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SUPREME COURT

OF THE

PHILIPPINES

FROM

JUNE 13, 2011 TO JUNE 27, 2011

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MANILA
2014

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by

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. P-06-2130. June 13, 2011]
(Formerly A.M. OCA I.P.I. No. 04-1946-P)

SUSANA E. FLORES, *complainant, vs.* **ARIEL D. PASCASIO, Sheriff III, MTCC, Branch 5, Olongapo City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; SHERIFF; DISHONESTY IN THE PERFORMANCE OF OFFICIAL DUTY; COMMITTED BY DISREGARDING THE HIGHEST BID IN AN AUCTION SALE WHICH PREJUDICED THE RIGHT OF THE JUDGMENT CREDITOR TO RECOVER A BIGGER AMOUNT.— A perusal of the minutes of the auction sale, attached to the records of the case, shows that, indeed, the complainant's name was included but no amount of bid was indicated opposite her name. The bid of ₱1,200.00 for the DVD corresponds to the person listed as no. 13 among those who submitted bids. The complainant's name was listed as no. 14, the last name on the list. No amount was indicated opposite her name. While the complainant may have failed to itemize her bid and to indicate how much she was willing to pay for each item, it is clear from her bid nevertheless that she was bidding for the two items at the combined price of ₱10,200.00 when she listed therein, "Item(s): 1. Sony TV-21 inches [and] 2. DVD-JVC." In disregarding the bid of the complainant, which was the highest submitted bid, the respondent violated Section

19, Rule 39 of the Rules of Civil Procedure which directs that **sale of personal property should be made in such parcels as likely to bring the highest price**. The public auction was conducted by the respondent to sell the levied personal properties in order to enforce the judgment against the defendants in Civil Case No. 16-03 of the MTCC of Olongapo City, Branch 4, to satisfy their indebtedness to the plaintiffs in the amount of ₱30,000.00. The respondent sold the personal properties for a total of ₱5,200.00 only, compared to the complainant's bid of ₱10,200.00. Respondent's failure to consider the complainant's bid prejudiced the plaintiff's right to recover a bigger amount of the defendant's indebtedness.

2. ID.; ID.; ID.; ID.; FINE IMPOSED AS AN ALTERNATIVE PENALTY IN VIEW OF RESPONDENT'S PRIOR DISMISSAL FROM THE SERVICE.— [T]he Court finds the respondent guilty of dishonesty as recommended by OCA. Under Section 52, B(2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, dishonesty is punishable by dismissal from the service. Since the respondent had previously been ordered dismissed from the service, suspension is no longer possible. Thus, instead of suspension, the respondent, shall be imposed a fine as alternative penalty. We deem the fine equivalent to three-month salary to be appropriate in light of the penalty of dismissal that it replaces and the potential damage that his dishonesty caused.

APPEARANCES OF COUNSEL

Randy B. Escolano for complainant.

R E S O L U T I O N

BRION, *J.*:

This is an administrative complaint filed by Susana E. Flores (*complainant*) against Ariel R. Pascasio (*respondent*), Sheriff III in the Municipal Trial Court in Cities (*MTCC*), Branch 5, Olongapo City, for Grave Misconduct and Grave Abuse of Authority.

In her complaint-affidavit dated June 2, 2004, the complainant narrated that on March 5, 2004, an auction sale of a JVC DVD player and a Sony TV set was conducted by the respondent at the Office of the Clerk of Court, Olongapo City. She submitted a bid of Ten Thousand Two Hundred Pesos (₱10,200.00) for the two (2) items. During the public auction, the two items were sold separately, the JVC DVD player for ₱2,520.00 and the Sony TV set for ₱2,500.00. The complainant claimed that the respondent manipulated the bidding process to make it appear that she submitted a bid of only One Thousand Two Hundred Pesos (₱1,200.00) instead of her bid of Ten Thousand Two Hundred Pesos (₱10,200.00). She further alleged that the respondent even scolded her for questioning the conduct of the auction sale. According to her, when she asked the respondent why she lost the bidding, he replied, "*Wala kang magagawa dahil ako ang masusunod dito. Ako ang sheriff dito, kung kanino ko gustong mapunta ang items, yun ang masusunod*."[1]

In his comment[2] dated August 24, 2004, the respondent denied having discriminated against the complainant. He admitted having received the complainant's bid, but because it was not itemized, he disregarded it on ground of technicality. While he listed the complainant's name in the minutes of the auction sale, no amount was placed opposite her name because her bid was invalid. He explained to the complainant that only itemized bids were considered and that she should have submitted separate bids and not just one bid for the two (2) items.

In an Evaluation Report dated November 30, 2005,[3] the Office of the Court Administrator (*OCA*) submitted its findings:

> The respondent stated in his Minutes of the Auction Sale that the complainant submitted a bid only for the DVD in the amount of ₱1,200.00. But based on the certified photocopies of the bids of all those who participated in the auction sale, complainant's bid of ₱10,200.00 for the two items was the highest. It must be remembered

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[1] *Rollo,* p. 3.

[2] *Id.* at 11-12.

[3] *Id.* at 13-15.

that this Court has countless times reiterated that the conduct and behavior of everyone connected with an office charged with the dispensation of justice must not only be characterized by propriety and decorum but above else (sic) must be above suspicion.

The conduct of the respondent in disregarding the highest bid of the complainant and his making a false entry in the minutes of the auction sale is clearly an act of dishonesty which erodes the faith and confidence of our people in the judiciary.[4]

The OCA recommended:

1. That the instant administrative complaint be REDOCKETED as a result administrative matter;
2. That Sheriff Ariel R. Pascasio be found GUILTY of Dishonesty in the performance of his official duties; and
3. That Sheriff Pascasio be SUSPENDED for a period of two (2) months and STERNLY WARNED that a repetition of the same or a similar act in the future shall be dealt with more severely.[5]

Pursuant to the OCA's recommendation, the Court, in a Resolution dated February 15, 2006, directed that the complaint be re-docketed as a regular administrative matter and required the parties to manifest whether they were willing to submit the matter for resolution on the basis of the pleadings filed.[6]

On March 21, 2006, the complainant, through her counsel Atty. Randy B. Escolango, filed a Manifestation with Motion[7] manifesting that she would file a Reply to controvert the respondent's allegations in his comment, at the same time asking for an extension of fifteen (15) days for the filing of her reply. Despite several extensions granted, Atty. Escolango failed to file the complainant's reply. He was required to show cause why he should not be disciplinary dealt with or held in contempt

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[4] *Id*. at 14.

