness or lewdness;
(2) That it is done under any of the following circumstances:
    a. By using force or intimidation; or
    b. When the offended party is deprived of reason or otherwise unconscious; or
    c. When the offended party is under 12 years of age; and
(3) That the offended party is another person of either sex.[41]

In addition, the following elements of sexual abuse under Section 5, Article III of R.A. No. 7610 must be established:

1. The accused commits the act of sexual intercourse or lascivious conduct.
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
3. The child, whether male or female, is below 18 years of age.[42]

Corollarilly, Section 2 (h) of the rules and regulations[43] of R.A. No. 7610 defines "Lascivious conduct" as:

[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.[44]

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[41] *Flordeliz v. People*, *supra* note 19, at 240-241; *Navarrete v. People*, *supra*.

[42] *Malto v. People*, G.R. No. 164733, September 21, 2007, 533 SCRA 643, 656; *Navarrete v. People, supra* note 40, at 521; *Olivares v. Court of Appeals*, 503 Phil. 421, 431 (2005).

[43] Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (adopted on October 11, 1993).

[44] *Flordeliz v. People*, *supra* note 19, at 241, citing *Navarrete v. People*, *supra* note 40, at 521-522; *Olivarez v. Court of Appeals, supra* note 42, at 431-432; *People v. Bon*, 444 Phil. 571, 584 (2003).

Undeniably, all the afore-stated elements are present in Criminal Case No. 03-0255. Ireno committed lascivious acts against AAA by touching her breasts and licking her vagina and the lascivious or lewd acts were committed against AAA, who was 8 years old at the time as established by her birth certificate.[45] Thus, the CA correctly found Ireno guilty of the crime of Acts of Lasciviousness under Section 5 (b) of R.A. No. 7610.

It must be emphasized, however, that like in the crime of rape whereby the slightest penetration of the male organ or even its slightest contact with the outer lip or the *labia majora* of the vagina already consummates the crime, in like manner, if the tongue, in an act of cunnilingus, touches the outer lip of the vagina, the act should also be considered as already consummating the crime of rape through sexual assault, not the crime of acts of lasciviousness. Notwithstanding, in the present case, such logical interpretation could not be applied. It must be pointed out that the victim testified that Ireno only touched her private part and licked it, but did not insert his finger in her vagina. This testimony of the victim, however, is open to various interpretation, since it cannot be identified what specific part of the vagina was defiled by Ireno. Thus, in conformity with the principle that the guilt of an accused must be proven beyond reasonable doubt, the statement cannot be the basis for convicting Ireno with the crime of rape through sexual assault.

Penalties and Award of Damages

Having found Ireno guilty beyond reasonable doubt of Rape Through Sexual Assault in Criminal Case Nos. 03-0254, 03-0256, and 03-0257 and Acts of Lasciviousness in Criminal Case No. 03-0255, We shall proceed to determine the appropriate penalties imposable for each offense.

Criminal Case Nos. 03-0254, 03-0256, and 03-0257

Under Article 266-B of the RPC, the penalty for rape by sexual assault is *reclusion temporal* "if the rape is committed

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[45] Record, Criminal Case No. 03-0254, p. 107.

by any of the 10 aggravating/qualifying circumstances mentioned in this article."[46] In Criminal Case Nos. 03-0254, 03-0256, and 03-0257, the aggravating/qualifying circumstance of minority and relationship are present, considering that the rape was committed by a parent against his minor child. *Reclusion temporal* ranges from twelve (12) years and one (1) day to twenty (20) years.

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the RPC. Other than the aggravating/qualifying circumstances of minority and relationship which have been taken into account to raise the penalty to *reclusion temporal*,[47] no other aggravating circumstance was alleged and proven. Hence, the penalty shall be imposed in its medium period,[48] or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

On the other hand, the minimum term of the indeterminate sentence should be within the range of the penalty next lower in degree than that prescribed by the Code which is *prision mayor* or six (6) years and one (1) day to twelve (12) years.[49] Thus, Ireno should be meted the indeterminate penalty of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

It must be clarified, however, that the reasoning expounded by the Court in the recent case of *People v. Armando Chingh y Parcia*,[50] for imposing upon the accused the higher penalty

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[46] ART. 266-B. *Penalties.* – x x x

x x x x x x x x x

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.

[47] *Flordeliz v. People*, *supra* note 19, at 243.

[48] Revised Penal Code, Art. 64, Par. 1.

[49] *Supra* note 19, at 243.

[50] G.R. No. 178323, March 16, 2011.

provided in Section 5 (b), Article III of R.A. No. 7610, has no application in the case at bar. In the said case, the Court, acknowledging the fact that to impose the lesser penalty would be unfair to the child victim, meted upon the accused the higher penalty of *reclusion temporal* in its medium period as provided in Section 5 (b), Article III of R.A. No. 7610, instead of the lesser penalty of *prision mayor* prescribed by Article 266-B for rape by sexual assault under paragraph 2, Article 266-A of the RPC. The Court elucidated:

> In this case, the offended party was ten years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, Armando was aptly prosecuted under Art. 266-A, par. 2 of the Revised Penal Code, as amended by R.A. No. 8353, for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is *prision mayor*, considering that VVV was below 12 years of age, and considering further that Armando's act of inserting his finger in VVV's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period.
>
> The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Art. 366 in relation to Section 5 (b), Article III of R.A. No. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor*. This is undeniably unfair to the child victim. To be sure, it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of RA No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those "persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."

In the present case, the factual milieu was different since the offender, Ireno, is the father of the minor victim. Hence, the offenses were committed with the aggravating/qualifying circumstances of minority and relationship, attendant circumstances

which were not present in the *Chingh* case, which in turn, warrants the imposition of the higher penalty of *reclusion temporal* prescribed by Article 266-B of the RPC. Considering that the RPC already prescribes such penalty, the rationale of unfairness to the child victim that *Chingh* wanted to correct is absent. Hence, there is no more need to apply the penalty prescribed by R.A. No. 7610.

As to civil liabilities, the damages awarded in the form of civil indemnity in the amount of ₱50,000.00 and moral damages, also in the amount of ₱50,000.00, for each count of Rape must be both reduced to ₱30,000.00, respectively, in line with current jurisprudence.[51] Also, the amount of exemplary damages awarded in the amount of ₱25,000.00 must be increased to ₱30,000.00 for each count of Rape.[52]

Criminal Case No. 03-0255

It is beyond cavil that when the sexual abuse was committed by Ireno, AAA was only eight (8) years old. Hence, the provisions of R.A. No. 7610, or *The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*, should be applied.

Thus, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. As the crime was committed by the father of the offended party, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as Acts of Lasciviousness, relationship is always aggravating.[53] Therefore, Ireno should be meted the indeterminate penalty of thirteen

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[51] *People v. Alfonso*, G.R. No. 182094, August 18, 2010, 628 SCRA 431, 452-453.

[52] *Id.* at 452, citing *People v. Lindo*, 627 SCRA 519, 533 (2010).

[53] *People v. Montinola*, G.R. No. 178061, January 31, 2008, 543 SCRA 412, 432.

(13) years, nine (9) months and eleven (11) days of *reclusion temporal*, as minimum, to sixteen (16) years, five (5) months and ten (10) days of *reclusion temporal*, as maximum.

Moreover, the award in the amount of ₱15,000.00 as moral damages and a fine in the amount of ₱15,000.00, is proper in line with current jurisprudence.[54] However, civil indemnity *ex delicto* in the amount of ₱20,000.00 should also be awarded.[55] In view of the presence of the aggravating circumstance of relationship, the amount of ₱15,000.00 as exemplary damages should likewise be awarded.[56]

WHEREFORE, premises considered, the Decision of the Court of Appeals, dated March 31, 2009 in CA-G.R. CR-H.C. No. 03133, is *AFFIRMED* with *MODIFICATIONS*:

1. In *Criminal Case Nos. 03-0254, 03-0256, and 03-0257*, *IRENO BONAAGUA y BERCE* is hereby sentenced to suffer the indeterminate penalty of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, for each count. He is likewise ordered to pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages for each count of Qualified Rape Through Sexual Assault or a total of ₱90,000.00 for each count.

2. In *Criminal Case No. 03-0255, IRENO BONAAGUA y BERCE* is meted to suffer the indeterminate penalty of thirteen (13) years, nine (9) months and eleven (11) days of *reclusion temporal*, as minimum, to sixteen (16) years, five (5) months and ten (10) days of *reclusion temporal*, as maximum. In addition to moral damages and fine, he is likewise ordered to pay ₱20,000.00 as civil indemnity and ₱15,000.00 as exemplary damages.

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[54] *Id.*; *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 280; *Olivares v. Court of Appeals*, *supra* note 42.

[55] *Flordeliz v. People*, *supra* note 19, at 243; *People v. Palma*, 463 Phil. 767 (2003).

[56] *Flordeliz v. People*, *supra*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 190107. June 6, 2011]

JAPRL DEVELOPMENT CORP., PETER RAFAEL C. LIMSON and JOSE UY AROLLADO, *petitioners, vs.* **SECURITY BANK CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION OVER THE PERSON OF DEFENDANT; WHERE OBJECTION THEREIN WAS COUPLED WITH DISCUSSION OF THE CASE, THE SAME IS CONSIDERED AS VOLUNTARY SUBMISSION TO JURISDICTION OF THE COURT.— When a defendant's appearance is made precisely to object to the jurisdiction of the court over his person, it cannot be considered as appearance in court. Limson and Arollado glossed over the alleged lack of service of summons, however, and proceeded to exhaustively discuss why SBC's complaint could not prosper against them as sureties. They thereby voluntarily submitted themselves to the jurisdiction of the Makati RTC.

2. MERCANTILE LAW; CORPORATION LAW; CORPORATE REHABILITATION; SURETY SOLIDARILY LIABLE WITH THE CORPORATION UNDER REHABILITATION, NOT INCLUDED IN THE LIST OF STAYED CLAIMS.— On a trial court's suspension of proceedings against a surety of a corporation in the process of rehabilitation, *Banco de Oro-EPCI, Inc. v. JAPRL Development Corporation* holds that a

creditor can demand payment from the surety **solidarily liable** with the corporation seeking rehabilitation**,** it being not included in the list of stayed claims. Indeed, Section 6(b) of the Interim Rules of Procedure of Corporate Rehabilitation which the appellate court cited in the earlier-quoted portion of its decision, provides that a stay order does not apply to sureties who are *solidarily liable* with the debtor. In Limson and Arollado's case, their solidary liability with JAPRI is documented. x x x Limson and Arollado, as sureties, whose liability is solidary cannot therefore, claim protection from the rehabilitation court, they not being the financially-distressed corporation that may be restored, not to mention that the rehabilitation court has no jurisdiction over them. Article 1216 of the Civil Code clearly is not on their side: ART. 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against any one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected. IN FINE, SBC can pursue its claim against Limson and Arollado despite the pendency of JAPRL's petition for rehabilitation. For, by the Continuing Suretyship Agreement (CSA) in favor of respondent SBC, it is the obligation of the sureties, who are therein stated to be solidary with JAPRL, to see to it that JAPRL's debt is **fully paid.**

APPEARANCES OF COUNSEL

Feria Tantoco Robeniol & Santiago for petitioners.

Lariba Perez Mangrobang Miralles Alpao Castaneda & Dumbrique for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

JAPRL Development Corporation (JAPRL), a domestic corporation engaged in fabrication, manufacture and distribution of steel products, applied for a credit facility (Letter of Credit/

Trust Receipt) in the amount of Fifty Million (₱50,000,000) Pesos with Security Bank Corporation (SBC). The application was approved and the Credit Agreement took effect on July 15, 1996.[1]

On November 5, 2001, petitioners Peter Rafael C. Limson (Limson) and Jose Uy Arollado (Arollado), JAPRL Chairman and President, respectively, executed a Continuing Suretyship Agreement (CSA)[2] in favor of SBC wherein they guaranteed the due and full payment and performance of JAPRL's guaranteed obligations under the credit facility.[3]

In 2002, on JAPRL's proposal, SBC extended the period of settlement of his obligations.

In 2003, JAPRL's financial adviser, MRM Management Incorporated (MRM), convened JAPRL's creditors, SBC included, for the purpose of restructuring JAPRL's existing loan obligations. Copies of JAPRL's financial statements from 1998 to 2001 were given for the creditors to study.

SBC soon discovered material inconsistencies in the financial statements given by MRM *vis-à-vis* those submitted by JAPRL when it applied for a credit facility, drawing SBC to conclude that JAPRL committed misrepresentation.

As paragraph 10 (c) of the Credit Agreement[4] provided, if "any representation or warranty, covenant or undertaking embodied [therein] and [in] the Credit Instrument or in any certificate, statement or document submitted to SBC turns out to be untrue or ceases to be true in any material respect, or is violated or not complied with," such will constitute an event of default committed by JAPRL and its sureties.

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[1] Records, pp. 14-17.

[2] *Id.* at 10-13.

[3] JAPRL, Limson and Arollado shall be collectively referred to as "petitioners."

[4] Records, pp. 14-17.

On the basis of Item 2 of the CSA,[5] SBC sent a formal letter of demand[6] dated August 20, 2003 to petitioners JAPRL, Limson and Arollado for the immediate payment of Forty Three Million Nine Hundred Twenty Six Thousand and Twenty One Pesos and 41/100 (₱43,926,021.41) representing JAPRL's outstanding obligations.

Petitioners failed to comply with SBC's demand, hence, SBC filed on September 1, 2003 a complaint for sum of money with application for issuance of writ of preliminary attachment[7] before the Regional Trial Court (RTC) of Makati City against JAPRL, Limson and Arollado.

During the hearing on the prayer for the issuance of writ of preliminary attachment on September 16, 2003, SBC's counsel manifested that it received a copy of a Stay Order dated September 8, 2003 issued by the RTC of Quezon City, Branch 90 wherein JAPRL's petition for rehabilitation was lodged. The Makati RTC at once ordered in open court the archiving of SBC's complaint for sum of money until disposition by the Quezon City RTC of JAPRL's petition for rehabilitation.[8]

When the Makati RTC reduced to writing its open court Order of September 16, 2003, however, it instead declared the dismissal of SBC's complaint without prejudice:

When this case was called for hearing, plaintiff's counsel manifested that they received a Stay Order from Regional Trial Court, Br. 190, Quezon City, relative to the approval of the Rehabilitation Plan filed by defendant JAPRL Dev. Corp. and in view thereof he

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[5] Item No. 2 provides: Binding Effect of Credit Instruments – The Surety shall be bound by all the terms and conditions of the Credit Instruments.

Credit Instruments as defined in Item 1 (c) of the CSA refer to the agreements and promissory notes covering the credit accommodations granted by the Bank to the Debtor, including the collaterals given as a security for the credit accommodations.

[6] Records, p. 69.

[7] *Id.* at 1-9.

[8] Transcript of Stenographic Notes (TSN) dated September 16, 2003, p. 75.

prayed that the present case be archived instead. However, the Court is of the view to have the case dismissed without prejudice so that a disposition be made on the case.

WHEREFORE, let the present case be ordered DISMISSED without prejudice to a refiling or having a claim filed with the appropriate forum.

SO ORDERED.[9] (underscoring supplied)

On SBC's motion for reconsideration, however, the Makati RTC, by Order of January 9, 2004,[10] reverted to its oral order of archiving SBC's complaint.

SBC moved to clarify the Makati RTC January 9, 2004 Order, positing that the suspension of the proceedings should only be with respect to JAPRL but not with respect to Limson and Arollado.[11] The Makati RTC, by Order of February 25, 2004, mantained its order archiving the complaint against all petitioners herein, however.

SBC filed a motion for reconsideration[12] of the February 25, 2004 Order, to which Limson and Arollado separately filed an "Opposition (*Ad Cautelam*)"[13] wherein they claimed that summons were not served on them, hence, the Makati RTC failed to acquire jurisdiction over their person. At any rate, they raised defenses against SBC's claim that they acted as sureties of JAPRL.

Meanwhile, the proposed rehabilitation plan before the Quezon City RTC was disapproved by Order of May 9, 2005.[14] On SBC's motion, the Makati RTC thus reinstated SBC's complaint to its docket, by Order of February 27, 2006.[15]

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[9] *Id.* at 71.

[10] *Id.* at 100.

[11] *Id.* at 101-102.

[12] *Id.* at 105-109.

[13] *Id.* at 119-126.

[14] CA *rollo*, pp. 72-74.

[15] Records, p. 276.

Petitioners later filed before the Makati RTC a Manifestation (*Ad Cautelam*)[16] informing that a Stay Order dated March 13, 2006[17] was issued, this time by the Calamba RTC, Branch 34, in a new petition for rehabilitation filed by JAPRL and its subsidiary, RAPID Forming Corporation, and praying for the archiving of SBC's complaint.

By Order of June 30, 2006,[18] the Makati RTC again archived SBC's complaint against petitioners. SBC, by Consolidated Motion, moved for the reconsideration of the June 30, 2006 Order, averring that its complaint should not have been archived with respect to sureties Limson and Arollado; and that since the two failed to file their respective Answers within the reglementary period, they should be declared in default.

The Makati RTC denied, by Order of October 2, 2006,[19] the Consolidated Motion of SBC, prompting SBC to file a petition for *certiorari* before the Court of Appeals.

By Decision of September 25, 2008,[20] the appellate court held that Limson and Arollado voluntarily submitted themselves to the jurisdiction of the Makati RTC, despite the qualification that the filing of their respective "Opposition[s] *Ad Cautelam"* and "Manifestation[s] *Ad Cautelam,"* was "by way of special appearance" they having sought affirmative relief by praying for the archiving of SBC's complaint.

The Manifestations and Oppositions filed by the individual private respondents to the court *a quo* have the purpose of asking the court to archive the case until the final resolution of either the Petition for Rehabilitation filed by private respondent corporation JAPRL in Quezon City or the subsisting Petition for Rehabilitation filed in

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[16] *Id.* at 291-295.

[17] *Id.* at 286-289.

[18] *Id.* at 320.

[19] *Id.* at 357.

[20] Penned by Associate Justice Pampio A. Abarintos with the concurrence of Associate Justices Arcangelita Romilla Lontok and Ricardo R. Rosario, *rollo*, pp. 268-279.

Calamba City, Laguna. Clearly, the purpose of those pleadings is to seek for affirmative relief, (*i.e*. Suspending the proceedings in *Civil Case No. 03-1036*) from the said court. By those pleadings asking for affirmative relief, the individual private respondents had voluntarily appeared in court. As expressly stated in *Rule 14, Section 20, of the Rules of Court*, the defendant's voluntary appearance in the action shall be equivalent to service of summons. It is well settled that any form of appearance in court, by the defendant, by his agent authorized to do so, or by attorney, is equivalent to service except where such appearance is precisely to object to the jurisdiction of the court over the person of the defendant. x x x[21] (italics in the original; underscoring supplied)

To the appellate court, SBC's claim against Limson and Arollado in their capacity as sureties could proceed independently of JAPRL's petition for rehabilitation:

x x x [T]he property of the surety cannot be taken into custody by the rehabilitation receiver (SEC) and said surety can be sued separately to enforce his liability as surety for the debts or obligations of the debtor. The debts or obligations for which a surety may be liable include future debts, an amount which may not be known at the time the surety is given.

Aside from that, it is specifically stated under *Rule 4, Section 6 (b) of the Interim Rules of Procedure on Corporate Rehabilitation*, that the issuance of a Stay order will have an effect of:

(b) staying enforcement of all claims whether for money or otherwise and whether such enforcement is by court action otherwise, against the debtor, its guarantors and ***sureties not solidarily liable with the debtor.***[22] (emphasis and italics in the original; underscoring supplied)

The appellate court denied petitioners' motion for reconsideration by Resolution of October 29, 2009,[23] hence, the present petition for review on *certiorari*.[24]

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[21] *Id.* at 16.

[22] *Id.* at 19.