[5] *Id*. at 15.

[6] *Id.* at 16.

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

for his failure,[8] and was later imposed a fine of ₱2,000.00. Finally, on August 22, 2008, Atty. Escolango complied, claiming that he could no longer locate and contact the complainant. He presumed that the complainant was no longer interested in pursuing the case as the respondent had already been dismissed from the service; thus, it was no longer necessary to file a reply.[9]

In a Resolution dated December 3, 2008,[10] the Court "[deemed] as waived the filing of complainant's xxx reply." The case was referred to the Executive Judge of the Regional Trial Court (RTC) of Olongapo City for investigation, report and recommendation in a resolution dated March 4, 2009.[11]

In a memorandum dated September 24, 2009,[12] the OCA reported that the respondent had already been ordered dismissed from the service in the Decision of May 7, 2008 in A.M. No. P-08-2454 entitled "*Virgilio A. Musngi v. Ariel R. Pascasio, etc.*" At the time the present administrative case was referred to the Executive Judge of the RTC of Olongapo City, however, the respondent's motion for reconsideration of his dismissal was still pending. It was eventually denied in a resolution dated April 28, 2009. In view thereof, the OCA recommended that the Resolution of March 4, 2009 referring the complaint to the Executive Judge of the RTC of Olongapo City, be set aside for being moot and academic, "respondent Pascasio having been already dismissed from the service and complainant Flores having shown no interest at all to pursue the case." However, the OCA submits that proceedings against respondent may continue without violating his right to due process. He was required to comment on the complaint and he presented evidence to controvert the charges against him.

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[8] *Id.* at 27; Resolution dated January 28, 2008.

[9] *Id.* at 32-36.

[10] *Id.* at 41.

[11] *Id.* at 43.

[12] *Id.* at 57.

The Court agrees with the OCA that the respondent has been accorded due process when he was required to comment on the complaint during the preliminary investigation of the charges against him. While it is true that continued investigation is no longer feasible, the pleadings submitted by both parties are uncontroverted and their submitted evidence are sufficient to determine the respondent's culpability. The respondent filed his comment on the complaint against him. Clearly, he was afforded an opportunity to be heard through his pleadings; hence, his right to due process was not impaired.

The OCA found the respondent guilty of dishonesty in the performance of official duty instead of grave misconduct and grave abuse of authority as charged. As the penalty of suspension is no longer feasible in view of the respondent's dismissal from the service, the OCA recommended that its original recommendation of a two-month suspension be converted into a payment of a two-month salary.

In support of its finding that the respondent is guilty of dishonesty, the OCA, in its Evaluation Report of November 30, 2005, reported that the "respondent stated in [the] Minutes of the Auction Sale that the complainant submitted a bid only for the DVD in the amount of ₱1,200.00." On the other hand, the respondent, in his Comment, claimed that he included the complainant's name in the minutes of the auction sale, but he did not place the amount of her bid as the bid was not itemized. A perusal of the minutes of the auction sale, attached to the records of the case, shows that, indeed, the complainant's name was included but no amount of bid was indicated opposite her name. The bid of ₱1,200.00 for the DVD corresponds to the person listed as no. 13 among those who submitted bids. The complainant's name was listed as no. 14, the last name on the list. No amount was indicated opposite her name.[13]

While the complainant may have failed to itemize her bid and to indicate how much she was willing to pay for each item, it is clear from her bid nevertheless that she was bidding for

[13] *Id.* at 7.

the two items at the combined price of ₱10,200.00 when she listed therein, "Item(s): 1. Sony TV-21 inches [and] 2. DVD-JVC."[14] In disregarding the bid of the complainant, which was the highest submitted bid, the respondent violated Section 19, Rule 39 of the Rules of Civil Procedure which directs that **sale of personal property should be made in such parcels as likely to bring the highest price**. The public auction was conducted by the respondent to sell the levied personal properties in order to enforce the judgment against the defendants in Civil Case No. 16-03 of the MTCC of Olongapo City, Branch 4, to satisfy their indebtedness to the plaintiffs in the amount of ₱30,000.00. The respondent sold the personal properties for a total of ₱5,200.00 only, compared to the complainant's bid of ₱10,200.00. Respondent's failure to consider the complainant's bid prejudiced the plaintiff's right to recover a bigger amount of the defendant's indebtedness.

Sheriffs play an important role in the administration of justice and high standards are expected of them. Their conduct, at all times, must not only be characterized by propriety and decorum but must, at all times, be above suspicion.[15] Part of this stringent requirement is that agents of the law should refrain from the use of abusive, offensive, scandalous, menacing or otherwise improper language. Judicial employees are expected to accord due respect, not only to their superiors, but also to others and their rights at all times. Their every act and word should be characterized by prudence, restraint, courtesy and dignity.[16] The respondent's arrogant behavior, telling complainant, "*Wala kang magagawa dahil ako ang masusunod. Ako ang sheriff dito, kung kanino ko gustong mapunta ang items, yun ang masusunod,* was an evident violation of these rules of conduct for judicial employees.

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[14] *Id.* at 5.

[15] *F.F.I. Dagupan Lending Investors, Inc., etc. v. Vinez A. Hortaleza, etc.,* A.M. No. P-05-1952, July 8, 2005, 463 SCRA 16.

[16] *Quilo v. Jundarino,* A.M. No. P-09-2644, July 30, 2009, 594 SCRA 259.

The Court defines misconduct as any unlawful conduct, on the part of a person concerned in the administration of justice, prejudicial to the rights of the parties or to the right determination of the cause. It generally means wrongful, improper and unlawful conduct motivated by a premeditated, obstinate or intentional purpose.[17] It means intentional wrongdoing or deliberate violations of a rule of law or standard or behavior, especially by a government official.

Dishonesty means a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; **lack of fairness and straightforwardness**; and disposition to defraud, deceive or betray.[18]

Given the above parameters, the Court finds the respondent guilty of dishonesty as recommended by OCA. Under Section 52, B(2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, dishonesty is punishable by dismissal from the service. Since the respondent had previously been ordered dismissed from the service, suspension is no longer possible. Thus, instead of suspension, the respondent, shall be imposed a fine as alternative penalty. We deem the fine equivalent to three-month salary to be appropriate in light of the penalty of dismissal that it replaces and the potential damage that his dishonesty caused.

WHEREFORE, the Court finds the respondent Ariel R. Pascacio, Sheriff III, Municipal Trial Court in Cities, Branch 5, Olongapo City, *GUILTY* of Dishonesty and he is hereby imposed a *FINE* in the amount equivalent to his three-month salary, deductible from the money value of his accrued leave credits, if he has any.

SO ORDERED.

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

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[17] *Quilo v. Jundarino, supra* note 16.

[18] *Ibid.*

THIRD DIVISION

[A.M. No. P-09-2715. June 13, 2011]
(Formerly A.M. OCA I.P.I. No. 02-1383-RTJ)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **EFREN E. TOLOSA, Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Sorsogon City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; RETURN OF WRIT OF EXECUTION; REQUIRED TO UPDATE THE COURT ON THE STATUS OF THE EXECUTION AND TO TAKE THE NECESSARY STEPS TO ENSURE THE SPEEDY EXECUTION OF DECISIONS.— Section 14, Rule 39 of the Rules of Court makes it mandatory for a sheriff to make a return of the writ of execution to the Clerk of Court or to the Judge issuing it immediately upon satisfaction, in part or in full, of the judgment. If the judgment cannot be satisfied in full, the sheriff shall make a report to the court within thirty (30) days after his receipt of the writ and state why full satisfaction could not be made. The sheriff shall continue to make a report to the court every (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. Failure of a sheriff to make periodic reports on the status of a writ of execution warrants administrative liability. The reason behind this requirement is to update the court on the status of the execution and to take the necessary steps to ensure the speedy execution of decisions.

2. ID.; ID.; ID.; ID.; THE DUTY OF A SHERIFF TO MAKE A RETURN OF THE WRIT IS MINISTERIAL.— The Court finds Sheriff Tolosa's explanation on his delay to make a return of the writ in due time flimsy and untenable. The duty of a sheriff to make a return of the writ is ministerial and it is not his duty to wait for the plaintiff to decide whether or not to accept the checks as payment. A purely ministerial act or duty is one which an officer or tribunal performs in the context of a

given set of facts, in a prescribed manner and without regard to the exercise of his own judgment, upon the propriety or impropriety of the act done. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with celerity and promptness to execute it according to its mandate. The Writ of Execution, issued by Branch Clerk of Court Erlano, specifically directed Tolosa to enforce and implement the decision "pursuant to the provision of the Rules of Court," and to return the writ "within the time provided for by law" but he simply ignored the instructions to him.

3. ID.; ID.; ID.; EXECUTION OF JUDGMENTS FOR MONEY; A SHERIFF HAS NO DISCRETION WHATSOEVER WITH RESPECT TO THE DISPOSITION OF THE AMOUNTS HE RECEIVES.— The OCA correctly found that Tolosa violated Section 9, par. 2, Rule 39 of the Rules of Civil Procedure when he failed to turn over all the amounts he received by reason of implementing the writ, within the same day to the clerk of court that issued it. x x x A sheriff has no discretion whatsoever with respect to the disposition of the amounts he receives. If he finds that there is a need to clarify what to do with the checks, prudence and reasonableness dictate that clarification be sought immediately from the clerk or judge issuing it. He cannot escape liability for the "misinterpretation" he had done in connection with the case. Having been in the service for more than 26 years, respondent sheriff cannot wrongly interpret basic rules without appearing grossly incompetent or in bad faith.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; SHOULD KNOW THE RULES OF PROCEDURE RELATIVE TO THE IMPLEMENTATION OF WRITS OF EXECUTION AND SHOULD SHOW A HIGH DEGREE OF PROFESSIONALISM IN THE PERFORMANCE OF DUTIES.— As an officer of the court, sheriffs are chargeable with the knowledge of what is the proper action to take in case there are questions in the writ which need to be clarified, and the knowledge of what he is bound to comply. He is expected to know the rules of procedure pertaining to his functions as an officer of the court, relative to the implementation of writs of execution, and should, at all times, show a high degree of professionalism in the performance of

his duties. Any act deviating from the procedure laid down by the Rules is misconduct that warrants disciplinary action.

5. ID.; ID.; ID.; GRAVE MISCONDUCT; COMMITTED IN CASE AT BAR; PENALTY.— Misconduct is defined as a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer. The misconduct is grave if it involves any of the additional elements of corruption, and willful intent to violate the law or to disregard established rules. For clear violation of established rules, coupled with having encashed the checks which matured without having been authorized to do so, the Court finds Tolosa guilty of Grave Misconduct, tempered only by his length of service. The Court takes into consideration Tolosa's long years of service in the judiciary of about 25 years. Thus, in lieu of the dismissal that Section 52(A)(3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service commands, we find the penalty of suspension for six (6) months appropriate.

D E C I S I O N

BRION, *J.*:

This administrative complaint stemmed from the administrative complaint, docketed as A.M. I.P.I. No. 02-1383-RTJ, filed by Gerardo D. Espiritu against Judge Jose L. Madrid of the Regional Trial Court (*RTC*), Branch 51, Sorsogon City, and Sheriff Ariosto Letada of the RTC, Branch 52, Sorsogon City, for Undue Delay in the Disposition of a Case and/or Manifest Bias or Partiality relative to the implementation of the Writ of Execution in Civil Case No. 5327, entitled *"Loreto Brondial, et al. v. Vicente Go, et al."* The complaint in A.M. OCA I.P.I. No. 02-1383-RTJ was dismissed in a Resolution dated September 15, 2003,[1] for the failure of complainant Espiritu to substantiate his claim that Judge Madrid and Sheriff Letada conspired with each other in the non-implementation of the writ. In the same Resolution, the Court directed the Office of the Court Administrator (*OCA*)

[1] *Rollo*, A.M. OCA IPI No. 02-1383-RTJ, pp. 41-42.

to take appropriate action on its report that Efren E. Tolosa, Sheriff IV, Office of the Clerk of Court, RTC, Sorsogon City, who was the one originally designated to implement the writ of execution, violated Section 9, par. 2, Rule 39 of the Rules of Civil Procedure[2] when he did not turn over the checks that came into his possession to the Clerk of Court of the court that issued the writ on the same day he received them.

In a letter dated October 21, 2003 of then Deputy Court Administrator, later Court Administrator and now Justice Jose P. Perez, Tolosa was asked to explain his failure to immediately turn over the checks as required by the Rules.