[23] CA *rollo*, pp. 364-365. Penned by Associate Justice Pampio A. Abarintos with the concurrence of Associate Justices Arcangelita Romilla Lontok and Ricardo R. Rosario.

[24] *Rollo*, pp. 26-70.

The petition fails.

A reading of the separate Oppositions *Ad Cautelam* by Limson and Arollado to SBC's Motion for Reconsideration[25] shows that they did not challenge the trial court's jurisdiction. Albeit both pleadings contained prefatory statements that the two did not receive summons, they pleaded defenses in their favor, *viz*:

Limson's Opposition Ad Cautelam

6. First of all, there is no gainsaying that herein defendant LIMSON as well as defendant AROLLADO are being sued in their alleged capacities as SURETIES, with defendant JAPRL being the DEBTOR. As SURETIES, they are covered by the Stay Order issued by the court hearing the petition for corporate rehabilitation filed by Rapid Forming Corp. and defendant JAPRL. The Stay Order directed, among others, the stay of enforcement of " ALL CLAIMS, WHETHER FOR MONEY OR OTHERWISE, AND WHETHER SUCH ENFORCEMENT IS BY COURT ACTION OR OTHERWISE, against the petitioner/s, and its/their guarantors and SURETIES not solidarily liable with petitioner/s,"[26] x x x (all caps in the original)

Arollado's Opposition (Ad Cautelam)

11. Certainly, the plaintiff cannot unjustly enrich itself and be allowed to recover from both the DEBTOR JAPRL in accordance with the rehabilitation plan, and at the same time from the alleged SURETIES LIMSON and AROLLADO through the present complaint.

12. Moreover, defendant AROLLADO, as surety, can set up against the plaintiff all the defenses which pertain to the principal DEBTOR JAPRL and even those defenses that are inherent in the debt. Likewise, defendant AROLLADO would, in any case, have a right of action for reimbursement against JAPRL, the principal DEBTOR. Additionally, defendant AROLLADO is given the right, **under Article 1222 of the New Civil Code,** to avail himself of all the defenses which are derived from the nature of the obligation. Since the plaintiff, and even defendants LIMSON and AROLLADO, are temporarily barred from enforcing a claim against JAPRL, there is, therefore, every

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[25] SBC filed a Motion for Reconsideration to the Order dated February 25, 2004 of the RTC archiving the case against all the defendants, including Limson and Arollado as individual sureties.

[26] Records, p. 121.

reason to suspend the proceedings against defendants LIMSON and AROLLADO while the complaint is archived and cannot be prosecuted against the DEBTOR JAPRL.[27] (capitalization and emphasis in the original; underscoring supplied)

When a defendant's appearance is made precisely to object to the jurisdiction of the court over his person, it cannot be considered as appearance in court.[28] Limson and Arollado glossed over the alleged lack of service of summons, however, and proceeded to exhaustively discuss why SBC's complaint could not prosper against them as sureties. They thereby voluntarily submitted themselves to the jurisdiction of the Makati RTC .

On a trial court's suspension of proceedings against a surety of a corporation in the process of rehabilitation, *Banco de Oro-EPCI, Inc. v. JAPRL Development Corporation*[29] holds that a creditor can demand payment from the surety **solidarily liable** with the corporation seeking rehabilitation, it being not included in the list of stayed claims:

Indeed, Section 6(b) of the Interim Rules of Procedure of Corporate Rehabilitation which the appellate court cited in the earlier-quoted portion of its decision, provides that a stay order does not apply to sureties who are *solidarily liable* with the debtor. In Limson and Arollado's case, their solidary liability with JAPRL is documented.

3. **Liability of the Surety – The liability of the Surety is solidary and not contingent upon the pursuit by the Bank of whatever remedies it may have against the Debtor or the collaterals/liens it may possess.** If any of the Guaranteed Obligation is not paid or performed on due date (at stated maturity or by acceleration), the Surety shall, without need for any notice, demand or any other act or deed, immediately become liable therefor and the Surety shall pay and perform the same.[30] (emphasis and underscoring supplied)

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[27] *Id.* at 138.

[28] *French Oil Mill Machinery Co., Inc. v. Court of Appeals*, G.R. No. 126477, September 11, 1998, 295 SCRA 463.

[29] G.R. No. 179901, April 14, 2008, 551 SCRA 342.

[30] Records, p. 11.

Limson and Arollado, as sureties, whose liability is solidary cannot, therefore, claim protection from the rehabilitation court, they not being the financially-distressed corporation that may be restored, not to mention that the rehabilitation court has no jurisdiction over them. Article 1216 of the Civil Code clearly is not on their side:

> ART. 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against any one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected. (underscoring supplied)

IN FINE, SBC can pursue its claim against Limson and Arollado despite the pendency of JAPRL's petition for rehabilitation. For, by the CSA in favor of SBC, it is the obligation of the sureties, who are therein stated to be solidary with JAPRL, to see to it that JAPRL's debt is **fully paid.**[31]

Finally, contrary to petitioners' position, the appellate court's decision only nullified the suspension of proceedings against Limson and Arollado.[32] The suspension with respect to JAPRL remains, in line with *Philippine Blooming Mills v. Court of Appeals*.[33]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

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[31] *Paramount Insurance Corporation v. Court of Appeals*, G.R. No. 110086, July 19, 1999, 310 SCRA 377.

[32] The pertinent portion of the Court of Appeals Decision reads: "Thusly, being bound solidarily with the private respondent corporation, the complaint for sum of money docketed as Civil Case No. 03-1026 should continue against the private respondent individuals [referring to Limson and Arollada] for they are excluded from the jurisdiction of the rehabilitation court," *rollo*, p. 82.

[33] G.R. No. 142381, October 15, 2003, 413 SCRA 445

[*] Additional member Per Special Order No. 997 dated June 6, 2011 in lieu of Associate Justice Ma. Lourdes P.A. Sereno.

THIRD DIVISION

[G.R. No. 190515. June 6, 2011]

CIRTEK EMPLOYEES LABOR UNION-FEDERATION OF FREE WORKERS, *petitioner, vs.* **CIRTEK ELECTRONICS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WRONG REMEDY GIVEN DUE COURSE AS THE CASE INVOLVES WORKERS' WAGES AND BENEFITS.— Respondent indeed availed of the wrong remedy of *certiorari* under Rule 65. Due, however, to the nature of the case, one involving workers' wages and benefits, and the fact that whether the petition was filed under Rule 65 or appeal by *certiorari* under Rule 45 it was filed within 15 days (the reglementary period under Rule 45) from petitioner's receipt of the resolution of the Court of Appeals' Resolution denying its motion for reconsideration, the Court resolved to give it due course. As *Almelor v. RTC of Las Piñas, et al.* restates: **Generally, an appeal taken either to the Supreme Court or the CA by the wrong or inappropriate mode shall be dismissed**. This is to prevent the party from benefiting from one's neglect and mistakes. **However, like most rules, it carries certain exceptions**. After all, **the ultimate purpose of all rules of procedures is to achieve substantial justice as expeditiously as possible**.

2. ID.; CIVIL PROCEDURE; APPEALS; QUESTION OF FACT DISTINGUISHED FROM QUESTION OF LAW.— Respecting the attribution of error to the Court in ruling on a question of fact, it bears recalling that a QUESTION OF FACT arises when the doubt or difference arises as to the truth or falsehood of alleged facts, while a QUESTION OF LAW exists when the doubt or difference arises as to what the law is on a certain set of facts.

3. ID.; ID.; ID.; QUESTION OF FACT NOT APPROPRIATE; ONE EXCEPTION IS CONFLICT IN THE FINDINGS AS IN CONFLICT IN THE FINDINGS OF THE SECRETARY OF LABOR AND THE APPELLATE COURT IN CASE AT

BAR.— Ineluctably, the issue involves a determination and application of existing law, the provisions of the Labor Code, and prevailing jurisprudence. Intertwined with the issue, however, is the question of validity of the MOA and its ratification which, as movant correctly points out, is a question of fact and one which is not appropriate for a petition for review on *certiorari* under Rule 45. The rule, however, is not without exceptions, *viz*: x x x (4) **When the judgment is based on a misapprehension of facts**; (5) **When the findings of fact are conflicting**; x x x (7) **When the findings are contrary to those of the trial court**; x x x In the present case, the findings of the Secretary of Labor and the appellate court on whether the MOA is valid and binding are conflicting, the former giving scant consideration thereon, and the latter affording it more weight.

4. LABOR AND SOCIAL LEGISLATION; ARBITRAL AWARD DETERMINED AS AN APPROXIMATION OF COLLECTIVE BARGAINING AGREEMENT WHICH PARTIES WOULD HAVE OTHERWISE ENTERED, CONSIDERED AS VALID CONTRACT BETWEEN THE PARTIES.— As discussed in the Decision under reconsideration, the then Acting Secretary of Labor Manuel G. Imson acted well within his jurisdiction in ruling that the wage increases to be given are ₱10 per day effective January 1, 2004 and ₱15 per day effective January 1, 2005, pursuant to his power to assume jurisdiction under Art. 263 (g) of the Labor Code. While an arbitral award cannot *per se* be categorized as an agreement voluntarily entered into by the parties because it requires the interference and imposing power of the State thru the Secretary of Labor when he assumes jurisdiction, **the award can be considered as an approximation of a collective bargaining agreement which would otherwise have been entered into by the parties**. Hence, it has the force and effect of a valid contract obligation between the parties. In determining arbitral awards then, aside from the MOA, courts considered other factors and documents including, as in this case, the financial documents submitted by respondent as well as its previous bargaining history and financial outlook and improvements as stated in its own website.

5. ID.; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; GIVEN LIBERAL CONSTRUCTION.— On

the contention that the MOA should have been given credence because it was validly entered into by the parties, the Court notes that even those who signed it expressed reservations thereto. A CBA (assuming in this case that the MOA can be treated as one) is a contract imbued with public interest. It must thus be given a liberal, practical and realistic, rather than a narrow and technical construction, with due consideration to the context in which it is negotiated and the purpose for which it is intended.

6. ID.; ID.; LABOR UNION; INTRA-UNION DISPUTE; INCLUDES ISSUE OF DISAFFILIATION WHICH THE UNION, NOT THE EMPLOYER, MUST RESOLVE.— At all events, the issue of disaffiliation is an intra-union dispute which must be resolved in a different forum in an action at the instance of either or both the FFW and the Union or a rival labor organization, not the employer. **An intra-union dispute refers to any conflict between and among union members, including grievances arising from any violation of the rights and conditions of membership, violation of or disagreement over any provision of the union's constitution and by-laws, or disputes arising from chartering or disaffiliation of the union**. Sections 1 and 2, Rule XI of Department Order No. 40-03, Series of 2003 of the DOLE enumerate the following circumstances as inter/intra-union disputes, *viz*: x x x (e) **validity/invalidity of union affiliation or disaffiliation;** x x x.

7. ID.; ID.; ID.; LOCAL UNION MAY DISAFFILIATE FROM ITS MOTHER FEDERATION AND WILL NOT LOSE ITS LEGAL PERSONALITY.— Indeed, as respondent-movant itself argues, **a local union may disaffiliate at any time from its mother federation, absent any showing that the same is prohibited under its constitution or rule. Such, however, does not result in it losing its legal personality altogether**. Verily, *Anglo-KMU v. Samahan Ng Mga Manggagawang Nagkakaisa Sa Manila Bay Spinning Mills At J.P. Coats* enlightens: **A local labor union is a separate and distinct unit** primarily designed to secure and maintain an equality of bargaining power between the employer and their employee-members. **A local union does not owe its existence to the federation with which it is affiliated.** It is a separate and distinct voluntary association owing its creation to the will of its members. **The mere act of affiliation does not divest**

the local union of its own personality, neither does it give the mother federation the license to act independently of the local union. It only gives rise to a contract of agency where the former acts in representation of the latter.

APPEARANCES OF COUNSEL

Jose Sonny G. Matula for petitioner.
Herminio F. Valerio and *Bernardo Fuentes & Associates Law Office* for respondent.

R E S O L U T I O N

CARPIO MORALES, *J.*:

This resolves the motion for reconsideration and supplemental motion for reconsideration filed by respondent, Cirtek Electronics, Inc., of the Court's Decision dated November 15, 2010.

Respondent-movant avers that petitioner, in filing the petition for *certiorari* under Rule 65, availed of the wrong remedy, hence, the Court should have dismissed the petition outright. It goes on to aver that the Court erred in resolving a factual issue – whether the August 24, 2005 Memorandum of Agreement (MOA) was validly entered into –, which is not the office of a petition for *certiorari*.

Respondent-movant further avers that the MOA[1] signed by the remaining officers of petitioner Union and allegedly ratified by its members should have been given credence by the Court.

Furthermore, respondent-movant maintains that the Secretary of Labor cannot insist on a ruling beyond the compromise agreement entered into by the parties; and that, as early as February 5, 2010, petitioner Union had already filed with the Department of Labor and Employment (DOLE) a resolution of disaffiliation from the Federation of Free Workers resulting in

[1] DOLE records, pp. 251-289.

the latter's lack of personality to represent the workers in the present case.

The motion is bereft of merit.

Respondent indeed availed of the wrong remedy of *certiorari* under Rule 65. Due, however, to the nature of the case, one involving workers' wages and benefits, and the fact that whether the petition was filed under Rule 65 or appeal by *certiorari* under Rule 45 it was filed within 15 days (the reglementary period under Rule 45) from petitioner's receipt of the resolution of the Court of Appeals' Resolution denying its motion for reconsideration, the Court resolved to give it due course. As *Almelor v. RTC of Las Piñas, et al.*[2] restates:

> **Generally, an appeal taken either to the Supreme Court or the CA by the wrong or inappropriate mode shall be dismissed**. This is to prevent the party from benefiting from one's neglect and mistakes. **However, like most rules, it carries certain exceptions**. After all, **the ultimate purpose of all rules of procedures is to achieve substantial justice as expeditiously as possible**. (emphasis and underscoring supplied)

Respecting the attribution of error to the Court in ruling on a question of fact, it bears recalling that a QUESTION OF FACT arises when the doubt or difference arises as to the truth or falsehood of alleged facts,[3] while a QUESTION OF LAW exists when the doubt or difference arises as to what the law is on a certain set of facts.

The present case presents the primordial issue of *whether the Secretary of Labor is empowered to give arbitral awards in the exercise of his authority to assume jurisdiction over labor disputes*.

Ineluctably, the issue involves a determination and application of existing law, the provisions of the Labor Code, and prevailing

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[2] G.R. No. 179620, August 26, 2008.

[3] *Vide Philippine Veterans Bank v. Monillas*, G.R. No. 167098, March 28, 2008.

jurisprudence. Intertwined with the issue, however, is the question of validity of the MOA and its ratification which, as movant correctly points out, is a question of fact and one which is not appropriate for a petition for review on *certiorari* under Rule 45. The rule, however, is not without exceptions, *viz*:

> This rule provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. **When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions**:
>
> (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
>
> (2) When the inference made is manifestly mistaken, absurd or impossible;
>
> (3) Where there is a grave abuse of discretion;
>
> (4) **When the judgment is based on a misapprehension of facts**;
>
> (5) **When the findings of fact are conflicting**;
>
> (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
>
> (7) **When the findings are contrary to those of the trial court**;
>
> (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
>
> (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
>
> (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (emphasis and underscoring supplied)

In the present case, the findings of the Secretary of Labor and the appellate court on whether the MOA is valid and binding are conflicting, the former giving scant consideration thereon, and the latter affording it more weight.

As found by the Secretary of Labor, the MOA came about as a result of the constitution, at respondent's behest, of the Labor-Management Council (LMC) which, he reminded the parties, should not be used as an avenue for bargaining but for the purpose of *affording workers to participate in policy and decision-making*. Hence, the agreements embodied in the MOA were not the proper subject of the LMC deliberation or procedure but of CBA negotiations and, therefore, deserving little weight.

The appellate court, held, however, that the Secretary did not have the authority to give an arbitral award higher than what was stated in the MOA. The conflicting views drew the Court to re-evaluate the facts as borne by the records, an exception to the rule that only questions of law may be dealt with in an appeal by *certiorari* under Rule 45.

As discussed in the Decision under reconsideration, the then Acting Secretary of Labor Manuel G. Imson acted well within his jurisdiction in ruling that the wage increases to be given are ₱10 per day effective January 1, 2004 and ₱15 per day effective January 1, 2005, pursuant to his power to assume jurisdiction under Art. 263 (g)[4] of the Labor Code.

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[4] (g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, **the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it** or certify the same to the Commission for compulsory arbitration**. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order**. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return-to-work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

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While an arbitral award cannot *per se* be categorized as an agreement voluntarily entered into by the parties because it requires the interference and imposing power of the State thru the Secretary of Labor when he assumes jurisdiction, **the award can be considered as an approximation of a collective bargaining agreement which would otherwise have been entered into by the parties**. Hence, it has the force and effect of a valid contract obligation between the parties.[5]

In determining arbitral awards then, aside from the MOA, courts considered other factors and documents including, as in this case, the financial documents[6] submitted by respondent as well as its previous bargaining history and financial outlook and improvements as stated in its own website.[7]

The appellate court's ruling that giving credence to the "*Pahayag*" and the minutes of the meeting which were not verified and notarized would violate the rule on parol evidence is erroneous. The parol evidence rule, like other rules on evidence, should not be strictly applied in labor cases. *Interphil Laboratories Employees Union-FFW v. Interphil Laboratories, Inc.*[8] teaches:

[R]eliance on the parol evidence rule is misplaced. **In labor cases** pending before the Commission or the Labor Arbiter, **the rules of evidence prevailing in courts of law or equity are not controlling**. Rules of procedure and evidence are not applied in a very rigid and technical sense in labor cases. Hence, the Labor Arbiter is not precluded from accepting and evaluating evidence other than, **and even contrary to**, what is stated in the CBA. (emphasis and underscoring supplied)

On the contention that the MOA should have been given credence because it was validly entered into by the parties, the

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[5] *Vide Manila Electric Company v. Quisumbing*, G.R. No. 127598, February 22, 2000, citing *Mindanao Terminal and Brokerage Service, Inc. v. Confesor*, 338 Phil. 671.

[6] DOLE records, pp. 303-305; 129-250; 32-48.

[7] DOLE records, pp. 306-307.

[8] G.R. No. 142824, December 19, 2001.

Court notes that even those who signed it expressed reservations thereto. A CBA (assuming in this case that the MOA can be treated as one) is a contract imbued with public interest. It must thus be given a liberal, practical and realistic, rather than a narrow and technical construction, with due consideration to the context in which it is negotiated and the purpose for which it is intended.[9]

As for the contention that the alleged disaffiliation of the Union from the FFW during the pendency of the case resulted in the FFW losing its personality to represent the Union, the same does not affect the Court's upholding of the authority of the Secretary of Labor to impose arbitral awards higher than what was supposedly agreed upon in the MOA. Contrary to respondent's assertion, the "unavoidable issue of disaffiliation" bears no significant legal repercussions to warrant the reversal of the Court's Decision.

En passant, whether there was a valid disaffiliation is a factual issue. Besides, the alleged disaffiliation of the Union from the FFW was by virtue of a Resolution signed on February 23, 2010 and submitted to the DOLE Laguna Field Office on March 5, 2010 – two months *after* the present petition was filed on December 22, 2009, – hence, it did not affect FFW and its Legal Center's standing to file the petition nor this Court's jurisdiction to resolve the same.

At all events, the issue of disaffiliation is an intra-union dispute which must be resolved in a different forum in an action at the instance of either or both the FFW and the Union or a rival labor organization, not the employer.