In his letter-explanation dated November 1, 2003,[3] Tolosa alleged: (1) he received the checks issued by the defendant in Civil Case No. 5327 but these were postdated and received on the condition that they would be returned to the defendant should the plaintiffs refuse to accept them; (2) the encashed amount of the checks, as well as the checks that have not been encashed, has already been withdrawn by Atty. Rofebar T. Gerona, counsel for the plaintiffs, from the Clerk of Court on December 21, 2000; and (3) there are two plaintiffs in the civil case and "they might have been doing some action without the knowledge of their counsel."

The OCA found Tolosa's explanation insufficient to excuse him from liability for his patent violation of Section 9, par. 2, Rule 39 of the Rules on Civil Procedure, and recommended that he be fined in the amount of ₱5,000.00, with a warning that a repetition of the same or similar acts in the future shall be dealt with more severely.[4]

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[2] If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amount to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

[3] *Id.* at 45.

[4] *Id.* at 48-49; Memorandum dated November 25, 2003.

In a Resolution dated November 16, 2009,[5] the Court directed the OCA to docket separately the complaint against Tolosa; hence, the present administrative complaint.

Asked to manifest to the Court whether he was willing to submit the case against him for resolution, based on the records/pleadings, Tolosa filed his answer, offering his sincere apology for the "misinterpretation" he had done in connection with the case and praying that the case against him be dismissed.[6]

The Antecedent Facts

Espiritu is one of the legal heirs of one of the plaintiffs in Civil Case No. 5327. In a decision dated March 26, 1990, the RTC ordered the defendants therein, *Vicente Go, et al.*, to pay jointly and severally the plaintiffs the sum of ₱20,000.00 as actual or compensatory damages, ₱5,000.00 as attorney's fees and ₱3,000.00 as litigation expenses, and to pay the costs, with legal interest from the date of the decision until they are fully paid.[7]

Both parties appealed to the Court of Appeals (*CA*). In a decision dated May 14, 1997, the CA affirmed the RTC decision with modification as to the damages awarded to the plaintiffs, as follows: ₱80,000.00 as actual or compensatory damages with interest at 6% per annum from the date of the filing of the complaint; ₱20,000.00 and ₱10,000.00 as moral and exemplary damages, respectively; ₱5,000.00 as attorney's fees; and ₱3,000.00 as litigation expenses, with interest of 6% per annum from the date the defendants were served a copy of the decision of the lower court, until the amounts are actually paid.[8]

The defendants contested the CA decision in a petition for review on *certiorari* filed with the Supreme Court. In a Resolution dated October 21, 1998, the Court dismissed the

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[5] *Id.* at 68-69.

[6] *Rollo*, A.M. No. P-09-2715, pp. 13-14.

[7] See Writ of Execution *rollo*, A.M. OCA IPI No. 02-1383-RTJ, p. 18.

[8] *Id*. at 19.

petition. The dismissal became final and executory on December 7, 1998.[9]

On February 16, 2000, upon the plaintiffs' motion, the RTC directed the issuance of a Writ of Execution. Accordingly, Branch Clerk of Court William D. Erlano issued the corresponding Writ of Execution on February 29, 2000, directing the Provincial Sheriff or any of his deputies to enforce and implement the decision "pursuant to the provision of the Rules of Court" and to make a return of the writ "within the time provided for by law."[10] The respondent was furnished a copy of the writ on March 31, 2000.

Three (3) months thereafter, or on July 3, 2000, the complainant's mother wrote Clerk of Court Marilyn D. Valino inquiring about the status of the writ. In a 1st Indorsement dated July 4, 2000,[11] Clerk of Court Valino forwarded the letter to Tolosa, directing him to immediately execute and/or implement the Writ of Execution "in accordance with the decision and [in consonance] with the existing rules," and inviting his attention to the provisions of Section 14, Rule 39 of the Rules of Court.

On July 17, 2000, Tolosa complied and submitted a Sheriff's Partial Return,[12] reporting that he attempted to serve the writ twice, on April 17, 2000 and May 12, 2000, but defendant Vicente Go was not in his house on both occasions. He was able to implement the writ only on June 14, 2000. He reported that he received from defendant Vicente Go several postdated checks in the total amount of ₱118,000.00, in partial satisfaction of the judgment, and that he informed the complainant's counsel of his receipt of the checks. Counsel did not make any comment on whether to accept the checks or not.

On September 22, 2000, Espiritu, apparently unaware that there was a partial implementation of the writ, wrote Judge

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[9] *Ibid.*

[10] *Id.* at 20.

[11] *Id.* at 21.

[12] *Id.* at 22.

Madrid, complaining that Tolosa has failed to do his task, as mandated by the Rules of Court, despite that "several months have passed" and requesting that a substitute Sheriff be designated.[13] In a 1st Indorsement dated September 26, 2000, Judge Madrid required Tolosa to comment on Espiritu's letter.[14]

On October 10, 2000, Tolosa filed his comment/manifestation,[15] explaining that as early as July 17, 2000, he already made a partial return of the Writ of Execution and that he had encashed the matured checks in the amount of ₱60,000.00. On the same day, he deposited the amount of ₱60,000.00 with the Branch Clerk of Court of the RTC, Branch 51, together with the other postdated checks. He enclosed an Acknowledgment Receipt dated October 10, 2000, signed by Branch Clerk of Court Erlano.[16]

The Court's Ruling

The Court finds that the respondent committed two offenses in this case, (1) failure to make a return of the writ within the period provided by the Rules of Court; and (2) failure to turn over the checks he received by virtue of the implementation of the writ, to the court issuing it within the same day he received them.

Section 14, Rule 39 of the Rules of Court[17] makes it mandatory for a sheriff to make a return of the writ of execution to the

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[13] *Id.* at 23.

[14] *Id.* at 24.

[15] *Id.* at 26.

[16] *Rollo*, p. 27.

[17] *Return of the writ of execution.* The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

Clerk of Court or to the Judge issuing it immediately upon satisfaction, in part or in full, of the judgment. If the judgment cannot be satisfied in full, the sheriff shall make a report to the court within thirty (30) days after his receipt of the writ and state why full satisfaction could not be made. The sheriff shall continue to make a report to the court every (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. Failure of a sheriff to make periodic reports on the status of a writ of execution warrants administrative liability.[18] The reason behind this requirement is to update the court on the status of the execution and to take the necessary steps to ensure the speedy execution of decisions.[19]

The writ was placed in the hands of Tolosa on March 31, 2000 but he submitted a Sheriff's Partial Return only on July 17, 2000. He submitted the return only after Espiritu's mother wrote Clerk of Court Valino, complaining that he had not taken any action on the writ. Tolosa attributes the delay in the submission of his Sheriff's Return on the failure of the plaintiffs to decide whether or not to accept the checks delivered to him. He allegedly verbally informed Atty. Gerona, the plaintiff's counsel, but the latter could not definitely decide what to do with the checks. He believed that Atty. Gerona was the proper person to know because he was the one who requested the implementation of the writ. He further claimed that he was not sure whom to deal with because there were several persons claiming to be the legal heirs and persistently making demands from him of the amounts he received.