An intra-union dispute refers to any conflict between and among union members, including grievances arising from any violation of the rights and conditions of membership, violation of or disagreement over any provision of the union's constitution and by-laws, or disputes arising from chartering or disaffiliation

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[9] *Davao Integrated Port Services v. Abarquez*, G.R. No. 102132. March 19, 1993.

of the union. Sections 1 and 2, Rule XI of Department Order No. 40-03, Series of 2003 of the DOLE enumerate the following circumstances as inter/intra-union disputes, *viz*:

RULE XI
INTER/INTRA-UNION DISPUTES AND OTHER RELATED LABOR RELATIONS DISPUTES

SECTION 1. Coverage. - Inter/intra-union disputes shall include:

(a) cancellation of registration of a labor organization filed by its members or by another labor organization;

(b) conduct of election of union and workers' association officers/nullification of election of union and workers' association officers;

(c) audit/accounts examination of union or workers' association funds;

(d) deregistration of collective bargaining agreements;

(e) **validity/invalidity of union affiliation or disaffiliation;**

(f) validity/invalidity of acceptance/non-acceptance for union membership;

(g) validity/invalidity of impeachment/expulsion of union and workers' association officers and members;

(h) validity/invalidity of voluntary recognition;

(i) opposition to application for union and CBA registration;

(j) violations of or disagreements over any provision in a union or workers' association constitution and by-laws;

(k) disagreements over chartering or registration of labor organizations and collective bargaining agreements;

(l) violations of the rights and conditions of union or workers' association membership;

(m) violations of the rights of legitimate labor organizations, except interpretation of collective bargaining agreements;

(n) such other disputes or conflicts involving the rights to self-organization, union membership and collective bargaining –

(1) between and among legitimate labor organizations;

(2) between and among members of a union or workers' association.

SECTION 2. Coverage. – Other related labor relations disputes shall include any conflict between a labor union and the employer or any individual, entity or group that is not a labor organization or workers' association. This includes: (1) cancellation of registration of unions and workers' associations; and (2) a petition for interpleader.[10] (emphasis supplied)

Indeed, as respondent-movant itself argues, **a local union may disaffiliate at any time from its mother federation, absent any showing that the same is prohibited under its constitution or rule. Such, however, does not result in it losing its legal personality altogether**. Verily, *Anglo-KMU v. Samahan Ng Mga Manggagawang Nagkakaisa Sa Manila Bay Spinning Mills At J.P. Coats*[11] enlightens:

A local labor union is a separate and distinct unit primarily designed to secure and maintain an equality of bargaining power between the employer and their employee-members. **A local union does not owe its existence to the federation with which it is affiliated.** It is a separate and distinct voluntary association owing its creation to the will of its members. **The mere act of affiliation does not divest the local union of its own personality, neither does it give the mother federation the license to act independently of the local union. It only gives rise to a contract of agency where the former acts in representation of the latter**. (emphasis and underscoring supplied)

Whether then, as respondent claims, FFW "went against the will and wishes of its principal" (the member-employees) by pursuing the case despite the signing of the MOA, is not for the Court, nor for respondent to determine, but for the Union and FFW to resolve on their own pursuant to their principal-agent relationship.

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[10] *Employee's Union of Bayer Philippines, et al. v. Bayer Philippines, et al.*, G.R. No. 162943, December 6, 2010.

[11] G.R. No. 118562, July 5, 1996.

WHEREFORE, the motion for reconsideration of this Court's Decision of November 15, 2010 is *DENIED*.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 190710. June 6, 2011]

JESSE U. LUCAS, *petitioner, vs.* **JESUS S. LUCAS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; DENIAL THEREOF CANNOT BE QUESTIONED EVEN BY SPECIAL CIVIL ACTION FOR *CERTIORARI* UNLESS TAINTED WITH GRAVE ABUSE OF DISCRETION.— An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case, 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. Neither can a denial of a motion to dismiss be the subject of an appeal unless and until a final judgment or order is rendered. In a number of cases, the court has granted the extraordinary remedy of *certiorari* on the denial of the motion to dismiss but only when it has been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

2. ID.; ID.; JURISDICTION; ACTION *IN PERSONAM* DISTINGUISHED FROM ACTION *IN REM* AND ACTION *QUASI IN REM* FOR THE PURPOSE OF ACQUIRING JURISDICTION.— An action *in personam* is lodged against a person based on personal liability; an action *in rem* is directed against the thing itself instead of the person; while an action *quasi in rem* names a person as defendant, but its object is to subject that person's interest in a property to a corresponding lien or obligation. A petition directed against the "thing" itself or the *res*, which concerns the status of a person, like a petition for adoption, annulment of marriage, or correction of entries in the birth certificate, is an action *in rem*. In an action *in personam*, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. In a proceeding *in rem* or *quasi in rem*, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided that the latter has jurisdiction over the *res*. Jurisdiction over the *res* is acquired either (a) by the seizure of the property under legal process, whereby it is brought into actual custody of the law, or (b) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.

3. CIVIL LAW; PERSONS; FILIATION; PETITION TO ESTABLISH ILLEGITIMATE FILIATION IS AN ACTION *IN REM* WHERE JURISDICTION IS ACQUIRED BY THE SIMPLE FILING OF PETITION, VALIDATED THROUGH PUBLICATION.— The herein petition to establish illegitimate filiation is an action *in rem*. By the simple filing of the petition to establish illegitimate filiation before the RTC, which undoubtedly had jurisdiction over the subject matter of the petition, the latter thereby acquired jurisdiction over the case. An *in rem* proceeding is validated essentially through publication. Publication is notice to the whole world that the proceeding has for its object to bar indefinitely all who might be minded to make an objection of any sort to the right sought to be established. Through publication, all interested parties are deemed notified of the petition.

4. ID.; ID.; ID.; ID.; SERVICE OF SUMMONS MADE ONLY TO SATISFY DUE PROCESS REQUIREMENTS AND ABSENCE THEREOF MAY BE EXCUSED WHERE THE ADVERSE PARTY HAD THE OPPORTUNITY TO FILE

HIS OPPOSITION AS IN CASE AT BAR.— If at all, service of summons or notice is made to the defendant, it is not for the purpose of vesting the court with jurisdiction, but merely for satisfying the due process requirements. This is but proper in order to afford the person concerned the opportunity to protect his interest if he so chooses. Hence, failure to serve summons will not deprive the court of its jurisdiction to try and decide the case. In such a case, the lack of summons may be excused where it is determined that the adverse party had, in fact, the opportunity to file his opposition, as in this case. We find that the due process requirement with respect to respondent has been satisfied, considering that he has participated in the proceedings in this case and he has the opportunity to file his opposition to the petition to establish filiation.

5. ID.; ID.; ID.; PETITION TO ESTABLISH FILIATION IS ADVERSARIAL IN NATURE REGARDLESS OF ITS CAPTION AND NON-SERVICE OF SUMMONS.— To address respondent's contention that the petition should have been adversarial in form, we further hold that the herein petition to establish filiation was sufficient in form. It was indeed adversarial in nature despite its caption which lacked the name of a defendant, the failure to implead respondent as defendant, and the non-service of summons upon respondent. A proceeding is adversarial where the party seeking relief has given legal warning to the other party and afforded the latter an opportunity to contest it. In this petition—classified as an action *in rem*—the notice requirement for an adversarial proceeding was likewise satisfied by the publication of the petition and the giving of notice to the Solicitor General, as directed by the trial court.

6. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; ELEMENTS.— Section 1, Rule 8 of the Rules of Court, requires the complaint to contain a plain, concise, and direct statement of the ultimate facts upon which the plaintiff bases his claim. A fact is essential if it cannot be stricken out without leaving the statement of the cause of action inadequate. A complaint states a cause of action when it contains the following elements: (1) the legal right of plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right.

7. ID.; ID.; ID.; MOTION TO DISMISS FOR LACK OF CAUSE OF ACTION; THE QUESTION IS THE SUFFICIENCY, NOT THE VERACITY, OF THE ALLEGATIONS IN THE COMPLAINT.— In a motion to dismiss a complaint based on lack of cause of action, the question submitted to the court for determination is the sufficiency of the allegations made in the complaint to constitute a cause of action and not whether those allegations of fact are true, for said motion must hypothetically admit the truth of the facts alleged in the complaint. The inquiry is confined to the four corners of the complaint, and no other. The test of the sufficiency of the facts alleged in the complaint is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint. If the allegations of the complaint are sufficient in form and substance but their veracity and correctness are assailed, it is incumbent upon the court to deny the motion to dismiss and require the defendant to answer and go to trial to prove his defense. The veracity of the assertions of the parties can be ascertained at the trial of the case on the merits.

8. CIVIL LAW; PERSONS; FILIATION; DNA TESTING; NEED OF *PRIMA FACIE* EVIDENCE BEFORE THE COURT ISSUES TESTING ORDER AND THE SAME STILL DISCRETIONARY IN THE ABSENCE OF PREPONDERANCE OF EVIDENCE.— The Rule on DNA Evidence was enacted to guide the Bench and the Bar for the introduction and use of DNA evidence in the judicial system. It provides the "prescribed parameters on the requisite elements for reliability and validity (*i.e.*, the proper procedures, protocols, necessary laboratory reports, *etc*.), the possible sources of error, the available objections to the admission of DNA test results as evidence as well as the probative value of DNA evidence." It seeks "to ensure that the evidence gathered, using various methods of DNA analysis, is utilized effectively and properly, [and] shall not be misused and/or abused and, more importantly, shall continue to ensure that DNA analysis serves justice and protects, rather than prejudice the public." Not surprisingly, Section 4 of the Rule on DNA Evidence merely provides for conditions that are aimed to safeguard the accuracy and integrity of the DNA testing. x x x This does not mean, however, that a DNA testing order will be issued as a matter of right if, during the hearing, the said conditions are established.

> In some states, to warrant the issuance of the DNA testing order, there must be a show cause hearing wherein the applicant must first present sufficient evidence to establish a *prima facie* case or a reasonable possibility of paternity or "good cause" for the holding of the test. In these states, a court order for blood testing is considered a "search," which, under their Constitutions (as in ours), must be preceded by a finding of probable cause in order to be valid. Hence, the requirement of a *prima facie* case, or reasonable possibility, was imposed in civil actions as a counterpart of a finding of probable cause. x x x The same condition precedent should be applied in our jurisdiction to protect the putative father from mere harassment suits. Thus, during the hearing on the motion for DNA testing, the petitioner must present *prima facie* evidence or establish a reasonable possibility of paternity. Notwithstanding these, it should be stressed that the issuance of a DNA testing order remains discretionary upon the court. The court may, for example, consider whether there is absolute necessity for the DNA testing. If there is already preponderance of evidence to establish paternity and the DNA test result would only be corroborative, the court may, in its discretion, disallow a DNA testing.

APPEARANCES OF COUNSEL

Cruz Neria & Carpio Law Offices for petitioner.

Punzalan Lising & Punsalan and *Ramirez Lazaro and Associates Law Office* for respondent.

D E C I S I O N

NACHURA, *J.*:

Is a *prima facie* showing necessary before a court can issue a DNA testing order? In this petition for review on *certiorari*, we address this question to guide the Bench and the Bar in dealing with a relatively new evidentiary tool. Assailed in this petition are the Court of Appeals (CA) Decision[1] dated September 25, 2009 and Resolution dated December 17, 2009.

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[1] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Juan Q. Enriquez, Jr. and Francisco P. Acosta, concurring; *rollo*, pp. 35-46.

The antecedents of the case are, as follows:

On July 26, 2007, petitioner, Jesse U. Lucas, filed a Petition to Establish Illegitimate Filiation (with Motion for the Submission of Parties to DNA Testing)[2] before the Regional Trial Court (RTC), Branch 72, Valenzuela City. Petitioner narrated that, sometime in 1967, his mother, Elsie Uy (Elsie), migrated to Manila from Davao and stayed with a certain "Ate Belen (Belen)" who worked in a prominent nightspot in Manila. Elsie would oftentimes accompany Belen to work. On one occasion, Elsie got acquainted with respondent, Jesus S. Lucas, at Belen's workplace, and an intimate relationship developed between the two. Elsie eventually got pregnant and, on March 11, 1969, she gave birth to petitioner, Jesse U. Lucas. The name of petitioner's father was not stated in petitioner's certificate of live birth. However, Elsie later on told petitioner that his father is respondent. On August 1, 1969, petitioner was baptized at San Isidro Parish, Taft Avenue, Pasay City. Respondent allegedly extended financial support to Elsie and petitioner for a period of about two years. When the relationship of Elsie and respondent ended, Elsie refused to accept respondent's offer of support and decided to raise petitioner on her own. While petitioner was growing up, Elsie made several attempts to introduce petitioner to respondent, but all attempts were in vain.

Attached to the petition were the following: (a) petitioner's certificate of live birth; (b) petitioner's baptismal certificate; (c) petitioner's college diploma, showing that he graduated from Saint Louis University in Baguio City with a degree in Psychology; (d) his Certificate of Graduation from the same school; (e) Certificate of Recognition from the University of the Philippines, College of Music; and (f) clippings of several articles from different newspapers about petitioner, as a musical prodigy.

Respondent was not served with a copy of the petition. Nonetheless, respondent learned of the petition to establish filiation. His counsel therefore went to the trial court on August 29, 2007 and obtained a copy of the petition.

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[2] *Id.* at 50-59.

Petitioner filed with the RTC a Very Urgent Motion to Try and Hear the Case. Hence, on September 3, 2007, the RTC, finding the petition to be sufficient in form and substance, issued the Order[3] setting the case for hearing and urging anyone who has any objection to the petition to file his opposition. The court also directed that the Order be published once a week for three consecutive weeks in any newspaper of general circulation in the Philippines, and that the Solicitor General be furnished with copies of the Order and the petition in order that he may appear and represent the State in the case.

On September 4, 2007, unaware of the issuance of the September 3, 2007 Order, respondent filed a Special Appearance and Comment. He manifested *inter alia* that: (1) he did not receive the summons and a copy of the petition; (2) the petition was adversarial in nature and therefore summons should be served on him as respondent; (3) should the court agree that summons was required, he was waiving service of summons and making a voluntary appearance; and (4) notice by publication of the petition and the hearing was improper because of the confidentiality of the subject matter.[4]

On September 14, 2007, respondent also filed a Manifestation and Comment on Petitioner's Very Urgent Motion to Try and Hear the Case. Respondent reiterated that the petition for recognition is adversarial in nature; hence, he should be served with summons.

After learning of the September 3, 2007 Order, respondent filed a motion for reconsideration.[5] Respondent averred that the petition was not in due form and substance because petitioner could not have personally known the matters that were alleged therein. He argued that DNA testing cannot be had on the basis of a mere allegation pointing to respondent as petitioner's father. Moreover, jurisprudence is still unsettled on the acceptability of DNA evidence.

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[3] Penned by Executive Judge Maria Nena J. Santos.

[4] *Rollo*, p. 76.

[5] *Id.* at 156-157.

On July 30, 2008, the RTC, acting on respondent's motion for reconsideration, issued an Order[6] dismissing the case. The court remarked that, based on the case of *Herrera v. Alba*,[7] there are four significant procedural aspects of a traditional paternity action which the parties have to face: a *prima facie* case, affirmative defenses, presumption of legitimacy, and physical resemblance between the putative father and the child. The court opined that petitioner must first establish these four procedural aspects before he can present evidence of paternity and filiation, which may include incriminating acts or scientific evidence like blood group test and DNA test results. The court observed that the petition did not show that these procedural aspects were present. Petitioner failed to establish a *prima facie* case considering that (a) his mother did not personally declare that she had sexual relations with respondent, and petitioner's statement as to what his mother told him about his father was clearly hearsay; (b) the certificate of live birth was not signed by respondent; and (c) although petitioner used the surname of respondent, there was no allegation that he was treated as the child of respondent by the latter or his family. The court opined that, having failed to establish a *prima facie* case, respondent had no obligation to present any affirmative defenses. The dispositive portion of the said Order therefore reads:

> WHEREFORE, for failure of the petitioner to establish compliance with the four procedural aspects of a traditional paternity action in his petition, his motion for the submission of parties to DNA testing to establish paternity and filiation is hereby DENIED. This case is DISMISSED without prejudice.
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> SO ORDERED.[8]

Petitioner seasonably filed a motion for reconsideration to the Order dated July 30, 2008, which the RTC resolved in his

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[6] Penned by Acting Presiding Judge Ma. Belen Ringpis-Liban; *id.* at 61-64.

[7] 499 Phil. 185 (2005).

[8] *Rollo*, p. 64.

favor. Thus, on October 20, 2008, it issued the Order[9] setting aside the court's previous order, thus:

> WHEREFORE, in view of the foregoing, the Order dated July 30, 2008 is hereby reconsidered and set aside.
>
> Let the Petition (with Motion for the Submission of Parties to DNA Testing) be set for hearing on **January 22, 2009 at 8:30 in the morning**.
>
> x x x x x x x x x
>
> SO ORDERED.[10]

This time, the RTC held that the ruling on the grounds relied upon by petitioner for filing the petition is premature considering that a full-blown trial has not yet taken place. The court stressed that the petition was sufficient in form and substance. It was verified, it included a certification against forum shopping, and it contained a plain, concise, and direct statement of the ultimate facts on which petitioner relies on for his claim, in accordance with Section 1, Rule 8 of the Rules of Court. The court remarked that the allegation that the statements in the petition were not of petitioner's personal knowledge is a matter of evidence. The court also dismissed respondent's arguments that there is no basis for the taking of DNA test, and that jurisprudence is still unsettled on the acceptability of DNA evidence. It noted that the new Rule on DNA Evidence[11] allows the conduct of DNA testing, whether at the court's instance or upon application of any person who has legal interest in the matter in litigation.

Respondent filed a Motion for Reconsideration of Order dated October 20, 2008 and for Dismissal of Petition,[12] reiterating that (a) the petition was not in due form and substance as no defendant was named in the title, and all the basic allegations

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[9] Penned by Judge Nancy Rivas-Palmones; *id.* at 65-69.

[10] *Id.* at 69.

[11] A.M. No. 06-11-5-SC, October 15, 2007.

[12] *Rollo*, p. 161.

were hearsay; and (b) there was no *prima facie* case, which made the petition susceptible to dismissal.

The RTC denied the motion in the Order dated January 19, 2009, and rescheduled the hearing.[13]

Aggrieved, respondent filed a petition for *certiorari* with the CA, questioning the Orders dated October 20, 2008 and January 19, 2009.

On September 25, 2009, the CA decided the petition for *certiorari* in favor of respondent, thus:

> WHEREFORE, the instant petition for *certiorari* is hereby GRANTED for being meritorious. The assailed Orders dated October 20, 2008 and January 19, 2009 both issued by the Regional Trial Court, Branch 172 of Valenzuela City in SP. Proceeding Case No. 30-V-07 are REVERSED and SET ASIDE. Accordingly, the case docketed as SP. Proceeding Case No. 30-V-07 is DISMISSED.[14]

The CA held that the RTC did not acquire jurisdiction over the person of respondent, as no summons had been served on him. Respondent's special appearance could not be considered as voluntary appearance because it was filed only for the purpose of questioning the jurisdiction of the court over respondent. Although respondent likewise questioned the court's jurisdiction over the subject matter of the petition, the same is not equivalent to a waiver of his right to object to the jurisdiction of the court over his person.

The CA remarked that petitioner filed the petition to establish illegitimate filiation, specifically seeking a DNA testing order to abbreviate the proceedings. It noted that petitioner failed to show that the four significant procedural aspects of a traditional paternity action had been met. The CA further held that a DNA testing should not be allowed when the petitioner has failed to establish a *prima facie* case, thus:

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[13] *Id.* at 71.

[14] *Id.* at 46.

While the tenor [of Section 4, Rule on DNA Evidence] appears to be absolute, the rule could not really have been intended to trample on the substantive rights of the parties. It could have not meant to be an instrument to promote disorder, harassment, or extortion. It could have not been intended to legalize unwarranted expedition to fish for evidence. Such will be the situation in this particular case if a court may at any time order the taking of a DNA test. If the DNA test in compulsory recognition cases is immediately available to the petitioner/complainant without requiring first the presentation of corroborative proof, then a dire and absurd rule would result. Such will encourage and promote harassment and extortion.

x x x x x x x x x

At the risk of being repetitious, the Court would like to stress that it sees the danger of allowing an absolute DNA testing to a compulsory recognition test even if the plaintiff/petitioner failed to establish *prima facie* proof. x x x If at anytime, *motu proprio* and without pre-conditions, the court can indeed order the taking of DNA test in compulsory recognition cases, then the prominent and well-to-do members of our society will be easy prey for opportunists and extortionists. For no cause at all, or even for [sic] casual sexual indiscretions in their younger years could be used as a means to harass them. Unscrupulous women, unsure of the paternity of their children may just be taking the chances-just in case-by pointing to a sexual partner in a long past one-time encounter. Indeed an absolute and unconditional taking of DNA test for compulsory recognition case opens wide the opportunities for extortionist to prey on victims who have no stomach for scandal.[15]

Petitioner moved for reconsideration. On December 17, 2009, the CA denied the motion for lack of merit.[16]

In this petition for review on *certiorari*, petitioner raises the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RESOLVED THE ISSUE OF LACK OF JURISDICTION OVER

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

[16] *Id.* at 49.

THE PERSON OF HEREIN RESPONDENT ALBEIT THE SAME WAS NEVER RAISED IN THE PETITION FOR *CERTIORARI*.

I.A

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT JURISDICTION WAS NOT ACQUIRED OVER THE PERSON OF THE RESPONDENT.

I.B

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT FAILED TO REALIZE THAT THE RESPONDENT HAD ALREADY SUBMITTED VOLUNTARILY TO THE JURISDICTION OF THE COURT *A QUO*.

I.C

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT ESSENTIALLY RULED THAT THE TITLE OF A PLEADING, RATHER THAN ITS BODY, IS CONTROLLING.

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT ORDERED THE DISMISSAL OF THE PETITION BY REASON OF THE MOTION (FILED BY THE PETITIONER BEFORE THE COURT *A QUO*) FOR THE CONDUCT OF DNA TESTING.

II.A

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT ESSENTIALLY RULED THAT DNA TESTING CAN ONLY BE ORDERED AFTER THE PETITIONER ESTABLISHES PRIMA FACIE PROOF OF FILIATION.

III.

WHETHER OR NOT THE COURT OF APPEALS ERRED WITH ITS MISPLACED RELIANCE ON THE CASE OF HERRERA VS. ALBA, ESPECIALLY AS REGARDS THE 'FOUR SIGNIFICANT PROCEDURAL ASPECTS OF A TRADITIONAL PATERNITY ACTION.'[17]

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

Petitioner contends that respondent never raised as issue in his petition for *certiorari* the court's lack of jurisdiction over his person. Hence, the CA had no legal basis to discuss the same, because issues not raised are deemed waived or abandoned. At any rate, respondent had already voluntarily submitted to the jurisdiction of the trial court by his filing of several motions asking for affirmative relief, such as the (a) Motion for Reconsideration of the Order dated September 3, 2007; (b) *Ex Parte* Motion to Resolve Motion for Reconsideration of the Order dated November 6, 2007; and (c) Motion for Reconsideration of the Order dated October 20, 2008 and for Dismissal of Petition. Petitioner points out that respondent even expressly admitted that he has waived his right to summons in his Manifestation and Comment on Petitioner's Very Urgent Motion to Try and Hear the Case. Hence, the issue is already moot and academic.

Petitioner argues that the case was adversarial in nature. Although the caption of the petition does not state respondent's name, the body of the petition clearly indicates his name and his known address. He maintains that the body of the petition is controlling and not the caption.

Finally, petitioner asserts that the motion for DNA testing should not be a reason for the dismissal of the petition since it is not a legal ground for the dismissal of cases. If the CA entertained any doubt as to the propriety of DNA testing, it should have simply denied the motion.[18] Petitioner points out that Section 4 of the Rule on DNA Evidence does not require that there must be a prior proof of filiation before DNA testing can be ordered. He adds that the CA erroneously relied on the four significant procedural aspects of a paternity case, as enunciated in *Herrera v. Alba*.[19] Petitioner avers that these procedural aspects are not applicable at this point of the proceedings because they are matters of evidence that should be taken up during the trial.[20]

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[18] *Id.* at 23.

[19] *Supra* note 7.

[20] *Rollo*, p. 30.

In his Comment, respondent supports the CA's ruling on most issues raised in the petition for *certiorari* and merely reiterates his previous arguments. However, on the issue of lack of jurisdiction, respondent counters that, contrary to petitioner's assertion, he raised the issue before the CA in relation to his claim that the petition was not in due form and substance. Respondent denies that he waived his right to the service of summons. He insists that the alleged waiver and voluntary appearance was conditional upon a finding by the court that summons is indeed required. He avers that the assertion of affirmative defenses, aside from lack of jurisdiction over the person of the defendant, cannot be considered as waiver of the defense of lack of jurisdiction over such person.

The petition is meritorious.

Primarily, we emphasize that the assailed Orders of the trial court were orders denying respondent's motion to dismiss the petition for illegitimate filiation. An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case, 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. Neither can a denial of a motion to dismiss be the subject of an appeal unless and until a final judgment or order is rendered. In a number of cases, the court has granted the extraordinary remedy of *certiorari* on the denial of the motion to dismiss but only when it has been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.[21] In the present case, we discern no grave abuse of discretion on the part of the trial court in denying the motion to dismiss.

The grounds for dismissal relied upon by respondent were (a) the court's lack of jurisdiction over his person due to the

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[21] *Lu Ym v. Nabua*, 492 Phil. 397, 404 (2005).

absence of summons, and (b) defect in the form and substance of the petition to establish illegitimate filiation, which is equivalent to failure to state a cause of action.

We need not belabor the issues on whether lack of jurisdiction was raised before the CA, whether the court acquired jurisdiction over the person of respondent, or whether respondent waived his right to the service of summons. We find that the primordial issue here is actually whether it was necessary, in the first place, to serve summons on respondent for the court to acquire jurisdiction over the case. In other words, was the service of summons jurisdictional? The answer to this question depends on the nature of petitioner's action, that is, whether it is an action *in personam, in rem,* or *quasi in rem*.

An action *in personam* is lodged against a person based on personal liability; an action *in rem* is directed against the thing itself instead of the person; while an action *quasi in rem* names a person as defendant, but its object is to subject that person's interest in a property to a corresponding lien or obligation. A petition directed against the "thing" itself or the *res*, which concerns the status of a person, like a petition for adoption, annulment of marriage, or correction of entries in the birth certificate, is an action *in rem*.[22]

In an action *in personam*, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. In a proceeding *in rem* or *quasi in rem*, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided that the latter has jurisdiction over the *res*. Jurisdiction over the *res* is acquired either (a) by the seizure of the property under legal process, whereby it is brought into actual custody of the law, or (b) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.[23]

The herein petition to establish illegitimate filiation is an action *in rem*. By the simple filing of the petition to establish illegitimate

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[22] *Alba v. Court of Appeals*, 503 Phil. 451, 458-459 (2005).

[23] *Id.* at 459.

filiation before the RTC, which undoubtedly had jurisdiction over the subject matter of the petition, the latter thereby acquired jurisdiction over the case. An *in rem* proceeding is validated essentially through publication. Publication is notice to the whole world that the proceeding has for its object to bar indefinitely all who might be minded to make an objection of any sort to the right sought to be established.[24] Through publication, all interested parties are deemed notified of the petition.

If at all, service of summons or notice is made to the defendant, it is not for the purpose of vesting the court with jurisdiction, but merely for satisfying the due process requirements.[25] This is but proper in order to afford the person concerned the opportunity to protect his interest if he so chooses.[26] Hence, failure to serve summons will not deprive the court of its jurisdiction to try and decide the case. In such a case, the lack of summons may be excused where it is determined that the adverse party had, in fact, the opportunity to file his opposition, as in this case. We find that the due process requirement with respect to respondent has been satisfied, considering that he has participated in the proceedings in this case and he has the opportunity to file his opposition to the petition to establish filiation.

To address respondent's contention that the petition should have been adversarial in form, we further hold that the herein petition to establish filiation was sufficient in form. It was indeed adversarial in nature despite its caption which lacked the name of a defendant, the failure to implead respondent as defendant, and the non-service of summons upon respondent. A proceeding is adversarial where the party seeking relief has given legal warning to the other party and afforded the latter an opportunity to contest it.[27] In this petition—classified as an action *in rem*—

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[24] *Barco v. Court of Appeals,* 465 Phil. 39, 57 (2004).

[25] *Alba v. Court of Appeals*, *supra* note 22, at 459.

[26] *Ceruila v. Delantar,* 513 Phil. 237, 252 (2005).

[27] *Republic v. Capote,* G.R. No. 157043, February 2, 2007, 514 SCRA 76, 85.

the notice requirement for an adversarial proceeding was likewise satisfied by the publication of the petition and the giving of notice to the Solicitor General, as directed by the trial court.

The petition to establish filiation is sufficient in substance. It satisfies Section 1, Rule 8 of the Rules of Court, which requires the complaint to contain a plain, concise, and direct statement of the ultimate facts upon which the plaintiff bases his claim. A fact is essential if it cannot be stricken out without leaving the statement of the cause of action inadequate.[28] A complaint states a cause of action when it contains the following elements: (1) the legal right of plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right.[29]

The petition sufficiently states the ultimate facts relied upon by petitioner to establish his filiation to respondent. Respondent, however, contends that the allegations in the petition were hearsay as they were not of petitioner's personal knowledge. Such matter is clearly a matter of evidence that cannot be determined at this point but only during the trial when petitioner presents his evidence.

In a motion to dismiss a complaint based on lack of cause of action, the question submitted to the court for determination is the sufficiency of the allegations made in the complaint to constitute a cause of action and not whether those allegations of fact are true, for said motion must hypothetically admit the truth of the facts alleged in the complaint.[30] The inquiry is confined to the four corners of the complaint, and no other.[31] The test of the sufficiency of the facts alleged in the complaint is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint.[32]

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[28] *Ceroferr Realty Corporation v. Court of Appeals*, 426 Phil. 522, 528 (2002).

[29] *Spouses Diaz v. Diaz*, 387 Phil. 314, 329 (2000).

[30] *Balo v. Court of Appeals*, 508 Phil. 224, 231 (2005).

[31] *Id.*

[32] *Id.*

If the allegations of the complaint are sufficient in form and substance but their veracity and correctness are assailed, it is incumbent upon the court to deny the motion to dismiss and require the defendant to answer and go to trial to prove his defense. The veracity of the assertions of the parties can be ascertained at the trial of the case on the merits.[33]

The statement in *Herrera v. Alba*[34] that there are four significant procedural aspects in a traditional paternity case which parties have to face has been widely misunderstood and misapplied in this case. A party is confronted by these so-called procedural aspects during trial, when the parties have presented their respective evidence. They are matters of evidence that cannot be determined at this initial stage of the proceedings, when only the petition to establish filiation has been filed. The CA's observation that petitioner failed to establish a *prima facie* case—the first procedural aspect in a paternity case—is therefore misplaced. A *prima facie* case is built by a party's evidence and not by mere allegations in the initiatory pleading.

Clearly then, it was also not the opportune time to discuss the lack of a *prima facie* case *vis-à-vis* the motion for DNA testing since no evidence has, as yet, been presented by petitioner. More essentially, it is premature to discuss whether, under the circumstances, a DNA testing order is warranted considering that no such order has yet been issued by the trial court. In fact, the latter has just set the said case for hearing.

At any rate, the CA's view that it would be dangerous to allow a DNA testing without corroborative proof is well taken and deserves the Court's attention. In light of this observation, we find that there is a need to supplement the Rule on DNA Evidence to aid the courts in resolving motions for DNA testing order, particularly in paternity and other filiation cases. We, thus, address the question of whether a *prima facie* showing is necessary before a court can issue a DNA testing order.

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[33] *Id.*

[34] *Supra* note 7.

The Rule on DNA Evidence was enacted to guide the Bench and the Bar for the introduction and use of DNA evidence in the judicial system. It provides the "prescribed parameters on the requisite elements for reliability and validity (*i.e.*, the proper procedures, protocols, necessary laboratory reports, *etc*.), the possible sources of error, the available objections to the admission of DNA test results as evidence as well as the probative value of DNA evidence." It seeks "to ensure that the evidence gathered, using various methods of DNA analysis, is utilized effectively and properly, [and] shall not be misused and/or abused and, more importantly, shall continue to ensure that DNA analysis serves justice and protects, rather than prejudice the public."[35]

Not surprisingly, Section 4 of the Rule on DNA Evidence merely provides for conditions that are aimed to safeguard the accuracy and integrity of the DNA testing. Section 4 states:

SEC. 4. *Application for DNA Testing Order*. – The appropriate court may, at any time, either *motu proprio* or on application of any person who has a legal interest in the matter in litigation, order a DNA testing. Such order shall issue after due hearing and notice to the parties upon a showing of the following:

(a) A biological sample exists that is relevant to the case;

(b) The biological sample: (i) was not previously subjected to the type of DNA testing now requested; or (ii) was previously subjected to DNA testing, but the results may require confirmation for good reasons;

(c) The DNA testing uses a scientifically valid technique;

(d) The DNA testing has the scientific potential to produce new information that is relevant to the proper resolution of the case; and

(e) The existence of other factors, if any, which the court may consider as potentially affecting the accuracy or integrity of the DNA testing.

This Rule shall not preclude a DNA testing, without need of a prior court order, at the behest of any party, including law enforcement agencies, before a suit or proceeding is commenced.

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[35] Rationale of the Rule on DNA Evidence.

This does not mean, however, that a DNA testing order will be issued as a matter of right if, during the hearing, the said conditions are established.

In some states, to warrant the issuance of the DNA testing order, there must be a show cause hearing wherein the applicant must first present sufficient evidence to establish a *prima facie* case or a reasonable possibility of paternity or "good cause" for the holding of the test.[36] In these states, a court order for blood testing is considered a "search," which, under their Constitutions (as in ours), must be preceded by a finding of probable cause in order to be valid. Hence, the requirement of a *prima facie* case, or reasonable possibility, was imposed in civil actions as a counterpart of a finding of probable cause. The Supreme Court of Louisiana eloquently explained —

> Although a paternity action is civil, not criminal, the constitutional prohibition against unreasonable searches and seizures is still applicable, and a proper showing of sufficient justification under the particular factual circumstances of the case must be made before a court may order a compulsory blood test. Courts in various jurisdictions have differed regarding the kind of procedures which are required, but those jurisdictions have almost universally found that a preliminary showing must be made before a court can constitutionally order compulsory blood testing in paternity cases. We agree, and find that, as a preliminary matter, before the court may issue an order for compulsory blood testing, the moving party must show that there is a reasonable possibility of paternity. As explained hereafter, in cases in which paternity is contested and a party to the action refuses to voluntarily undergo a blood test, a show cause hearing must be held in which the court can determine whether there is sufficient evidence to establish a *prima facie* case which warrants issuance of a court order for blood testing.[37]

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[36] *State ex rel. Department of Justice and Division of Child Support v. Spring,* 201 Or.App. 367, 120 P.3d 1 (2005); *State v. Shaddinger,* 702 So.2d 965, (1998); *State in the Interest of A.N.V. v. McCain,* 637 So.2d 650 (1994); *In the Interest of J.M.,* 590 So.2d 565 (1991); *Schenectady County Department of Social Services on Behalf of Maureen E. v. Robert "J,"* 126 A.D. 2d 786, 510 N.Y.S. 2d 289 (1987); *State ex rel. McGuire v. Howe,* 44 Wash. App. 559, 723 P.2d 452 (1986)

[37] *In the Interest of J.M., supra,* at 568.

The same condition precedent should be applied in our jurisdiction to protect the putative father from mere harassment suits. Thus, during the hearing on the motion for DNA testing, the petitioner must present *prima facie* evidence or establish a reasonable possibility of paternity.

Notwithstanding these, it should be stressed that the issuance of a DNA testing order remains discretionary upon the court. The court may, for example, consider whether there is absolute necessity for the DNA testing. If there is already preponderance of evidence to establish paternity and the DNA test result would only be corroborative, the court may, in its discretion, disallow a DNA testing.

WHEREFORE, premises considered, the petition is *GRANTED*. The Court of Appeals Decision dated September 25, 2009 and Resolution dated December 17, 2009 are *REVERSED* and *SET ASIDE*. The Orders dated October 20, 2008 and January 19, 2009 of the Regional Trial Court of Valenzuela City are *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 191266. June 6, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DARIUS BAUTISTA *y* ORSINO @ DADA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED.— Factual findings of the RTC should be given full faith and credit unless there is a showing of a misinterpretation of material facts or grave abuse of discretion. x x x As We have previously explained and discussed in *Gabrino* and in a multitude of cases, the trial court judge is in the best position to make this determination (credibility of witness) as the judge was the one who personally heard the accused and the witnesses, as well as observed their demeanor and the manner in which they testified during trial. Accordingly, We do not disturb or interfere with the trial court's finding of facts and its assessment of the credibility of the witnesses.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); BUY-BUST OPERATIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES UPHELD AS AGAINST ALLEGATION OF FRAME-UP.— [The RTC] has observed correctly that unless the defense could show with clear and convincing evidence that the members of the buy-bust team were inspired with ill motives or that they were not properly performing their duties, the defense's alibi of frame-up cannot stand. We held in *People v. Andres*, "The Court has invariably viewed with disfavor the defenses of denial and frame-up. Such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs."

3. ID.; ID.; CHAIN OF CUSTODY; REQUIREMENTS; ABSENCE OF SHOWING THAT THE APPREHENDING OFFICER DID NOT MAKE AN INVENTORY OF THE SEIZED ITEMS AND THAT HE DID NOT TAKE PHOTOGRAPHS OF THEM IS NOT FATAL.— The *Comprehensive Dangerous Drugs Act of 2002* provides for the requirements in handling seized dangerous drugs. Particularly, its Sec. 21(1) requires that: x x x We have ruled time and again that non-compliance with the afore-quoted provisions does not render the seizure of the dangerous drug void and the evidence inadmissible. Conversely, the absence of a showing that the apprehending officer did not make an inventory of the seized items and that

> he did not take photographs of them is not fatal. Besides, the law itself lays down certain exceptions to the general compliance requirement, stressing the point that "**as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team**," the seizure of and custody over the dangerous drugs shall not be rendered void and invalid. In cases of dangerous drugs, what is important and necessary is for the prosecution to prove with moral certainty "that the dangerous drug presented in court as evidence against the accused [be] the same item recovered from his possession."

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Terencio R. Yumang, Jr. for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the August 20, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03300, which affirmed the April 16, 2008 Decision[2] in Criminal Case No. 04-231073 of the Regional Trial Court (RTC), Branch 2 in Manila. The RTC found accused Darius O. Bautista (Bautista) guilty of violating Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

The charge against the accused stemmed from the following Information dated October 18, 2004:

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[1] *Rollo*, pp. 2-15. Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Fernanda Lampas Peralta and Ramon R. Garcia.

[2] CA *rollo*, pp. 16-24. Penned by Judge Alejandro G. Bijasa.

Criminal Case No. 04-231073

That on or about October 15, 2004, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, trade, deliver or give away any dangerous drug, did then and there willfully, unlawfully and knowingly sell zero point zero three four (0.034) gram of white crystalline substance containing methamphetamine hydrochloride, known as "*shabu*" a dangerous drug.

CONTRARY TO LAW.[3]

The case was originally tried jointly with Criminal Case No. 04-231074 against Armando Marcos *y* Balderama @ Onyo (Marcos), Bautista's brother-in-law, for violation of Sec. 11(3), Art. II of RA 9165. The instant appeal, however, relates only to accused Bautista in Criminal Case No. 04-231073, as Marcos, the accused in Criminal Case No. 04-231074, was acquitted by the RTC. Both cases arose out of the same facts and circumstances. Accordingly, common evidence was then presented during the trial.

At the arraignment, the accused, who was assisted by counsel, pleaded not guilty to the offense charged. Trial proceeded after the pre-trial.