The Court finds Sheriff Tolosa's explanation on his delay to make a return of the writ in due time flimsy and untenable. The duty of a sheriff to make a return of the writ is ministerial and it is not his duty to wait for the plaintiff to decide whether or not to accept the checks as payment. A purely ministerial act or duty is one which an officer or tribunal performs in the

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[18] *Dignum v. Diamla*, A.M. No. P-06-2166, April 28, 2006, 488 SCRA 405.

[19] *Zamudio v. Auro*, A.M. No. P-04-1793, December 8, 2008, 573 SCRA 178.

context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment, upon the propriety or impropriety of the act done.[20] When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with celerity and promptness to execute it according to its mandate.[21] The Writ of Execution, issued by Branch Clerk of Court Erlano, specifically directed Tolosa to enforce and implement the decision "pursuant to the provision of the Rules of Court," and to return the writ "within the time provided for by law"[22] but he simply ignored the instructions to him.

The OCA correctly found that Tolosa violated Section 9, par. 2, Rule 39 of the Rules of Civil Procedure when he failed to turn over all the amounts he received by reason of implementing the writ, within the same day to the clerk of court that issued it. Sheriff Tolosa received, on June 14, 2000 from defendant Vicente Go five (5) checks, in varying amounts and different dates of maturity in the total amount of ₱118,000.00, in partial satisfaction of the judgment in favor of the plaintiffs. He encashed the matured check for ₱60,000.00, without having been authorized to do so. He kept in his possession the ₱60,000.00 cash and the four remaining checks. He turned them over to the clerk of court only on October 10, 2000. The amount of ₱60,000.00 and the four postdated checks were eventually delivered to the plaintiffs only on December 21, 2000. Tolosa's acts of keeping and encashing the checks that matured spawned suspicion regarding his true intentions.

A sheriff has no discretion whatsoever with respect to the disposition of the amounts he receives. If he finds that there is a need to clarify what to do with the checks, prudence and reasonableness dictate that clarification be sought immediately from the clerk or judge issuing it. He cannot escape liability

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[20] *Cobarrubias v. Apostol,* A.M. No. P-02-1612, January 31, 2006, 481 SCRA 20.

[21] *Dignum v. Diamla, supra* note 19.

[22] *Supra* note 11.

for the "misinterpretation" he had done in connection with the case. Having been in the service for more than 26 years, respondent sheriff cannot wrongly interpret basic rules without appearing grossly incompetent or in bad faith.[23]

As an officer of the court, sheriffs are chargeable with the knowledge of what is the proper action to take in case there are questions in the writ which need to be clarified, and the knowledge of what he is bound to comply.[24] He is expected to know the rules of procedure pertaining to his functions as an officer of the court,[25] relative to the implementation of writs of execution, and should, at all times, show a high degree of professionalism in the performance of his duties. Any act deviating from the procedure laid down by the Rules is misconduct that warrants disciplinary action.[26]

Misconduct is defined as a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer. The misconduct is grave if it involves any of the additional elements of corruption, and willful intent to violate the law or to disregard established rules. For clear violation of established rules, coupled with having encashed the checks which matured without having been authorized to do so, the Court finds Tolosa guilty of Grave Misconduct, tempered only by his length of service. The Court takes into consideration Tolosa's long years of service in the judiciary of about 25 years. Thus, in lieu of the dismissal that Section 52(A)(3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service commands, we find the penalty of suspension for six (6) months appropriate.

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[23] *Bautista v. Sula*, A.M. No. P-04-1920, August 17, 2007, 530 SCRA 406.

[24] *Stilgrove v. Sabas*, A.M. No. P-06-2257, March 28, 2008, 550 SCRA 28.

[25] *Zamora v. Villanueva*, A.M. No. P-04-1898, July 28, 2008, 560 SCRA 32.

[26] *Ibid.*; *Viaje v. Dizon*, A.M. No. P-07-2402, October 15, 2008, 569 SCRA 45; and *Areola v. Patag*, A.M. No. P-06-2207, December 16, 2008, 574 SCRA 10.

WHEREFORE, Sheriff Efren E. Tolosa, Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Sorsogon City is found *GUILTY* of grave misconduct and he is hereby imposed the penalty of *SUSPENSION* of six (6) months without pay with a *STERN WARNING* that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 164153. June 13, 2011]

JOHN ANTHONY B. ESPIRITU, for himself and as Attorney-in-Fact for Westmont Investment Corporation, STA. LUCIA REALTY AND DEVELOPMENT CORPORATION, GOLDEN ERA HOLDINGS, INC., and EXCHANGE EQUITY CORPORATION, *petitioners, vs.* **MANUEL N. TANKIANSEE and JUANITA U. TAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM-SHOPPING; PRESENT WHERE A PARTY'S PETITION FOR *CERTIORARI* AND SUBSEQUENT APPEAL SEEK TO ACHIEVE ONE AND THE SAME PURPOSE; CASE AT BAR.— [W]hile this case was pending review before the Court of Appeals or on February 2, 2004, the trial court rendered a Decision in the main case (*i.e.*, Civil Case No. 02-103160). From this judgment, petitioners, except petitioner Westmont Investment Corporation, filed a notice of appeal. This case