During the trial, the prosecution offered the testimonies of Police Officer 2 Jonathan Ruiz (PO2 Ruiz) and PO2 Crispino Ocampo (PO2 Ocampo) both of the Western Police District's (WPD's) District Anti-Illegal Drugs-Special Operations Task Group (DAID-SOTG) on United Nations Avenue, Ermita, Manila. On the other hand, the defense presented, as its witnesses, the accused; co-accused Marcos; Irene Manabat (Manabat), a *kakanin* (native delicacy) vendor; and Anna Marie Ignacio (Ignacio), accused's neighbor and operator of a video *karera*.[4] At the pre-trial, the parties likewise stipulated the qualifications of Forensic Chemist Elisa G. Reyes (Reyes), and sought that the following documents be marked and admitted:[5]

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[3] *Rollo*, pp. 3-4.

[4] *Rollo*, pp. 5-8; CA *rollo*, pp. 17-20. A video *karera* is a betting/coin slot machine, usually of virtual horse racing.

[5] *Id.* at 4; *id.* at 6; TSN, April 27, 2006, pp. 25-26.

Exh. A	Letter Request for Laboratory Examination
Exh. A-1	Stamp receipt appearing at the bottom portion of Exh. "A"
Exh. B	One (1) heat-sealed transparent plastic sachet containing white crystalline substance with marking "AMB"
Exh. B-1	One heat-sealed transparent plastic sachet containing white crystalline substance with marking "DBO"
Exh. B-2	Small brown envelope with marking D-1589-04
Exh. C	Chemistry Report No. D-1589-04
Exh. C-1	Findings and Conclusions
Exh. C-2	Signatures appearing at the bottom
Exh. D	Joint Affidavit of Apprehension
Exh. D-1	Page 2 of Joint Affidavit of Apprehension
Exh. D-2	Signatures of the police officers
Exh. E	Booking Sheet and Arrest Report of Darius Bautista
Exh. E-1	Booking Sheet and Arrest Report of Armando Marcos
Exh. F	Letter Request to the prosecutor, showing that both accused were properly booked and that inquest was properly conducted within the reglementary period.

Reyes conducted the laboratory examination of the specimen that is subject of the case. But her testimony, not having personal knowledge of the subject incident, was dispensed with by the RTC.[6]

The Prosecution's Version of Facts

The prosecution presented PO2 Ruiz as its first witness. He testified that a confidential informant called the WPD's office several times on October 15, 2004 to report that a certain person called "Dada" was engaged in dealing illegal drugs along Mata Street, Tondo, Manila. A buy-bust operation was, therefore, organized by Police Inspector Angel De Leon (P/Insp. De Leon) of the WPD. The buy-bust team was composed of PO2 Ruiz, PO2 Ocampo, PO2 Rhumjalie Salazar, PO2 Dranred Cipriano, and PO1 Erwin Castro.[7] For this purpose, PO2 Ruiz was

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[6] CA *rollo*, p. 17.

[7] *Id.* at 60; TSN, April 27, 2006, pp. 4-5.

designated as the poseur-buyer and a one hundred-peso bill, which was to serve as the buy-bust money, was marked with "JR," representing the initials of PO2 Ruiz.[8]

He narrated that on the same day, at about 11:30 in the evening, the buy-bust team organized by the WPD went to Mata Street in Tondo, Manila, the site pointed out by the confidential informant, in order to execute the buy-bust operation.[9] The team first went around the area, then met with the confidential informant for the operation. The team saw "Dada" standing along Mata Street. While PO2 Ruiz and the confidential informant proceeded to approach "Dada," the rest of the buy-bust team hid themselves in a place where they could have a good view of the buy-bust operation that was to transpire,[10] which was about five to seven meters away.[11] During the operation, the informant introduced PO2 Ruiz as a buyer of *shabu*.[12] PO2 Ruiz then handed the marked money to "Dada" in exchange for a plastic sachet, which "Dada" took out from his right front pocket.[13] At this instance, PO2 Ruiz identified himself to "Dada" as a police officer and then made the pre-arranged signal to his colleagues by removing his ball cap.[14] Accused was arrested and brought to the DAID-SOTG.[15] PO2 Ruiz ordered accused to empty his pocket and recovered the marked money.[16] Marcos, who was within the vicinity accompanying "Dada," was likewise arrested.[17] PO2 Ruiz marked the plastic sachet with "DBO,"

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

[9] TSN, April 27, 2006, p. 4.

[10] *Id.* at 6.

[11] *Id.* at 16.

[12] *Id.* at 6 & 18.

[13] *Id.* at 6-7 & 19.

[14] *Id.* at 7 & 20.

[15] *Id.* at 7 & 19.

[16] *Id.* at 20.

[17] *Id.* at 19.

the initials of accused, and thereafter turned it over to the investigator.[18] The investigator then turned the plastic sachet over to the WPD's Crime Laboratory for examination.[19]

PO2 Ocampo was presented by the prosecution as the second witness. He testified that on October 15, 2004, P/Insp. De Leon directed a number of police officers to conduct a buy-bust operation against a certain "Dada." Since PO2 Ocampo was very familiar with the target area for being a nearby resident, he volunteered to be part of the buy-bust team. He confirmed that PO2 Ruiz was designated as the poseur-buyer. When PO2 Ruiz and the informant went to the target area to conduct the buy-bust operation, PO2 Ocampo went to his residence, which was two blocks away from the target area, for approximately 30 minutes. Upon his return to the target area, PO2 Ruiz informed him that the operation had been consummated and two persons were arrested. The buy-bust team then brought the arrested persons to the police station for investigation.[20] PO2 Ocampo stated that he and PO2 Ruiz were also present when the accused and Marcos were turned over to the investigator.[21] PO2 Ocampo properly identified accused Bautista ("Dada") and Marcos in the RTC.[22]

The Defense's Version of Facts

The accused was presented as the first witness for the defense. He stated that on October 15, 2004 between 9 o'clock to 9:30 in the evening, he was inside his neighbor's house playing video *karera* with Marcos and five other people.[23] While they were playing video *karera*, about eight police officers suddenly arrived and announced, "*Huwag kayong tatakbo mga pulis kami*." (Do

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[18] *Id.* at 7, 22-23.

[19] *Rollo*, p. 6; CA *rollo*, p. 60.

[20] *Id.* at 6-7; *id.* at 59; TSN, April 20, 2006, pp. 3-5.

[21] TSN, April 20, 2006, p. 5.

[22] *Id.* at 3-5.

[23] *Rollo*, p. 7; CA *rollo*, p. 60; TSN, October 20, 2006, pp. 2-3.

not run. We are police officers.) The accused testified that right after the verbal warning, the police officers frisked them. Thereafter, the five other persons in the house were released, and only the two of them, the accused and Marcos, were arrested.[24] They were then brought to the DAID-SOTG office on United Nations Avenue in Manila for investigation.[25]

The defense presented Manabat as its second witness. She testified that on October 15, 2004, she was at the video *karera* on 348 Mata Street, Tondo, Manila, when the arrest happened. She was there to have her money changed into coins. At the time, Ignacio, the owner and operator of the video *karera*, and some children were also present. She said that two persons in civilian clothes suddenly appeared and asked who the owner of the video *karera* was. Marcos answered that he did not know. Thereafter, accused and Marcos were frisked and then arrested. She further testified that accused and Marcos resisted by holding on to a steel bar such that Marcos' hand had to be burned by a cigarette in order for him to let go of it.[26]

The defense then presented Marcos as the third witness. Marcos, a pedicab driver, testified that on October 15, 2004 at 10 o'clock in the evening, while he was at the video *karera*, two persons arrived asking him who the owner of the video *karera* was. He replied that he did not know.[27] He and accused were then frisked and forced to go with the said persons to the DAID-SOTG office.

The defense also presented Ignacio, the owner and operator of the video *karera*, as its witness. Ignacio testified that on October 15, 2004, she was at her house on 348 Mata St., Tondo, Manila, which was also where people played the video *karera*. She stated that at about 10 o'clock in the evening, three persons

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[24] TSN, October 20, 2006, pp. 3-4.

[25] *Id.* at 4-5; *rollo*, p. 7.

[26] TSN, May 21, 2007, pp. 2-4.

[27] TSN, November 8, 2007, pp. 2-3.

went inside her house and introduced themselves as police officers, while about three others waited outside. The police officers arrested two persons playing video *karera* in her house,[28] but the two resisted the arrest.[29] She said that she only knew one of the two arrested, Marcos, as he was her neighbor. She said further that besides the two persons arrested, three others were also playing video *karera* at the time of the arrest. One of them was a woman, which she identified to be her neighbor, Manabat. Finally, Ignacio stated that she was not arrested, notwithstanding the fact that she was operating a video *karera*, which was illegal.[30]

Ruling of the Trial Court

After trial, the RTC convicted the accused. The dispositive portion of its April 16, 2008 Decision reads:

> WHEREFORE, judgment is hereby rendered as follows, to wit:
>
> 1. In Criminal Case No. 04-231073 finding accused, Darius Bautista *y* Orsino @ Dada, GUILTY, beyond reasonable doubt of the crime charged, he is hereby sentenced to life imprisonment and to pay a fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs;
>
> 2. In Criminal Case No. 04-231074, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, we hereby ACQUIT, accused, Armando Marcos *y* Balderama @ Onyo, for the crime charged. Costs *de officio*.
>
> The specimens are forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon proper receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.
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> SO ORDERED.[31]

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[28] TSN, April 1, 2008, pp. 3-4.

[29] *Id.* at 7.

[30] *Id.* at 4-7.

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

In finding for the prosecution and convicting the accused of the crime charged, the RTC gave credence to the testimonies of the witnesses for the prosecution. The RTC held that the testimonies of the prosecution's witnesses, who are police officers, should be given full faith and credit, absent any clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duties.[32] Accused failed to show any ill motive on the part of the police officers to testify falsely against him.

The RTC further held that the accused's claim of alibi is not substantiated and therefore not believable. The RTC likewise did not give credence to the testimonies of Manabat and Ignacio, whose testimonies showed several inconsistencies and discrepancies that raised doubt as to their credibility.[33]

On the other hand, the RTC acquitted Marcos of the crime charged, because the testimonies of the police officers led to the conclusion that only accused Bautista could be held guilty beyond reasonable doubt of the crime. As seen in the testimony of PO2 Ruiz, the confidential informant pointed out accused Bautista only as the seller of prohibited drugs and the buy-bust operation was, thus, conducted against him. The RTC held that PO2 Ruiz had no personal knowledge of the arrest of Marcos, as he was apprehended by a companion of PO2 Ruiz while PO2 Ruiz himself was busy arresting the accused, Bautista.[34] PO2 Cruz, the officer who arrested Marcos, failed to testify in court. Marcos could, therefore, not be convicted of the crime charged.

Ruling of the Appellate Court

On August 20, 2009, the CA affirmed the judgment of the RTC. The dispositive portion of the CA Decision reads:

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[32] *Id.* at 20.

[33] *Id.* at 21-22.

[34] *Id.* at 23.

WHEREFORE, the foregoing premises considered, the instant appeal is **DISMISSED** and the assailed Decision dated April 16, 2008 is **AFFIRMED**.

SO ORDERED.[35]

The CA held that the factual findings of the trial court should be given great weight, considering that they have been fully substantiated by the evidence on record.[36] The CA held that there was in fact no break in the custody of the *corpus delicti*, *i.e.*, the confiscated dangerous drug, which in this case is methamphetamine hydrochloride or *shabu*.[37] Finally, the CA ruled that the alleged non-compliance with the provision of Sec. 21 of the *Comprehensive Dangerous Drugs Act of 2002* is not fatal, considering that the integrity and evidentiary value of the seized dangerous drug were properly preserved as can be gleaned from the facts of the case.[38]

The Issues

Hence, this appeal is before Us, with accused-appellant maintaining that the trial court erred in convicting him of the crime charged, despite the fact that his guilt was not proved beyond reasonable doubt. He alleges that reasonable doubt exists because there is a break in the chain of custody of the seized dangerous drug. He further alleges that there was a serious deviation from the requirements of Sec. 21 of the *Comprehensive Dangerous Drugs Act of 2002* on the custody and disposition of the said seized dangerous drug.

The Court's Ruling

We sustain the conviction of accused-appellant.

Factual findings of the RTC should be given full faith and credit unless there is a showing of a misinterpretation of material facts or grave abuse of discretion.

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[35] *Rollo*, p. 14.

[36] *Id.*

[37] *Id.* at 13.

[38] *Id.* at 13-14.

In the present case, the prosecution and the defense presented very different facts of the case. It was, therefore, obligatory upon the RTC to determine which of these facts should be given great weight and credence. As We held in *People v. Gabrino*:[39]

> We have held time and again that **"the trial court's assessment of the credibility of a witness is entitled to great weight, sometimes even with finality."** As We have reiterated in the very recent case of *People v. Jose Pepito Combate*, **where there is no showing that the trial court overlooked or misinterpreted some material facts or that it gravely abused its discretion, then We do not disturb and interfere with its assessment of the facts and the credibility of the witnesses. This is clearly because the judge in the trial court was the one who personally heard the accused and the witnesses, and observed their demeanor as well as the manner in which they testified during trial.** Accordingly, the trial court, or more particularly, the RTC in this case, is in a better position to assess and weigh the evidence presented during trial.

In the present case, in giving weight to the prosecution's testimonies, there is not a slight indication that the RTC acted with grave abuse of discretion, or that it overlooked any material fact. In fact, no allegation to that effect ever came from the defense. There is therefore no reason to disturb the findings of fact made by the RTC and its assessment of the credibility of the witnesses. To reiterate this time-honored doctrine and well-entrenched principle, We quote from *People v. Robert Dinglasan*, thus:

> In the matter of credibility of witnesses, we reiterate the familiar and well-entrenched rule that the factual findings of the trial court should be respected. **The judge *a quo* was in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.** It is doctrinally settled that the evaluation of the testimony of

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[39] G.R. No. 189981, March 9, 2011; citing *People v. Combate*, G.R. No. 189301, December 15, 2010; *People v. Agudez*, G.R. Nos. 138386-87, May 20, 2004, 428 SCRA 692, 705; *People v. Dinglasan*, G.R. No. 101312, January 28, 1997, 267 SCRA 26, 39.

> the witnesses by the trial court is received on appeal with the highest respect, **because it had the direct opportunity to observe the witnesses on the stand and detect if they were telling the truth. This assessment is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain facts of substance or value that if considered might affect the result of the case**. (Emphasis Ours.)

In appreciating the facts of the present case, the RTC gave credence to the testimonies of the prosecution's witnesses, which the CA found to be without grave abuse of discretion. The CA likewise did not make any finding that the RTC overlooked or misinterpreted a material fact. In fact, the CA affirmed the factual determination made by the RTC. As We have previously explained and discussed in *Gabrino* and in a multitude of cases, the trial court judge is in the best position to make this determination as the judge was the one who personally heard the accused and the witnesses, as well as observed their demeanor and the manner in which they testified during trial.[40] Accordingly, We do not disturb or interfere with the trial court's finding of facts and its assessment of the credibility of the witnesses.

Furthermore, the RTC made a very important observation that explains why it found the testimonies of the prosecution's witnesses more credible, to wit:

> Witness Anna Marie Ignacio when asked by us if she was also operating pedicabs aside from illegal video *karera* she answered no but when pressed if accused Armando [Marcos] was one of her drivers of pedicab, she reneged and admitted that indeed she was also operating pedicabs and Armando was one of the drivers. In her examination-in-chief, she claimed knowing Armando only because he is a neighbor. She is therefore lying and was also trying to save the hide of accused Armando and Darius. Had it not for the failure of PO Cruz, one who allegedly arrested and recovered the evidence from accused Armando, to testify in Court the prosecution could have proved beyond reasonable doubt his guilt.[41]

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[40] *People v. Gabrino*, *supra* note 39.

[41] CA *rollo*, pp. 21-22.

In appreciating the evidence for the prosecution, the CA ratiocinated, as follows:

> x x x The accused-appellant was caught by the police *in flagrante* in a buy-bust operation. The delivery of the contraband to the poseur buyer and the receipt of the marked money by the accused consummated the buy-bust transaction between the entrapping officer and the accused.
>
> Accused-appellant's challenge against the legality of the buy-bust operation is a closed issue. A buy-bust operation is a common form of entrapment that is resorted to for trapping and capturing felons in the execution of their criminal plan. The operation is sanctioned by law and has consistently proved to be an effective method of apprehending drug sellers. As for the convincing evidence that the members of the buy-bust team were inspired by improper motives or were not performing their duty, their testimonies on the operation deserve full faith and credit. No evidence of improper motive on the part of the buy-bust operation team was established. The allegation that the policemen brought the appellant and his companion forcefully to the police station when nothing was recovered from them, after asking ₱63,000.00 from them deserves scant consideration. As aptly held by the trial court, the defense of frame-up has been invariably viewed by the Supreme Court with disfavor for it can easily be concocted and, like denial, is a common and standard line of defense in most prosecutions arising from violation of the Dangerous Drugs Act.[42]

On the other hand, there were inconsistencies in the testimonies of the defense's witnesses, which, while only reflective of the circumstances surrounding the case, greatly demonstrate their lack of credibility.

First, as to the testimony of Marcos, he initially stated that when he was asked by the two persons who went inside the house with the video *karera*, he said that he did not know its owner.[43] However, when asked during cross-examination, he disclosed that not only did he know the owner of the video

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

[43] TSN, November 8, 2007, pp. 3-4.

karera, but he also knew that the same person is actually the owner of the pedicab that he drives.[44] Marcos testified:

Q: What did they do, if any, after they arrived at the place, Mr. Witness?
A: They asked, who is the owner of that video *karera*.

Q: Whom did they ask for?
A: Me, sir.

Q: After they asked, who is the owner of that video *karera*, what was your reply?
A: **Then, I answered – I don't know the owner**.

Q: **What happened after telling these two persons that you do not know the name of the owner of this video *karera*?**
A: And then, one of the two answered or uttered the words – searching. Then, I was frisked, sir.

x x x x x x x x x

Q: What was your route then?
A: Divisoria, sir.

Q: Everyday?
A: Yes, sir.

Q: Who owns that sidecar?
A: Anna, sir.

Q: Is she your neighbor?
A: Yes, sir.

x x x x x x x x x

Q: Is the owner of this video *karera* renting this house?
A: It is a house, sir.

Q: Who owns that house?
A: The owner of the sidecar, sir.

Q: What is her name?
A: Anna, sir.

Q: Was Anna there at that time?
A: Yes, sir. (Emphasis Ours.)[45]

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[44] *Id.* at 6 & 8.

[45] *Id.* at 3-4, 6 & 8.

Moreover, when Manabat testified, she said that she was at the video *karera* because she was changing her one hundred-peso bill into coins.[46] In fact, she stated that it only took her seconds to do so:[47]

Q: What were do you doing there?
A: I was changing my money into coins, sir.

x x x x x x x x x

Q: You said you were there because you are changing your money into coins, to whom you were changing it, from the owner of the video *karera*?
A: To the owner, sir.

x x x x x x x x x

Q: So, how much money you were holding then?
A: ₱100.00, sir.

x x x x x x x x x

Q: How long have you made that changing your money into coins?
A: Seconds only, sir.

Q: So, you made this exchange in seconds. Is that what you mean?
A: Yes, sir. (Emphasis Ours.)[48]

Contrary to Manabat's statement, there was clearly no indication in Ignacio's testimony that Manabat was at the place of the incident to change her money into coins. In fact, when Ignacio testified, she informed the trial court that Manabat was at the video *karera* to play:

Q: What were they doing?
A: They were playing.

Q: Playing what?
A: Video *karera*.

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[46] TSN, May 21, 2007, pp. 3, 6-7.

[47] *Id.* at 8.

[48] *Id.* at 2-3, 6-8.

Q: Who else aside from Darius and Armando were playing video *karera* that time?
A: They were three (3), sir, one (1) female, sir.

Q: And this female person, do you know her?
A: Yes, sir.

Q: What is her name?
A: Irene Manabat, sir.

Q: How do you know her?
A: My neighbor, sir. (Emphasis Ours.)[49]

In addition to the RTC's finding of a lack of credibility on the part of the defense's witnesses, it has observed correctly that unless the defense could show with clear and convincing evidence that the members of the buy-bust team were inspired with ill motives or that they were not properly performing their duties, the defense's alibi of frame-up cannot stand.[50] We held in *People v. Andres*, "The Court has invariably viewed with disfavor the defenses of denial and frame-up. Such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs."[51]

Considering the absence of either a mistake in the appreciation of material facts or grave abuse of discretion on the part of the trial court judge, and considering further the presumption of regularity on the actions of the police officers, the inconsistencies that raised doubt on the credibility of the defense's witnesses, and finally the opportunity of the trial court judge to directly observe the witnesses and ascertain their credibility, which remains uncontroverted, We do not disturb the said court's assessment of the facts. We, therefore, agree with the RTC's factual determination, which the CA consequently affirmed.

The chain of custody of the seized dangerous drug was properly and clearly established; consequently, the integrity and the

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[49] TSN, April 1, 2008, pp. 5-6.

[50] CA *rollo*, pp. 20-21.

[51] G.R. No. 193184, February 7, 2011.

evidentiary value of the seized dangerous drug were properly preserved by the apprehending police officers

The *Comprehensive Dangerous Drugs Act of 2002* provides for the requirements in handling seized dangerous drugs. Particularly, its Sec. 21(1) requires that:

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.

And the law's Implementing Rules and Regulations states:

SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative

from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; **Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items**. (Emphasis Ours.)

We have ruled time and again that non-compliance with the afore-quoted provisions does not render the seizure of the dangerous drug void and the evidence inadmissible.[52] Conversely, the absence of a showing that the apprehending officer did not make an inventory of the seized items and that he did not take photographs of them is not fatal.[53]

Besides, the law itself lays down certain exceptions to the general compliance requirement, stressing the point that "**as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/ team**," the seizure of and custody over the dangerous drugs shall not be rendered void and invalid.[54]

In cases of dangerous drugs, what is important and necessary is for the prosecution to prove with moral certainty "that the dangerous drug presented in court as evidence against the accused [be] the same item recovered from his possession."[55]

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[52] *People v. Pambid*, G.R. No. 192237, January 26, 2011; citing *People v. De Mesa*, G.R. No. 188570, July 6, 2010, 624 SCRA 248 & *People v. Mariacos*, G.R. No. 188611, June 21, 2010, 621 SCRA 327.

[53] *People v. Presas*, G.R. No. 182525, March 2, 2011.

[54] RA 9165, Implementing Rules and Regulations, Sec. 21(a). (Emphasis Ours.)

[55] *Cacao v. People*, G.R. No. 180870, January 22, 2010, 610 SCRA 636, 644-45.

In this case, it is undoubted that the witnesses for the prosecution clearly established such essential requirement. Right after the buy-bust operation on October 15, 2004, accused-appellant and Marcos were immediately brought to the DAID-SOTG office. And upon their arrival, PO2 Ruiz marked the specimens seized from accused-appellant with specific proper markings and turned them over to the investigator, who in turn referred them at once to the Philippine National Police Crime Laboratory for examination. The testimony of PO2 Ruiz clearly establishes this requirement:

Fiscal Yap: Police Officer Ruiz, what is your participation in this case against Bautista?
The Witness: I was the poseur buyer, sir.

x x x x x x x x x

Q: What happened when you approached *alias* Dada?
A: The confidential informant introduced me to *alias* Dada as the buyer of *shabu*, sir.

Q: What happened, what was his response?
A: *Nagpalitan po kami ng pera then nag-exchanged [sic] kami ng plastic sachet, sir.*

Q: Where did the plastic sachet come from?
A: At right front pocket, sir.

Q: Of?
A: Dada, sir.

Q: Then what happened when he handed to you this plastic sachet?
A: After that, sir, I made a pre-arranged signal to my colleagues, sir.

x x x x x x x x x

Q: How about the plastic sachet, was it also turned over to the investigator?
A: Yes, sir, I put markings before I turned it over to the investigator, sir.

Q: What was the marking made?
A: "DBO", sir.

Q: What is the meaning of "DBO"?
A: The initial of the suspect Darius Bautista *y* Orsino, sir.

x x x x x x x x x

Q: I am showing to you a plastic sachet could you recognize the same, is this the one sold to you by Bautista?
A: Yes, sir.

x x x x x x x x x

Q: Now, how long did it take you from the time you were introduced and then there was somebody who will buy to Dada you said there was a transaction already how long it took?
A: A few minutes, sir.

x x x x x x x x x

Q: And after that what happened, after that there was already exchanged [sic], what happened?
A: When the plastic sachet was already with me I give [sic] my pre-arranged signal and then introduced myself as police officer, sir.

x x x x x x x x x

Q: And also this stuff that you were allegedly responsible for the recovery and also the other one where was it marked?
A: At the office, sir, I marked it before I turned it over to the investigator, sir.

Q: Did you mark it?
A: Yes, sir.

Q: What was the marking?
A: The initials of the suspects, sir.

Q: What is the initial?
A: "DOB", sir.

Q: Represents who?
A: Darius Bautista *y* Orsino, sir.

x x x x x x x x x

Q: And you were not the one also who prepared for this examination to the laboratory of this alleged selling that you have confiscated?
A: The investigator, sir.

Q: Just the investigator. You were not also present when these cases of this two accused were presented before the inquest, you were not also present?
A: I was there, sir.

Q: When was that, that you represent, as the apprehending officer because you are the vital witness when was that if you can recall during the inquest of this two accused?
A: The following day, sir.

Q: When was that?
A: October 16, 2004, sir.[56]

After the seized item was properly marked by PO2 Ruiz, it was turned over to the investigator and thereafter to the crime laboratory for examination. The seized item and documentary evidence showing that the item had been forwarded and stamped received by the PNP Crime Laboratory were presented to and offered as evidence in the RTC. These were properly marked and admitted.[57] In addition, the members of the buy-bust team executed their Joint Affidavit of Apprehension immediately after the operation and arrest. From the foregoing circumstances, it is unmistakable that there is no break in the chain of custody of the seized dangerous drug from the time that it came to the possession of PO2 Ruiz. At the same time, the seized item was likewise positively identified by PO2 Ruiz in court when it was presented. Clearly, there is no doubt that the integrity and evidentiary value of the seized dangerous drug were properly preserved by the apprehending officer, in compliance with what the law requires.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 03300, finding accused-appellant Darius

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[56] TSN, April 27, 2006, pp. 4-19.

[57] *Id.* at 27.

Bautista *y* Orsino @ Dada guilty of the crime charged, is *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 196919. June 6, 2011]

JOSE RAMILO O. REGALADO, *petitioner, vs.* **CHAUCER B. REGALADO and GERARD R. CUEVAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; LEGAL FEES; INDIGENT LITIGANTS EXEMPT FROM PAYMENT OF LEGAL FEES; PROPER FOR PETITIONER WHO WAS ALLOWED TO PROSECUTE HIS CASE AS INDIGENT AND THE LEGAL CONDITIONS COMPLIED WITH.— Considering that petitioner was allowed by the courts *a quo* to prosecute his case as an indigent litigant and upon finding that he has complied with the conditions set forth by Section 19, Rule 141 of the Rules of Court, the prayer is granted. The Clerk of Court of the Second Division is directed to assign a regular docket number for this case, and the petition is hereby given due course.

2. ID.; CIVIL PROCEDURE; CANCELLATION OF TITLE; NOT EXTINGUISHED UPON DEATH OF A PARTY, IT SURVIVES AGAINST THE DECEDENT'S REPRESENTATIVES.— The action that led to the present controversy was one for cancellation of title, which is a real action affecting as it does title to or possession of real property. It is an action that survives or is not extinguished upon the

death of a party, pursuant to Section 1, Rule 87 of the Rules of Court.

3. ID.; ID.; PARTIES; DUTY OF COUNSEL TO NOTIFY THE APPELLATE COURT; DELAY THEREOF DOES NOT WARRANT DISMISSAL OF APPEAL TO THE PREJUDICE OF THE DECEASED PARTY'S LEGAL REPRESENTATIVES.— Section 16, Rule 3 lays down the procedure that must be observed when a party dies in an action that survives, *viz.:* x x x The rule is intended to protect every party's right to due process. The estate of the deceased party will continue to be properly represented in the suit, through the duly appointed legal representative. Moreover, no adjudication can be made against the successor of the deceased if the fundamental right to a day in court is denied. x x x [I]t should not have taken Atty. Miguel B. Albar twenty (20) months before notifying the CA, when the same ought to have been carried out at the time of the filing of their appeal. This notwithstanding, it was still error for the CA to dismiss the appeal. After receiving the notice of Hugo Regalado's death, together with a list of his representatives, it was incumbent upon the appellate court to order the latter's appearance and cause their substitution as parties to the appeal. The belated filing of the notice must not prejudice the deceased party's legal representatives; the rules clearly provide that it is a mere ground for a disciplinary action against the erring counsel.

APPEARANCES OF COUNSEL

Miguel B. Albar for petitioner.
Arturo Dullano for respondents.

R E S O L U T I O N

NACHURA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the twin Resolutions dated September 24, 2009[1] and October 15, 2010[2] of the Court of Appeals (CA)

[1] *Rollo*, pp. 4-5.

[2] *Id*. at 6-8.

in CA-G.R. CEB-SP UDK No. 0235, entitled "*Hugo C. Regalado, represented by Jose Ramilo O. Regalado v. Chaucer B. Regalado and Jose Gerard R. Cuevas*."

The first assailed Resolution dismissed petitioner's appeal on the following grounds:

1. The petitioner failed to incorporate in his petition a written explanation why the preferred mode of personal service and filing as prescribed under Section 11, Rule 13 of the Revised Rules of Court was not availed of;

2. Copies of the pertinent and relevant pleadings and documents, which are necessary for proper resolution of the case, were not attached to the petition, *viz.*:

    a. Complaint[;]
    b. Motion to Dismiss and the corresponding Comment thereon;
    c. Motion for Reconsideration of the MTC's October 5, 2007 Order and the respondents' separate Opposition thereto;
    d. Notice of Appeal/Appeal Memorandum; [and]
    e. Appellees' Memorand[u]m

3. It is not shown that the purported representative of petitioner has the required authority to sign the verification and certificate of non-forum shopping in the latter's behalf.[3]

Petitioner sought reconsideration and asked for leniency in the application of the Rules of Court. Attached in his motion were copies of the pleadings pertinent and relevant to his petition. Petitioner asserted that he was authorized to sign the verification and certification of non-forum shopping in behalf of Hugo Regalado by virtue of a Special Power of Attorney attached to the complaint filed together with the motion for reconsideration.[4]

Respondents opposed the motion and manifested that Hugo Regalado died on April 23, 2008, even before the challenged

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[3] *Supra* note 1.

[4] *Rollo*, pp. 30-34.

decision of the Regional Trial Court (RTC) was rendered on May 15, 2008.[5]

On December 15, 2009, Atty. Miguel B. Albar, counsel of Hugo Regalado, furnished the CA with a notice of Hugo Regalado's death on April 23, 2008, together with a list of the latter's legal representatives.[6]

On October 15, 2010, the CA denied the motion for reconsideration, ruling thus:

> With the death of Hugo Regalado on April 23, 2008, the authority of Jose Ramilo O. Regalado to represent the former in this case had ceased effective said date. Elemental is the rule that one of the causes of the termination of an agency is the death of the principal. Apparently, when the instant petition was filed on June 4, 2008, Jose Ramilo O. Regalado had no more authority to sign the verification thereof in behalf of deceased petitioner Hugo Regalado. In effect, the petition was without proper verification. In the absence of verification, the instant petition is deemed as an unsigned pleading, and, as such, it is considered as a mere scrap of paper and does not deserve the cognizance of this Court.[7]

From this denial, petitioner is now before this Court, seeking for the reversal of the CA's issuances.

We shall first settle petitioner's plea that he be permitted to pursue this appeal as a pauper litigant.

Considering that petitioner was allowed by the courts *a quo* to prosecute his case as an indigent litigant and upon finding that he has complied with the conditions set forth by Section 19, Rule 141 of the Rules of Court,[8] the prayer is

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[5] *See* the October 15, 2010 Resolution of the CA, *supra* note 2.

[6] *Rollo*, pp. 55-58.

[7] *Supra* note 2, at 7.

[8] SEC. 19. *Indigent litigants exempt from payment of legal fees.* – INDIGENT LITIGANT (A) WHOSE GROSS INCOME AND THAT OF THEIR IMMEDIATE FAMILY DO NOT EXCEED AN AMOUNT DOUBLE THE MONTHLY MINIMUM WAGE OF AN EMPLOYEE AND (B) WHO

granted.[9] The Clerk of Court of the Second Division is directed to assign a regular docket number for this case, and the petition is hereby given due course.

Petitioner argues that after the death of Hugo Regalado, he did not lose his right or interest over the case since he is one of the compulsory heirs. As such, he signed the petition before the CA, not as an agent of Hugo Regalado, but as a compulsory heir.

The petition is meritorious.

The action that led to the present controversy was one for cancellation of title, which is a real action affecting as it does

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DO NOT OWN REAL PROPERTY WITH A FAIR MARKET VALUE AS STATED IN THE CURRENT TAX DECLARATION OF MORE THAN THREE HUNDRED THOUSAND PESOS (₱300,000.00) SHALL BE EXEMPT FROM THE PAYMENT OF LEGAL FEES.

The legal fees shall be a lien on any judgment rendered in the case favorable to the indigent unless the court otherwise provides.

To be entitled to the exemption herein provided, the litigant shall execute an affidavit that he and his immediate family do not earn a gross income abovementioned nor they own any real property with the fair value aforementioned, supported by an affidavit of a disinterested person attesting to the truth of the litigant's affidavit. The current tax declaration, if any, shall be attached to the litigant's affidavit. Any falsity in the affidavit of the litigant or disinterested person shall be sufficient cause to dismiss the complaint or action or to strike out the pleading of that party, without prejudice to whatever criminal liability may have been incurred.

[9] Petitioner submitted the following:

1) Affidavit executed by petitioner attesting that he and his immediate family earn about ₱1,000.00 per month; and that he does not own any real property.

2) Affidavit of a disinterested third person attesting to the truth of petitioner's affidavit; and

3) December 11, 2007 Order of the 2nd Municipal Circuit Trial Court of Pontevedra-Panay, Pontevedra, Capiz, granting the original complainant Hugo C. Regalado's plea to sue and pursue the action as pauper litigant. (*See Rollo*, pp. 61-65.)

The CA also granted petitioner's plea to sue as pauper litigant as evident in its September 24, 2009 Resolution.

title to or possession of real property. It is an action that survives or is not extinguished upon the death of a party, pursuant to Section 1, Rule 87 of the Rules of Court.[10]

Section 16, Rule 3 lays down the procedure that must be observed when a party dies in an action that survives, *viz.*:

> SEC.16. *Death of party; duty of counsel.* – Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.
>
> The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.
>
> The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.
>
> If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

The rule is intended to protect every party's right to due process.[11] The estate of the deceased party will continue to be

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[10] Under Sec 1, Rule 87, the actions that survive against the decedent's representatives are as follows: (1) actions to recover real or personal property or an interest thereon, (2) actions to enforce liens thereon, (3) actions to recover damages for an injury to a person or a property.

[11] *Spouses Dela Cruz v. Joaquin*, G.R. No. 162788, July 28, 2005, 464 SCRA 576, 584; *Riviera Filipina Inc. v. Court of Appeals*, 430 Phil. 8, 31 (2002); *Torres Jr. v. Court of Appeals*, 344 Phil. 348, 366 (1997); *Vda. De Salazar v. Court of Appeals*, 320 Phil. 373, 377 (1995).

properly represented in the suit, through the duly appointed legal representative.[12] Moreover, no adjudication can be made against the successor of the deceased if the fundamental right to a day in court is denied.[13]

Hugo Regalado passed away on April 23, 2008, but the notice of his death was served to the CA by his counsel only on December 15, 2009. Although Hugo Regalado died as early as the pendency of the proceedings before the RTC,[14] the non-fulfillment of the requirement before said court is excusable since the RTC rendered a decision on May 15, 2008, or before the expiration of the 30-day period set by the rule.

However, it should not have taken Atty. Miguel B. Albar twenty (20) months before notifying the CA, when the same ought to have been carried out at the time of the filing of their appeal.

This notwithstanding, it was still error for the CA to dismiss the appeal. After receiving the notice of Hugo Regalado's death, together with a list of his representatives, it was incumbent upon the appellate court to order the latter's appearance and cause their substitution as parties to the appeal. The belated filing of the notice must not prejudice the deceased party's legal representatives; the rules clearly provide that it is a mere ground for a disciplinary action against the erring counsel. Instead of abiding by the course of action set forth by the rules, the CA adopted a myopic examination of the procedural facts of the case. It focused simply on the validity of the Special Power of Attorney, and completely disregarded the notice of Hugo Regalado's death. Indeed, nothing is more unfortunate in law than when a counsel's remedial *faux pas* is improperly addressed by a court.

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[12] *Spouses Dela Cruz v. Joaquin, supra*; *Heirs of Hinog v. Melicor*, G.R. No. 140954, April 12, 2005, 455 SCRA 460, 478; *Torres Jr. v. Court of Appeals, supra*.

[13] *Vda. De Salazar v. Court of Appeals*, *supra*, at 377; *De Mesa, et al. v. Mencias, et al.*, 124 Phil. 1187, 1195 (1966).

[14] Branch 17, Roxas City.

Petitioner and the other legal representatives of Hugo Regalado were thus deprived of due process, and, as such, the CA issuances rendered against them were void.

WHEREFORE, premises considered, the Clerk of Court is *DIRECTED* to *ASSIGN* a regular docket number to this case, and thereafter *REMAND* the case to the Court of Appeals.

The September 24, 2009 and October 15, 2010 Resolutions of the Court of Appeals are hereby *ANNULLED* and *SET ASIDE*. The Court of Appeals is hereby *ORDERED* (1) to substitute the legal representatives of Hugo Regalado in his place as petitioner in CA-G.R. CEB-SP UDK No. 0235, and (2) to *GIVE DUE COURSE* to the appeal.

For his unexplained negligence in complying with the rules on substitution of a deceased party, Atty. Miguel B. Albar is hereby *REPRIMANDED* with a *WARNING* that a repetition of the same or similar acts shall be dealt with more severely. Let a copy of this Resolution be *FURNISHED* the Office of the Bar Confidant to be attached to the personal records of Atty. Miguel B. Albar.

SO ORDERED.

Velasco,[*] *Jr., Peralta, Abad,* and *Mendoza, JJ.,* concur.

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[*] Additional member in lieu of Associate Justice Antonio T. Carpio per raffle dated January 10, 2011.