was docketed as CA-G.R. CV No. 83161 and is now pending resolution before the appellate court. For its part, petitioner Westmont Investment Corporation filed an *Ex Abundanti Ad Cautelam* Notice Of Appeal and a Petition for *Certiorari* and *Mandamus*. With these developments, the instant petition should be denied because (1) petitioners' appeal before the appellate court is the appropriate and adequate remedy, and (2) the *certiorari* petition, subject matter of this case, constitutes forum shopping. This is in consonance with our ruling in *Ley Construction & Development Corporation v. Hyatt Industrial Manufacturing Corporation*. x x x Moreover, petitioners' appeal and *certiorari* petition effectively seek to annul the February 2, 2004 Decision of the trial court. In their pending appeal before the appellate court, petitioners argued, among others, that they were unduly deprived of their right to avail of modes of discovery, specifically, the deposition taking subject matter of this case. This is one of their arguments in their appeal which prays for the annulment of the February 2, 2004 Decision on due process grounds. On the other hand, petitioners argued in their *certiorari* petition that the disallowance of the taking of the subject depositions deprived them of the opportunity to bring to fore crucial evidence determinative of this case. According to petitioners, this brought about the erroneous February 2, 2004 Decision issued by the trial court. In fine, the appeal and *certiorari* petition raise similar arguments and effectively seek to achieve the same purpose of annulling the February 2, 2004 Decision which petitioners perceive to be in gross error. Thus, as in *Ley Construction & Development Corporation*, the *certiorari* petition must perforce be dismissed on the ground of forum shopping.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY ONLY BE AVAILED OF IF THERE IS NO APPEAL, OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.— [P]etitioners' *certiorari* petition, questioning the three interlocutory orders which denied their resort to discovery procedure, has been superseded by the filing of their subsequent appeal before the Court of Appeals (*i.e.*, CA-G.R. CV No. 83161). x x x [A] *certiorari* petition may only be availed of if "there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law." We find that

petitioners' appeal from the February 2, 2004 Decision of the trial court in the main case is the appropriate and adequate remedy in this case as it challenges the aforesaid interlocutory orders and the decision in the main case.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and Cruz for petitioners.
Saulog and De Leon Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

There is forum shopping when two or more actions or proceedings, founded on the same cause, are instituted by a party on the supposition that one or the other court would make a favorable disposition. Where a party's petition for *certiorari* and subsequent appeal seek to achieve one and the same purpose, there is forum shopping which is a sufficient ground for the dismissal of the *certiorari* petition.

This Petition for Review on *Certiorari* seeks to reverse and set aside the Court of Appeal's February 27, 2004 Decision[1] in CA-G.R. SP No. 76518 which affirmed the February 4,[2] February 17,[3] and February 26,[4] 2003 Orders of the Regional Trial Court of Manila, Branch 46 in Civil Case No. 02-103160, and the June 22, 2004 Resolution[5] denying petitioners' motion for reconsideration.

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[1] *Rollo*, pp. 57-69; penned by Associate Justice Mercedes Gozo-Dadole and concurred in by Associate Justices Eugenio S. Labitoria and Rosmari D. Carandang.

[2] CA *rollo*, pp. 58-60; penned by Judge Artemio S. Tipon.

[3] *Id.* at 61-64.

[4] *Id.* at 65-66.

[5] *Rollo*, p. 71; penned by Associate Justice Mercedes Gozo-Dadole and concurred in by Associate Justices Eugenio S. Labitoria and Rosmari D. Carandang.

Factual Antecedents

On March 25, 2002, John Anthony B. Espiritu, for himself and as attorney-in-fact of Westmont Investment Corporation, Sta. Lucia Realty and Development Corporation, Golden Era Holdings, Inc., and Exchange Equity Corporation (Espiritu Group) and Tony Tan Caktiong and William Tan Untiong (Tan Group) filed a Petition for Issuance of Shares of Stock and/or Return of Management and Control[6] with the Regional Trial Court of Manila against United Overseas Bank Limited, United Overseas Bank Philippines, Manta Ray Holdings, Inc., Wee Cho Chaw, Wee Ee Cheong, Samuel Poon Hon Thang, Ong Sea Eng, Chua Ten Hui, Wang Lian Khee and Marianne Malate-Guerrero (UOBP Group). The case was docketed as Civil Case No. 02-103160 and raffled to Branch 46.

On June 27, 2002, Manuel N. Tankiansee and Juanita U. Tan, joined by Farmix Fertilizer Corp., and Pearlbank Securities, Inc. (intervenors), filed a Motion for Leave to Intervene and to Admit Attached Petition-In-Intervention.[7]

On July 26, 2002, the UOBP Group filed their Answer *Ad Cautelam* with Counterclaim against intervenors, and Cross-claim against the Espiritu and Tan Groups.

On September 16, 2002, the Espiritu and Tan Groups filed their *Ex Abundanti Ad Cautelam* Answer to the cross-claim of the UOBP Group.

On October 4, 2002, the intervenors filed a Motion for Production, Inspection and Copying of Documents against the UOBP Group.

On October 14, 2002, the intervenors filed a Notice to Take Deposition Upon Oral Examination of John Anthony B. Espiritu, Tony Tan Caktiong and Chua Teng Hui. A similar notice was sent to Wee Cho Yaw. All the aforementioned parties opposed the taking of their depositions *via* separate Motions for Protective

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[6] CA *rollo*, pp. 67-102.

[7] *Id.* at 322.

Order and/or Objection to Resort to Discoveries on the ground that resort to discovery procedure was already time-barred.

In an Order dated October 29, 2002, the trial court denied the motion for production of documents and notice to take depositions because, as modes of discovery, the same were filed beyond the 15-day reglementary period.

Subsequently, the intervenors filed a Motion for Clarification. On November 25, 2002, the trial court reversed its previous ruling and granted the intervenors' motion for production of documents and notice to take depositions. Thereafter, the Espiritu, Tan and UOBP Groups sought reconsideration of this order. However, on December 18, 2002, the trial court denied the same and maintained that resort to discovery is permissible under the premises.

Following suit, the Espiritu and Tan Groups attempted to resort to discovery procedure. On January 31, 2003, they filed a Notice to Take Depositions Upon Oral Examination of Manuel Tankiansee and Juanita U. Tan.[8]

Regional Trial Court's Ruling

On February 4, 2003, the trial court issued the first questioned order which, among others, disallowed the taking of the depositions of Manuel Tankiansee and Juanita U. Tan.[9] It held that the taking of the subject depositions is time-barred. Meanwhile, in view of the November 25 and December 18, 2002 Orders of the trial court allowing the deposition-taking of John Anthony B. Espiritu and Tony Tan Caktiong, on February

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[8] *Id.* at 171-182.

[9] The dispositive portion thereof reads:

WHEREFORE, the petitioners-in-intervention, Farmix Fertilizer Corp. and Pearlbank Securities, Inc., are disallowed from availing or participating in all the discovery proceedings to be conducted by petitioners-in-intervention Manuel Tankiansee and Juanita Uy Tan.

Likewise, the Espiritu and Tan Caktiong Groups are disallowed from taking the depositions of Manuel Tankiansee and Juanita Uy Tan.