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acted with manifest partiality, evident bad faith or gross inexcusable negligence. (Respicio *vs*. People, G.R. Nos. 178701 and 178754, June 06, 2011) p. 705

(Guadines *vs*. Sandiganbayan, G.R. No. 164891, June 06, 2011) p. 563

(M.A. Jimenez Enterprises, Inc. *vs*. Hon. Ombudsman, G.R. No. 155307, June 06, 2011) p. 523

— There is evident bad faith when it connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. (Respicio *vs*. People, G.R. Nos. 178701 and 178754, June 06, 2011) p. 705

APPEALS

Appeal in criminal case — 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. (People *vs*. Bonaagua, G.R. No. 188897, June 06, 2011) p. 750

Factual findings of administrative agencies — Accorded respect because of their special knowledge and expertise over matters falling under their jurisdiction. (Gannapao *vs*. CSC, G.R. No. 180141, May 31, 2011) p. 60

Factual findings of the Sandiganbayan — Accorded respect and weight by the Supreme Court; exceptions. (Guadines *vs*. Sandiganbayan, G.R. No. 164891, June 06, 2011) p. 563

Law of the case — Defined as the opinion delivered on a former appeal. (Majority Stockholders of Ruby Industrial Corp. *vs*. Lim, G.R. No. 165887, June 06, 2011) p. 600

Petition for review on certiorari under Rule 45 — Entitlement to damages and attorney's fees is a factual issue which is beyond the ambit of a petition for review. (Vda. de Formoso *vs*. PNB, G.R. No. 154704, June 01, 2011) p. 184

— Proper in case of decisions or award by Voluntary Arbitrators. (Samahan ng mga Manggagawa sa Hyatt *vs*. Hon. Voluntary Arbitrator Magsalin, G.R. No. 164939, June 06, 2011) p. 584

— Question of fact is not proper except, when there is a conflict in the findings of the Secretary of Labor and the appellate court. (JAPRL Dev't. Corp. *vs*. Security Bank Corp., G.R. No. 190107, June 06, 2011) p. 774

Points of law, issues, theories, and arguments — Issue which was neither alleged in the complaint nor raised during trial cannot be raised for the first time on appeal; exception. (Aliviado *vs*. Procter & Gamble Phils., Inc., G.R. No. 160506, June 06, 2011) p. 542

Right to appeal — Relaxation of procedural rules to give effect to a party's right to appeal is proper. (Osmeña *vs*. COA, G.R. No. 188818, May 31, 2011) p. 116

BILL OF RIGHTS

Right to cross-examine — Does not necessarily require an actual cross examination but merely an opportunity to exercise the right if desired by the party entitled to it. (Gannapao *vs*. CSC, G.R. No. 180141, May 31, 2011) p. 60

CERTIORARI

Grave abuse of discretion as a ground — Lies when there is a capricious, arbitrary or whimsical exercise of power. (Ganaden *vs*. CA, G.R. Nos. 170500 & 170510-11, June 01, 2011) p. 261

Petition for — An independent action and is neither a continuation nor a part of the trial resulting in the judgment complained of. (Galang *vs*. Land Bank of the Phils., G.R. No. 175276, May 31, 2011) p. 37

— Lies where a court or any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion. (Atty. Zamoranos *vs*. People, G.R. No. 193902, June 01, 2011) p. 447

— Not the proper remedy to assail an interlocutory order; exceptions. *(Id.)*

— Though a wrong remedy, it can be given due course to achieve substantial justice as expeditiously as possible. (Cirtek Employees Labor Union-Federation of Free Workers *vs*. Cirtek Electronics, Inc., G.R. No. 190515, June 06, 2011) p. 784

Question of fact — Exists when a doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation. (Cirtek Employees Labor Union-Federation of Free Workers *vs*. Cirtek Electronics, Inc., G.R. No. 190515, June 06, 2011) p. 784

Question of law — Exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of the facts being admitted. (Cirtek Employees Labor Union-Federation of Free Workers *vs*. Cirtek Electronics, Inc., G.R. No. 190515, June 06, 2011) p. 784

CIVIL SERVICE

Reinstatement — An illegally terminated civil service employee is entitled to back salaries limited only to a maximum period of five years, and not full back salaries from his illegal termination up to his reinstatement. (Galang *vs*. Land Bank of the Phils., G.R. No. 175276, May 31, 2011) p. 37

— Defined as the issuance of an appointment to a person who has been previously appointed to a position in the career service and who has, through no delinquency or misconduct, been separated therefrom, or to the restoration of one who has been exonerated of the administrative charges filed against him. *(Id.)*

CLERKS OF COURT

Duties of — Clerks of court are primarily accountable for all funds that are collected for the court. (OCA *vs*. Recio, A.M. No. P-04-1813, May 31, 2011) p. 13

— Clerks of court must promptly remit or deposit cash collections with the local or nearest Land Bank of the Philippines branch in accordance with Court Administrative Circulars and Issuances. *(Id.)*

— Failure to remit collections upon demand by the court constitutes prima facie evidence that such missing funds have been put to personal use. *(Id.)*

Gross neglect of duty and gross dishonesty — Committed in case of failure to properly remit cash collections constituting public funds. (OCA *vs*. Recio, A.M. No. P-04-1813, May 31, 2011) p. 13

COLLECTIVE BARGAINING AGREEMENT

Arbitral award — Determined as an approximation of collective bargaining agreement which parties would have otherwise entered and it is considered a valid contract. (Cirtek Employees Labor Union-Federation of Free Workers *vs*. Cirtek Electronics, Inc., G.R. No. 190515, June 06, 2011) p. 784

Interpretation of — Given liberal construction. (Cirtek Employees Labor Union-Federation of Free Workers *vs*. Cirtek Electronics, Inc., G.R. No. 190515, June 06, 2011) p. 784

COMMAND RESPONSIBILITY

Doctrine of — Included as a form of criminal complicity in crimes against international humanitarian law, genocide and other crimes. (Lt. Boac *vs*. Cadapan, G.R. Nos. 184461-62, May 31, 2011) p. 84

— Means the responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict. *(Id.)*

COMMISSION ON THE SETTLEMENT OF LAND PROBLEMS (COSLAP)

Jurisdiction — COSLAP has two options in acting on a land dispute or problem lodged before it, to wit (a) refer the matter to the agency having appropriate jurisdiction for settlement/resolution; or (b) assume jurisdiction if the matter is one of those enumerated in paragraph 2 (a) to (e) of E.O. No. 561. (*Vda de* Herrera *vs*. Bernardo, G.R. No. 170251, June 01, 2011) p. 234

— Lack of jurisdiction of COSLAP may be raised at any stage of the proceedings. *(Id.)*

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Buy-bust operation — Compliance with the specific procedures on the seizure and custody of drugs to safeguard the rights of people under criminal investigation, emphasized. (People *vs*. Navarrete, G.R. No. 185211, June 06, 2011) p. 738

— Its regularity is not affected by the absence of a prior test buy or surveillance. (People *vs*. Villahermosa, G.R. No. 186465, June 01, 2011) p. 399

— Presumption of regular performance of official duties upheld as against allegation of frame-up. (People *vs*. Bautista, G.R. No. 191266, June 06, 2011) p. 815

Chain of custody rule/custody and disposition of confiscated drugs — Failure to comply with the marking of evidence immediately after confiscation constitutes a first gap in the chain of custody. (Ulep *vs*. People, G.R. No. 183849, June 01, 2011) p. 358

— Failure to observe these basic rules results not only in consequent acquittals but also in loss of precious time to futile exercise. *(Id.)*

— The non-compliance with the requirements under par. 1, Sec. 21, Article II of the Act 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. (People *vs*. Bautista, G.R. No. 191266, June 06, 2011) p. 815

(People *vs*. Navarrete, G.R. No. 185211, June 06, 2011) p. 738

Illegal possession of dangerous drugs — Imposable penalty. (People *vs*. Villahermosa, G.R. No. 186465, June 01, 2011) p. 399

— It must be shown that (a) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (b) such possession is not authorized by law, and (c) the accused was freely and consciously aware of being in possession of the drug. (People *vs*. Villahermosa, G.R. No. 186465, June 01, 2011) p. 399

Illegal sale of prohibited drugs — Prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment therefor. (People *vs*. Villahermosa, G.R. No. 186465, June 01, 2011) p. 399

— Punishable by life imprisonment and fine ranging from ₱500,000.00 to ₱10,000,000.00 without eligibility for parole. *(Id.)*

CONSPIRACY

Existence of — Conspiracy can be inferred from and proven by acts of the accused themselves when said acts point to a joint purpose and design, concerted action, and community of interests. (Guadines *vs*. Sandiganbayan, G.R. No. 164891, June 06, 2011) p. 563

Liability of conspirator — The act of one is the act of all. (People *vs*. Nimuan, G.R. No. 182918, June 06, 2011) p. 728

CONTRACTS

Perfection of — All contracts, including government contracts are subject to the police power of the state. (Guadines *vs*. Sandiganbayan, G.R. No. 164891, June 06, 2011) p. 563

Rescissible contract — Unless the parties stipulated it, rescission is allowed only when the breach of the contract is substantial and fundamental to the fulfillment of the obligation. (Reyes *vs*. Tuparan, G.R. No. 188064, June 01, 2011) p. 425

CO-OWNERSHIP

Application — Legal consequences of a void partition agreement. (Tecson *vs*. Fausto, G.R. No. 180683, June 01, 2011) p. 333

CORPORATIONS

Corporate liquidation — Consists of collecting all that is due the corporation, the settlement and adjustment of claims against it and the payment of its just debts. (Majority Stockholders of Ruby Industrial Corp. *vs*. Lim, G.R. No. 165887, June 06, 2011) p. 600

— Jurisdiction over the liquidation of corporations now pertains to the appropriate Regional Trial Courts. *(Id.)*

— Should ensue where the corporate life of a corporation has expired without a valid extension having been effected. *(Id.)*

Corporate rehabilitation — Connotes the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continued operation is economically feasible and its creditors can recover more, by way of the present value of payments projected in the rehabilitation plan, if the corporation continues as a going concern than if it is immediately liquidated. (Asiatrust Dev't. Bank *vs*. First Aikka Dev't., Inc., G.R. No. 179558, June 01, 2011) p. 313

— Consolidation of petitions for rehabilitation of two separate corporations with different office addresses is not proper. *(Id.)*

— Creditor can demand payment from the surety solidarily liable with the corporation seeking rehabilitation, it being not included in the list of stayed claims. (JAPRL Dev't. Corp. *vs*. Security Bank Corp., G.R. No. 190107, June 06, 2011) p. 774

— The major creditor of the distressed corporation, like a bank, should be given opportunity to be heard by the rehabilitation court. (Asiatrust Dev't. Bank *vs.* First Aikka Dev't., Inc., G.R. No. 179558, June 01, 2011) p. 313

— The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. *(Id.)*

Derivative action — Refers to a suit by a shareholder to enforce a corporate cause of action. (Majority Stockholders of Ruby Industrial Corp. *vs.* Lim, G.R. No. 165887, June 06, 2011) p. 600

Pre-emptive right of stockholder — Refers to the right of a stockholder of a stock corporation to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings. (Majority Stockholders of Ruby Industrial Corp. *vs.* Lim, G.R. No. 165887, June 06, 2011) p. 600

Shares of stock — The validity of issuance of additional shares may be questioned if done in breach of trust by the controlling stockholders. (Majority Stockholders of Ruby Industrial Corp. *vs*. Lim, G.R. No. 165887, June 06, 2011) p. 600

Stock corporation — Expressly granted the power to issue and sell stocks. (Majority Stockholders of Ruby Industrial Corp. *vs*. Lim, G.R. No. 165887, June 06, 2011) p. 600

COURT PERSONNEL

Cash clerks — As public officers, their duty was not only to perform their assigned tasks, but to prevent the commission of acts inimical to the Judiciary and to the public, in general. (OCA *vs.* Recio, A.M. No. P-04-1813, May 31, 2011) p. 13

Conduct of — Harassment of neighbors and display of overbearing character are deplorable acts amounting to oppression and conduct unbecoming a court employee. (Mendez *vs*. Balbuena, A.M. No. P-11-2931, June 01, 2011) p. 161

Conduct prejudicial to the best interest of the service — Committed by a security guard's act of watching a DVD while on duty; dismissal from service is warranted. (*Re*: Theft of the used galvanized iron (GI) sheets in the SC Compound, Baguio City, A.M. No. 2008-15-SC, May 31, 2011) p. 1

— Knowingly delaying the release of the warrant of arrest, a case of. (Sonido *vs*. Ilocso, A.M. No. P-10-2794, June 01, 2011) p. 152

Gross insubordination — Committed in case of deliberate refusal to comply with the court's resolution. (Mendez *vs*. Balbuena, A.M. No. P-11-2931, June 01, 2011) p. 161

Gross misconduct — A grave offense punishable with dismissal from service for the first offense. (*Re*: Theft of the used galvanized iron (GI) sheets in the SC Compound, Baguio City, A.M. No. 2008-15-SC, May 31, 2011) p. 1

COURTS

Disposition of cases — Once a case is filed with the court, any disposition of it rests on the sound discretion of the court. (Cerezo *vs*. People, G.R. No. 185230, June 01, 2011) p. 365

DENIAL OF THE ACCUSED

Defense of — Must be supported by clear and convincing evidence. (People *vs*. Villahermosa, G.R. No. 186465, June 01, 2011) p. 399

DOUBLE JEOPARDY

Concept — Double jeopardy exists when the following requisites are present: (a) a first jeopardy attached prior to the second; (b) the first jeopardy has been validly terminated; and (c) a second jeopardy is for the same offense as in the first. (Cerezo *vs*. People, G.R. No. 185230, June 01, 2011) p. 365

First jeopardy — Attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when

a valid plea has been entered; and (e) when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent. (Cerezo *vs*. People, G.R. No. 185230, June 01, 2011) p. 365

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. (Gannapao *vs*. CSC, G.R. No. 180141, May 31, 2011) p. 60

EMPLOYMENT, TERMINATION OF

Backwages — Represent the compensation that should have been earned but were not collected because of unjust dismissal. (Galang *vs*. Land Bank of the Phils., G.R. No. 175276, May 31, 2011) p. 37

Resignation — A voluntarily resigned employee may be granted financial assistance as a measure of social and compassionate justice. (Villaruel *vs*. Yeo Han Guan, G.R. No. 169191, June 01, 2011) p. 212

— A voluntarily resigning employee is not entitled to separation pay. *(Id.)*

— The voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. *(Id.)*

Serious misconduct as a ground — A series of irregularities when put together may constitute serious misconduct which is a just cause for dismissal. (Samahan ng mga Manggagawa sa Hyatt *vs*. Hon. Voluntary Arbitrator Magsalin, G.R. No. 164939, June 06, 2011) p. 584

Separation pay — Shall be allowed only when the cause of the dismissal is other than serious misconduct or for causes which reflect adversely on the employee's moral character.

(Samahan ng mga Manggagawa sa Hyatt *vs*. Hon. Voluntary Arbitrator Magsalin, G.R. No. 164939, June 06, 2011) p. 584

ESTAFA

Estafa by means of deceit — Elements of the crime are: (a) there must be a false pretense, fraudulent acts or fraudulent means; (b) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (c) the offended party must have relied on the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and (d) as a result thereof, the offended party suffered damage. (People *vs*. Ocden, G.R. No. 173198, June 01, 2011) p. 268

— Imposable penalty. *(Id.)*

ESTOPPEL

Application — A corporation is estopped from denying the authority of its counsel to appear in its behalf although there was no board resolution to that effect. (Megan Sugar Corporation *vs*. RTC, Br. 68, Dumangas, G.R. No. 170352, Iloilo, June 01, 2011) p. 245

Concept — An equitable principle rooted in natural justice, prevents persons from going back on their own acts and representations, to the prejudice of others who have relied on them. (Megan Sugar Corporation *vs*. RTC, Br. 68, Dumangas, G.R. No. 170352, Iloilo, June 01, 2011) p. 245

EXECUTIVE DEPARTMENT

Presidential immunity from suit — Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law; rationale. (Lt. Boac *vs*. Cadapan, G.R. Nos. 184461-62, May 31, 2011) p. 84

FALSIFICATION OF PUBLIC DOCUMENTS

Falsification by public officer, employee or notary or ecclesiastic minister — The elements of the crime are: (a) the offender is a public officer, employee, or notary public; (b) he takes advantage of his official position; (c) accused knows that what he imputes is false; (d) the falsity involves a material fact; (e) there is a legal obligation for him to narrate the truth; (f) and such untruthful statements are not contained in an affidavit or a statement required by law to be sworn in. (Respicio *vs*. People, G.R. Nos. 178701 and 178754, June 06, 2011) p. 705

FINANCIAL REHABILITATION AND INSOLVENCY ACT OF 2010 (R.A. NO. 10142)

Application — Provides for court proceedings in the rehabilitation or liquidation of debtors, both juridical and natural persons. (Majority Stockholders of Ruby Industrial Corp. *vs*. Lim, G.R. No. 165887, June 06, 2011) p. 600

FILIATION

DNA testing — Need of prima facie evidence before the court issues testing order and the same still discretionary in the absence of preponderance of evidence. (Lucas *vs*. Lucas, G.R. No. 190710, June 06, 2011) p. 795

Petition to establish illegitimate filiation — Adversarial in nature regardless of its caption and non-service of summons. (Lucas *vs*. Lucas, G.R. No. 190710, June 06, 2011) p. 795

— An action *in rem* where jurisdiction is acquired by the simple filing of petition, validated through publication. *(Id.)*

FORCIBLE ENTRY

Action for — Plaintiff must allege that: (a) he had prior physical possession of the property; and (b) that the defendant deprived him of such possession by means of force, intimidation, threats, strategy, or stealth. (Muñoz *vs*. Atty. Yabut, Jr., G.R. No. 142676, June 06, 2011) p. 488

FORUM SHOPPING

Certificate of non-forum shopping — Authority to sign for co-petitioners must be shown. (Vda. de Formoso *vs*. PNB, G.R. No. 154704, June 01, 2011) p. 184

GENERAL APPROPRIATION ACT FOR CY 1997 (R.A. NO. 8250)

Personnel Economic Relief Allowance (PERA) — Granted to all government employees and officials as a replacement of the Cost of Living Allowance (COLA). (Galang *vs*. Land Bank of the Phils., G.R. No. 175276, May 31, 2011) p. 37

GOVERNMENT AUDITING CODE (P.D. NO. 1445)

*Accountability and responsibility for government funds and pro*perty — Public official's personal liability arises when the expenditure of government funds is made in violation of law. (Osmeña *vs*. COA, G.R. No. 188818, May 31, 2011) p. 116

GOVERNMENT INFRASTRUCTURE CONTRACTS, PRESCRIBING POLICIES, GUIDELINES, RULES AND REGULATIONS FOR (P.D. NO. 1594)

Application — Supplemental agreement to cover change orders or extra work orders is not mandatory. (Osmeña *vs*. COA, G.R. No. 188818, May 31, 2011) p. 116

INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES (R.A. NO. 8293)

Registration of trademark — The defect arising from the absence of actual prior use of the mark in the Philippines as required under R.A. No. 166 has been cured by R.A. No. 8293. (Fredco Manufacturing Corp. *vs*. Pres. and Fellows of Harvard College, G.R. No. 185917, June 01, 2011) p. 374

— R.A. No. 166, Section 4(a) prohibits the registration of a mark which may falsely suggest a connection with a person, living or dead, institution, beliefs; intended to protect the right of publicity of famous individuals and institutions

from commercial exploitation of their goodwill by others. *(Id.)*

Trademarks — To be protected, the mark is required to be well-known internationally and in the Philippines for identical and similar goods, whether or not it is registered or used in the Philippines. (Fredco Manufacturing Corp. *vs*. Pres. and Fellows of Harvard College, G.R. No. 185917, June 01, 2011) p. 374

Tradenames — Under Philippine law, a tradename of a national of a state that is a party to the Paris Convention, whether or not the tradename forms part of a trademark, is protected without the obligation of filing or registration. (Fredco Manufacturing Corp. *vs*. Pres. and Fellows of Harvard College, G.R. No. 185917, June 01, 2011) p. 374

JUDGES

Gross inefficiency — Categorized as less serious charge with the following sanctions: (a) suspension from office without salary and other benefits for not less than one or more than three months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. (Atty. Bareng *vs*. Judge Daguna, A.M. No. RTJ-10-2246, June 01, 2011) p. 168

— Committed in case of failure to adopt a system of record management in his court. *(Id.)*

— Committed in case of failure to decide cases and other matters within the prescribed period. *(Id.)*

JUDGMENTS

Effect of judgment — Only real parties in interest in an action are bound by the judgment therein and by writs of execution issued pursuant thereto. (Muñoz *vs*. Atty. Yabut, Jr., G.R. No. 142676, June 06, 2011) p. 488