IT IS SO ORDERED. (*Id.* at 59.)

7, 2003, the Espiritu and Tan Groups filed a Motion for the Issuance of Protective Orders.[10] On February 17, 2003, the trial court issued the second questioned order which denied the said motion.[11] Upon motion, on February 26, 2003, the trial

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[10] *Id.* at 183-189.

[11] The dispositive portion thereof reads:

IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court resolves the motion for the issuance of protective orders under Section 16, Rule 23, Rules of Civil Procedure as follows:

1. The deposition of Mr. Tony Tan Caktiong is here firmly set on February 28, 2003 at 2:00 P.M. at the Ateneo School of Law, Thesis Room, Ateneo Professional Schools Building, 20 Rockwell Drive, Rockwell Center, Makati City and to continue everyday at the same time and place until completed. The Espiritu and Tan Caktiong Groups are hereby directed to ensure the presence of Mr. Tan Caktiong at the scheduled deposition-taking. The Branch Clerk of Court shall be the official representative of the court in the deposition taking and shall record the proceedings in a video-tape device or any other voice and/or image reproducing machine at her discretion.

2. The deposition of Mr. John Anthony B. Espiritu shall be taken at San Francisco CA, U.S.A. on March 12, 2003 subject to the following conditions:

2.1. The Espiritu Group shall pay for the expenses of the deposition taking. For this purpose, it shall deposit in court the sum of not less than ONE HUNDRED THOUSAND U.S. DOLLARS (US$100,000.00) not later than February 20, 2003 to pay for the traveling expenses and hotel accommodations of the following: The presiding judge, the branch clerk of court, a stenographer, Atty. Alejandro B. Saulog, Jr. or alternate (counsel for Manuel N. Tankiansee and Juanita U. Tan), and Atty. Roan Libarios or alternate (counsel for Farmix Fertilizer Corporation and Pearlbank Securities, Inc.). Counsels for respondents shall bear their own expense.

2.2. The Espiritu Group shall make arrangement for the deposition taking which shall be held at the Hyatt Hotel in downtown San Francisco starting at 2:00 P.M. and to continue everyday until completed.

2.3. The judge will preside at the taking of the deposition upon oral examination of Mr. Espiritu instead of being taken before a consul of the Philippine consulate.

In case the conditions above-set forth (Nos. 2.1. to 2.3) are not acceptable to the Espiritu Group, then the deposition upon oral examination on Mr. John Anthony B. Espiritu shall be taken not later than March 12, 2003 at 2:00 P.M. at the Ateneo School of Law, Thesis Room, Ateneo Professional

court issued the third questioned order which modified the February 17, 2003 Order by canceling the deposition of John Anthony B. Espiritu until further notice and resetting the deposition of Tony Tan Caktiong to a later date.[12]

On April 14, 2003, the Espiritu and Tan Groups filed a petition for *certiorari*[13] before the Court of Appeals challenging the validity of the February 4, 17, and 26, 2003 Orders for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Court of Appeal's Ruling

On February 27, 2004, the Court of Appeals rendered the assailed Decision denying the petition for *certiorari*. It ruled that the Espiritu and Tan Groups failed to adduce evidence to establish that they filed the notice of deposition within the period provided under Section 1, Rule 3 of the Interim Rules of Procedure on Intra-Corporate Controversies. Moreover, the failure of a

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Schools Building, 20 Rockwell Drive, Rockwell Center, Makati City and to continue everyday at the same time and place until completed. The Branch Clerk of Court or in her absence, the Court Interpreter, shall be the official representative of the court in the deposition taking and shall record the proceedings in a video-tape device or any other voice and/or image reproducing machine at her discretion.

3. The deposition of Mr. Chua Ten Hui will proceeded (*sic*) as scheduled tomorrow.

IT IS SO ORDERED. (*Id.* at 62-63.)

[12] The dispositive portion thereof reads:

[T]he deposition scheduled on Friday, February 28, 2003, is hereby CANCELLED and reset to March 19, 2003 at the same time and place.

Mr. Tan Caktiong is warned that this will be the last time that the court grants a motion for the taking of his deposition. Should he fail to appear, he faces sanction from this court.

The taking of the deposition of Mr. John B. Espiritu in the United States is CANCELLED until further notice.

The pre-trial set on March 21, 2003 shall proceed as scheduled.

IT IS SO ORDERED. (*Id.* at 65-66.)

[13] *Id.* at 3-33.

party to avail himself of modes of discovery does not operate to deprive him of the right to present his case because evidentiary matters may be presented before the court through pleadings and testimonies of the parties.

From this adverse decision, only the Espiritu Group (petitioners) appealed to this Court.

Meanwhile, while this case was pending resolution before the appellate court or on February 2, 2004, the trial court rendered a Decision[14] in the main case (*i.e.*, Civil Case No. 02-103160). From this judgment, petitioners, except petitioner Westmont Investment Corporation, filed a notice of appeal.[15] This case was docketed as CA-G.R. CV No. 83161 and is pending resolution before the appellate court. For its part, petitioner Westmont Investment Corporation filed an *Ex Abundanti Ad Cautelam* Notice Of Appeal[16] and a Petition for *Certiorari* and *Mandamus*.[17] On December 15, 2010, this Court issued a Resolution requiring the Court of Appeals to elevate the complete records of CA-G.R. CV No. 83161 to this Court.

Issues

1. Whether the disallowance of the deposition-taking of Manuel Tankiansee and Juanita U. Tan (Tankiansee Group) is contrary to the mandate of liberality in the availment and interpretation of the Rules on Discovery.[18]

2. Whether petitioners were deprived due process when they were denied resort to the modes of discovery.[19]

3. Whether petitioners are guilty of forum shopping.[20]

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[14] Records (Civil Case No. 02-103160) Vol. 17, pp. 226-246.

[15] *Rollo*, pp. 359-361.

[16] *Id.* at 362-364.

[17] *Id.* at 365-402.

[18] *Id.* at 35.

[19] *Id.* at 36.

[20] *Id.* at 343.

Petitioners' Arguments

Petitioners contend that, in disallowing the deposition of Manuel N. Tankiansee and Juanita U. Tan, the trial court violated the liberality in the availment and interpretation of the Rules on Discovery. Moreover, the trial court failed to consider that the allowance of the deposition would not prejudice any party because, at the time the notices of deposition were served, no party had yet actually availed himself of and/or conducted any discovery proceeding. They emphasize that the testimonies of the intended deponents are crucial to establish their just claims in the main case.