Entry of judgment — Its issuance is reckoned from the time the parties received a copy of the resolution denying the first motion for reconsideration. (Aliviado *vs*. Procter & Gamble Phils., Inc., G.R. No. 160506, June 06, 2011) p. 542

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. (Ybiernas *vs*. Tanco-Gabaldon, G.R. No. 178925, June 01, 2011) p. 297

— A judgment or order becomes final upon the lapse of the period to appeal without an appeal being perfected or a motion for reconsideration being filed. (Galang *vs*. Land Bank of the Phils., G.R. No. 175276, May 31, 2011) p. 37

— 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. (Airline Pilots Assn. of the Phils. *vs*. PAL, Inc., G.R. No. 168382, June 06, 2011) p. 679

(Aliviado *vs*. Procter & Gamble Phils., Inc., G.R. No. 160506, June 06, 2011) p. 542

Validity of — Court orders which were stained with grave abuse of discretion and which violated a party's right to due process are considered void. (Cerezo *vs*. People, G.R. No. 185230, June 01, 2011) p. 365

— Judgment issued by a quasi-judicial body without jurisdiction is void. (*Vda. de* Herrera *vs*. Bernardo, G.R. No. 170251, June 01, 2011) p. 234

— Judgment shall be read in connection with the entire record and construed accordingly. (Airline Pilots Assn. of the Phils. *vs*. PAL, Inc., G.R. No. 168382, June 06, 2011) p. 679

JURISDICTION

Concept — Conferred by law and any judgment, order or resolution issued without jurisdiction is void and cannot be given any effect. (Ybiernas *vs*. Tanco-Gabaldon, G.R. No. 178925, June 01, 2011) p. 297

— Court's jurisdiction may be assailed at any stage of the proceedings, even for the first time on appeal. (Asiatrust Dev't. Bank *vs*. First Aikka Dev't., Inc., G.R. No. 179558, June 01, 2011) p. 313

Jurisdiction over the person of the defendant — Where objection therein was coupled with discussion of the case, the same is considered a voluntary submission to the jurisdiction of the court. (JAPRL Dev't. Corp. *vs*. Security Bank Corp., G.R. No. 190107, June 06, 2011) p. 774

LABOR-ONLY CONTRACTING

Labor-only contractor — Merely an agent of the principal employer. (Aliviado *vs*. Procter & Gamble Phils., Inc., G.R. No. 160506, June 06, 2011) p. 542

LABOR ORGANIZATIONS

Disaffiliation of union — A local union may disaffiliate from its mother federation and will not lose its legal personality. (Cirtek Employees Labor Union-Federation of Free Workers *vs*. Cirtek Electronics, Inc., G.R. No. 190515, June 06, 2011) p. 784

Intra-union dispute — Includes issue of disaffiliation which must be resolved in a different forum in an action at the instance of either or both the FFW and the union or a rival labor organization, not the employer. (Cirtek Employees Labor Union-Federation of Free Workers *vs*. Cirtek Electronics, Inc., G.R. No. 190515, June 06, 2011) p. 784

LAND REGISTRATION

Torrens Certificate of Title — What cannot be collaterally attacked is the Torrens Certificate of Title, not the title in the concept of ownership itself. (*Vda. de* Herrera *vs*. Bernardo, G.R. No. 170251, June 01, 2011) p. 234

LEGAL FEES

Exemption from payment of — Proper when petitioner was allowed by the court a quo to prosecute his case as an indigent litigant and upon finding that he has complied

with the conditions set forth by Section 19, Rule 141 of the Rules of Court. (Regalado *vs*. Regalado, G.R. No. 196919, June 06, 2011) p. 837

MANDAMUS

Petition for — Its purpose is to compel the performance of a ministerial duty. (M.A. Jimenez Enterprises, Inc. *vs*. Hon. Ombudsman, G.R. No. 155307, June 06, 2011) p. 523

MITIGATING CIRCUMSTANCES

Intoxication — It must be shown that the will power of the accused was impaired that he did not know what he was doing. (People *vs*. Nimuan, G.R. No. 182918, June 06, 2011) p. 728

MOTION FOR RECONSIDERATION

Second motion for reconsideration — Generally considered a prohibited pleading. (Aliviado *vs*. Procter & Gamble Phils., Inc., G.R. No. 160506, June 06, 2011) p. 542

MOTION TO DISMISS

Denial of — Cannot be questioned even by a special civil action for certiorari unless tainted with grave abuse of discretion. (Lucas *vs*. Lucas, G.R. No. 190710, June 06, 2011) p. 795

(Aurelio *vs*. Aurelio, G.R. No. 175367, June 06, 2011) p. 693

Lack of cause of action as a ground — The question is the sufficiency, not the veracity of the allegations in the complaint. (Lucas *vs*. Lucas, G.R. No. 190710, June 06, 2011) p. 795

MURDER

Commission of — Punishable by *reclusion perpetua* to death. (People *vs*. Nimuan, G.R. No. 182918, June 06, 2011) p. 728

MUSLIM PERSONAL LAWS OF THE PHILIPPINES, CODE OF (P.D. NO. 1083)

Application — The Code was enacted to promote the advancement and effective participation of the National Cultural Communities and the State shall consider their customs, traditions, beliefs and interests in the formulation and implementation of its policies. (Atty. Zamoranos *vs*. People, G.R. No. 193902, June 01, 2011) p. 447

NATIONAL LABOR RELATIONS COMMISSION (NLRC)

Decisions of — Judgment in the NLRC case pertaining to a finding of an absence of an employer-employee relationship between the parties is conclusive on the Social Security Commission case. (Social Security Commission *vs*. Rizal Poultry and Livestock Assn. Inc., G.R. No. 167050, June 01, 2011) p. 198

NEW TRIAL

Newly discovered evidence as a ground — May be granted if it is shown (a) that the evidence was discovered after trial; (b) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) that it is material, not merely cumulative, corroborative, or impeaching; and (d) the evidence is of such weight that it would probably change the judgment if admitted. (Ybiernas *vs*. Tanco-Gabaldon, G.R. No. 178925, June 01, 2011) p. 297

OMBUDSMAN

Finality and execution of decision — Decisions of the Ombudsman are immediately executory even pending appeal in the Court of Appeals. (Ganaden *vs*. CA, G.R. Nos. 170500 & 170510-11, June 01, 2011) p. 261

Investigatory and prosecutorial powers — Cannot be interfered with by the courts except when there is grave abuse of discretion. (M.A. Jimenez Enterprises, Inc. *vs*. Hon. Ombudsman, G.R. No. 155307, June 06, 2011) p. 523

Jurisdiction — Limited to the findings of probable cause on cases of the violation of the Anti-Graft and Corrupt Practices Act. (Ganaden *vs*. Hon. Office of the Ombudsman, G.R. Nos. 169359-61, June 01, 2011) p. 224

— The Ombudsman is empowered to determine the existence of probable cause against those in public office during a preliminary investigation. (M.A. Jimenez Enterprises, Inc. *vs*. Hon. Ombudsman, G.R. No. 155307, June 06, 2011) p. 523

PARTIES TO CIVIL ACTIONS

Death of a party — Upon death of a party, counsel must notify the appellate court of such death; delay thereof does not warrant dismissal of an appeal to the prejudice of the deceased party's legal representatives. (Regalado *vs*. Regalado, G.R. No. 196919, June 06, 2011) p. 837

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Certificate of Title — A void title may become the root of a valid title if the derivative title was obtained in good faith and for value. ((Muñoz *vs*. Atty. Yabut, Jr., G.R. No. 142676, June 06, 2011) p. 488

— Shall not be subject to collateral attack. *(Id.)*

PUBLIC OFFICERS AND EMPLOYEES

Administrative complaint against — Disciplining authority is granted the discretion to consider mitigating circumstances in the imposition of the penalty. (Gannapao *vs*. CSC, G.R. No. 180141, May 31, 2011) p. 60

— In administrative cases, the injury sought to be remedied is not merely the loss of public money or property; acts that go against the established rules of conduct for government personnel bring harm to the civil service, whether they result in loss or not. (GSIS *vs*. Mayordomo, G. R. No. 191218, May 31, 2011) p. 131

— Withdrawal of the complaint does not result in its outright dismissal nor discharge the person complained of from any administrative liability. (Gannapao *vs*. CSC, G.R. No. 180141, May 31, 2011) p. 60

Conduct of — Any conduct contrary to the Code of Conduct and Ethical Standards for Public Officials and Employees would qualify as conduct unbecoming of a government employee. (GSIS *vs*. Mayordomo, G. R. No. 191218, May 31, 2011) p. 131

Conduct prejudicial to the best interest of the service — Need not be related or connected with the public officer's official functions. (GSIS *vs*. Mayordomo, G. R. No. 191218, May 31, 2011) p. 131

— Punishable by suspension (6 months and I day to 1 year) for the first offense and the penalty of dismissal for the second offense. (GSIS *vs*. Mayordomo, G. R. No. 191218, May 31, 2011) p. 131

Grave misconduct — Misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules. (*Re*: Theft of the used galvanized iron (GI) sheets in the SC Compound, Baguio City, A.M. No. 2008-15-SC, May 31, 2011) p. 1

— Necessarily includes the lesser offense of simple misconduct. (GSIS *vs*. Mayordomo, G. R. No. 191218, May 31, 2011) p. 131

Grave offenses — Acting as bodyguard for a private person unless approved by the proper authorities concerned is a case of irregularity in the performance of duties. (Gannapao *vs*. CSC, G.R. No. 180141, May 31, 2011) p. 60

Misconduct — Defined as a transgression of an established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. (GSIS *vs*. Mayordomo, G. R. No. 191218, May 31, 2011) p. 131

(*Re*: Theft of the used galvanized iron (GI) sheets in the SC Compound, Baguio City, A.M. No. 2008-15-SC, May 31, 2011) p. 1

— To constitute an administrative offense, it should be related to or connected with the performance of the official function

and duties of a public officer. (GSIS *vs*. Mayordomo, G.R. No. 191218, May 31, 2011) p. 131

QUALIFYING CIRCUMSTANCES

Treachery — Appreciated when the victim was shot at the back. (People *vs*. Nimuan, G.R. No. 182918, June 06, 2011) p. 728

RAPE

Commission of — Civil liabilities of accused, cited. (People *vs*. Cias, G.R. No. 194379, June 01, 2011) p. 470

— Not negated by the absence of injury to the victim. *(Id.)*

— Rape is committed by having carnal knowledge of a woman under the following circumstances: (a) by using force and intimidation; (b) when the woman is deprived of reason or otherwise unconscious; and (c) when the woman is under twelve years of age or is demented. *(Id.)*

Prosecution of — Affidavit of desistance is not admissible as a ground for dismissal of an instituted rape case which is now classified as crimes against persons. (People *vs*. Bonaagua, G.R. No. 188897, June 06, 2011) p. 750

— Conviction may be based solely on the credible testimony of the victim. (People *vs*. Cias, G.R. No. 194379, June 01, 2011) p. 470

— Guiding principles in the prosecution of rape cases. (People *vs*. Bonaagua, G.R. No. 188897, June 06, 2011) p. 750

(People *vs*. Cias, G.R. No. 194379, June 01, 2011) p. 470

— Youth and immaturity are generally badges of truth and sincerity. (People *vs*. Bonaagua, G.R. No. 188897, June 06, 2011) p. 750

Rape with use of deadly weapon — Whenever the crime of rape is committed with the use of a deadly weapon, the imposable penalty is *reclusion perpetua* to death. (People *vs*. Cias, G.R. No. 194379, June 01, 2011) p. 470

Sweetheart theory — Must be sufficiently established by compelling evidence. (People *vs*. Cias, G.R. No. 194379, June 01, 2011) p. 470

RECONVEYANCE

Action for reconveyance — An action in personam. (Muñoz *vs*. Atty. Yabut, Jr., G.R. No. 142676, June 06, 2011) p. 488

RECRUITMENT AND PLACEMENT OF WORKERS

Illegal recruitment — Accused may be charged and convicted separately of illegal recruitment under R.A. No. 8042 in relation to the Labor Code and estafa under the Revised Penal Code. (People *vs*. Ocden, G.R. No. 173198, June 01, 2011) p. 268

— Complainant need not present certification that accused is a non-licensee to engage in recruitment and placement of workers; failure to reimburse the expenses incurred by the worker when deployment does not actually take place is illegal recruitment. *(Id.)*

— To prove illegal recruitment, it must be shown that the accused gave complainants the distinct impression that he had the power or ability to send complainants abroad for work such that the latter were convinced to part with their money in order to be employed. *(Id.)*

Illegal recruitment in large scale — May be established through the testimony of only two victims as long as there is conclusive evidence that it is committed against three or more persons. (People *vs*. Ocden, G.R. No. 173198, June 01, 2011) p. 268

— Punishable by life imprisonment and fine of ₱100,000.00 as prescribed under Article 39 (a) of the Labor Code. *(Id.)*

REPRESENTATION AND TRANSPORTATION ALLOWANCE (RATA)

Nature — Belongs to a basket of allowances to defray expenses deemed unavoidable in the discharge of the office. (Galang *vs*. Land Bank of the Phils., G.R. No. 175276, May 31, 2011) p. 37

— Forfeiture or non-grant of the RATA does not constitute diminution in pay. *(Id.)*

— Paid only to certain officials who, by the nature of their offices, incur representation and transportation expenses. *(Id.)*

— The actual performance of an official's duties and responsibilities was a pre-requisite to the grant of the RATA. *(Id.)*

RES JUDICATA

Bar by prior judgment as a concept of res judicata — Requires that: (a) the former judgment or order must be final; (b) it must be a judgment on the merits; (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, subject matter, and cause of action. (Atty. Zamoranos *vs*. People, G.R. No. 193902, June 01, 2011) p. 447

— Present when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. (Social Security Commission *vs*. Rizal Poultry and Livestock Assn. Inc., G.R. No. 167050, June 01, 2011) p. 198

Principle of — 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. (Social Security Commission *vs*. Rizal Poultry and Livestock Assn. Inc., G.R. No. 167050, June 01, 2011) p. 198

Principle of conclusiveness of judgment — Present when any right, fact, or matter in issue, directly adjudicated on the merits in a previous action by a competent court or

necessarily involved in its determination, is conclusively settled by the judgment in such court and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same. (Social Security Commission *vs*. Rizal Poultry and Livestock Assn. Inc., G.R. No. 167050, June 01, 2011) p. 198

SALES

Contract to sell — Defined as one where the prospective seller reserves the transfer of title to the prospective buyer until the happening of an event, such as full payment of the purchase price. (Reyes *vs*. Tuparan, G.R. No. 188064, June 01, 2011) p. 425

Purchaser in bad faith — Established when the buyer has actual notice of the defect plaguing the Partition Agreement. (Tecson *vs*. Fausto, G.R. No. 180683, June 01, 2011) p. 333

SANDIGANBAYAN

Proceedings — The minutes of formal proceedings are important when the court is confronted with conflicting claims of parties as to the truth and accuracy of the matters taken up therein. (Guadines *vs*. Sandiganbayan, G.R. No. 164891, June 06, 2011) p. 563

SHARI'A CIRCUIT COURT

Clerk of court — Shall, in addition to his regular functions, act as District Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversion within the territorial jurisdiction of said court. (Sultan Ilupa *vs*. Abdullah, A.M. No. SCC-11-16-P, June 01, 2011) p. 178

SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Application — Proper in case of sexual abuse committed by a father against his child of only eight (8) years old. (People *vs*. Bonaagua, G.R. No. 188897, June 06, 2011) p. 750

SUMMARY JUDGMENT

Application — A summary judgment is considered as a final judgment although there is no determination of the amount of damages. (Ybiernas *vs*. Tanco-Gabaldon, G.R. No. 178925, June 01, 2011) p. 297

VOID MARRIAGES

Declaration of nullity of a void marriage — Burden of proof to show the nullity of marriage lies with the plaintiff. (Rep. of the Phils. *vs*. Galang, G.R. No. 168335, June 06, 2011) p. 658

Psychological incapacity as a ground — A psychological evaluation based on one-sided description alone can hardly be considered as credible or sufficient. (Rep. of the Phils. *vs*. Galang, G.R. No. 168335, June 06, 2011) p. 658

— An expert opinion is not absolutely required if the totality of evidence shows that psychological incapacity exists and its gravity, juridical antecedence, and incurability can be duly established. *(Id.)*

— Contemplates incapacity or inability to take cognizance of and to assume basic marital obligations and not merely difficulty, refusal, or neglect in the performance of marital obligations or ill will. *(Id.)*

— Guidelines in the interpretation and application, cited. (Aurelio *vs*. Aurelio, G.R. No. 175367, June 06, 2011) p. 693

— Isolated incidents and non-recurring acts of a spouse cannot be automatically equated with a psychological disorder. (Rep. of the Phils. *vs*. Galang, G.R. No. 168335, June 06, 2011) p. 658

— Must be characterized by: (a) gravity, (b) juridical antecedence, and (c) incurability. *(Id.)*

— Must refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage. *(Id.)*

— Presence of psychological incapacity is a factual issue to be resolved by the trial court based on attendant facts of the case. (Aurelio *vs*. Aurelio, G.R. No. 175367, June 06, 2011) p. 693

WITNESSES

Credibility of — Findings of trial court are entitled to great respect and accorded the highest consideration by the appellate court; exceptions. (People *vs*. Bautista, G.R. No. 191266, June 06, 2011) p. 815

(People *vs*. Villahermosa, G.R. No. 186465, June 01, 2011) p. 399

(Ulep *vs*. People, G.R. No. 183849, June 01, 2011) p. 358

— Not affected by inconsistencies and discrepancies in the testimony referring to minor details and not upon the basic aspect of the crime. (People *vs*. Villahermosa, G.R. No. 186465, June 01, 2011) p. 399

WRIT OF AMPARO

Accountability — Refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined; or who are imputed with knowledge relating to the enforced disappearance and who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance. (Lt. Boac *vs*. Cadapan, G.R. Nos. 184461-62, May 31, 2011) p. 84

Amparo proceedings — Does not determine guilt nor pinpoint criminal culpability for the disappearance; it determines responsibility, or at least accountability for the enforced disappearance; for purposes of imposing the appropriate remedies to address the disappearance. (Lt. Boac *vs*. Cadapan, G.R. Nos. 184461-62, May 31, 2011) p. 84

— It is a remedial measure designed to direct specified courses of action to government agencies to safeguard

the constitutional right to life, liberty and security of aggrieved individuals. *(Id.)*

— Not criminal in nature nor does it ascertain the criminal liability of individuals or entities involved, neither does it partake of a civil or administrative suit. *(Id.)*

— Summary in nature; a motion for execution for an amparo decision is not proper. *(Id.)*

Petition for — May be filed by the aggrieved party or any qualified person or entity in the following order: (a) any member of the immediate family, namely: the spouse, children, and parents of the aggrieved party; (b) any ascendant, descendant, collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph, or (c) any concerned citizen, organization, association or institution, if there is no known member of the immediate family or relative of the aggrieved party. (Lt. Boac *vs*. Cadapan. G.R. Nos. 184461-62, May 31, 2011) p. 84

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REFERENCES

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D. BOOKS
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Jose Campos, Jr. & Maria Clara L. Campos,
The Corporation Code: Comments, Notes and
Selected Cases, Vol. I (1990 Ed.), p. 820 633
Jose Campos, Jr. & Maria Clara L. Campos,
The Corporation Code: Comments, Notes and
Selected Cases, Vol. II (1990 Ed.), p. 58 646
Bartolome C. Fernandez, Jr., A Treatise on Government
Contracts Under Philippine Law, 2003 Rev. Ed., p. 39 582
Florenz D. Regalado, I Remedial Law Compendium,
368 (Eighth Revised Edition 2002) 309
Villanueva, Philippine Corporate Law (2010 Ed.), p. 841 649

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B. BOOKS

Roger E. Schechter and John R.Thomas, Intellectual Property: The Law of Copyrights, Patents and Trademarks (2003), p. 603 389