Petitioners further argue that the Tankiansee Group was allowed to avail itself of the modes of discovery despite the fact that the latter filed their pleadings beyond the period allowed under the Interim Rules Governing Intra-Corporate Controversies. They claim that the trial court erroneously counted the 15-day period. In truth, both petitioners and the Tankiansee Group availed themselves of the modes of discovery beyond the 15-day period. In effect, the trial court denied petitioners the very same right it granted the Tankiansee Group.

Petitioners also note that after the submission of the respective pre-trial briefs in the main case, the trial court rendered judgment without conducting hearings. Hence, they were denied the right to fully present their case because they were unable to make use of the testimonies of the intended deponents. Petitioners plead that it is not yet too late to rectify this injustice by allowing the subject depositions because the aforesaid summary judgment has been challenged in the meantime in various proceedings.

Respondents' Arguments

Respondents claim that petitioners are guilty of forum shopping. On February 2, 2004, the trial court rendered a summary judgment in the main case, *i.e.*, Civil Case No. 02-103160. Petitioners, except petitioner Westmont Investment Corporation, thereafter filed a notice of appeal. Petitioner Westmont Investment Corporation chose to file an *ex abundanti ad cautelam* notice of appeal and a petition for *certiorari* and *mandamus*. All

three cases seek to annul the February 2, 2004 Decision of the trial court.

According to respondents, the present recourse has the same objective, that is, to reopen the trial court's February 2, 2004 Decision which is pending review before the Court of Appeals. Considering that petitioners have a commonality of interest, the splitting of the causes of action on the same cause is tantamount to forum shopping.

Moreover, respondents argue that the notices of deposition filed by petitioners are time-barred. Section 1, Rule 3 of the Interim Rules Governing Intra-Corporate Controversies provides that a party can only avail himself of any of the modes of discovery not later than 15 days from the joinder of issues. According to the respondents, the joinder of issues occurred on September 29, 2002 after the lapse of the period for the filing of the last responsive pleading of the parties to this case. However, petitioners filed their notices of deposition only on January 31, 2003. Hence, the trial court did not err in denying their resort to modes of discovery.

Our Ruling

The petition lacks merit.

Petitioners' appeal before the Court of Appeals is the appropriate and adequate remedy, and the certiorari petition, subject matter of this case, constitutes forum shopping.

As stated earlier, while this case was pending review before the Court of Appeals or on February 2, 2004, the trial court rendered a Decision in the main case (*i.e.*, Civil Case No. 02-103160). From this judgment, petitioners, except petitioner Westmont Investment Corporation, filed a notice of appeal. This case was docketed as CA-G.R. CV No. 83161 and is now pending resolution before the appellate court. For its part, petitioner Westmont Investment Corporation filed an *Ex Abundanti Ad Cautelam* Notice Of Appeal and a Petition for *Certiorari* and *Mandamus*.

With these developments, the instant petition should be denied because (1) petitioners' appeal before the appellate court is the appropriate and adequate remedy, and (2) the *certiorari* petition, subject matter of this case, constitutes forum shopping. This is in consonance with our ruling in *Ley Construction & Development Corporation v. Hyatt Industrial Manufacturing Corporation*.[21]

In *Ley Construction & Development Corporation*, petitioner filed a complaint for specific performance and damages against respondent. Subsequently, petitioner served notices to take the depositions of several individuals. Initially, the trial court issued an order allowing the petitioner to take the subject depositions. However, it later issued another order canceling all the depositions set for hearing in order not to delay the prompt disposition of the case. Petitioner filed a petition for *certiorari* before the Court of Appeals questioning the trial court's order canceling the deposition-taking which allegedly deprived it of its due process right to discovery. While this *certiorari* petition was pending before the appellate court, the trial court issued a resolution in the main case which dismissed the complaint for specific performance and damages. Subsequently, the Court of Appeals dismissed the *certiorari* petition. On appeal to this Court by petitioner from the dismissal of its *certiorari* petition, we ruled that –

> *Second*, the Petition for *Certiorari* was superseded by the filing, before the Court of Appeals, of a subsequent appeal docketed as CA-GR CV No. 57119, questioning *the Resolution and the two Orders*. In this light, there was no more reason for the CA to resolve the Petition for *Certiorari*.
>
> Section 1, Rule 65 of the Rules of Court, clearly provides that a petition for *certiorari* is available only when "there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law." A petition for *certiorari* cannot co-exist with an appeal or any other adequate remedy. The existence and the availability of the right to appeal are antithetical to the availment of the special civil action for *certiorari*. As the Court has held, these two remedies are "mutually exclusive."

[21] 393 Phil. 633 (2000).

In this case, the subsequent appeal constitutes an adequate remedy. In fact it is the appropriate remedy because it assails not only the Resolution but also the two Orders.

It has been held that "what is determinative of the propriety of *certiorari* is the danger of failure of justice without the writ, not the mere absence of all other legal remedies." The Court is satisfied that the denial of the Petition for *Certiorari* by the Court of Appeals will not result in a failure of justice, for petitioner's rights are adequately and, in fact, more appropriately addressed in the appeal.

Third, petitioner's submission that the Petition for *Certiorari* has a practical legal effect is in fact an admission that the two actions are one and the same. Thus, in arguing that the reversal of the two interlocutory Orders "would likely result in the setting aside of the dismissal of petitioner's amended complaint," petitioner effectively contends that its Petition for *Certiorari*, like the appeal, seeks to set aside the *Resolution and the two Orders*.

Such argument unwittingly discloses a recourse to forum shopping, which has been held as "the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition." Clearly, by its own submission, petitioner seeks to accomplish the same thing in its Petition for *Certiorari* and in its appeal: both assail the two interlocutory Orders and both seek to set aside the RTC Resolution.

Hence, even assuming that the Petition for *Certiorari* has a practical legal effect because it would lead to the reversal of the Resolution dismissing the Complaint, it would still be denied on the ground of forum shopping.[22]

In the same vein, petitioners' *certiorari* petition, questioning the three interlocutory orders which denied their resort to discovery procedure, has been superseded by the filing of their subsequent appeal before the Court of Appeals (*i.e.*, CA-G.R. CV No. 83161). As explained above, a *certiorari* petition may only be availed of if "there is no appeal, or any plain, speedy

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[22] *Id.* at 640-642.

and adequate remedy in the ordinary course of law."[23] We find that petitioners' appeal from the February 2, 2004 Decision of the trial court in the main case is the appropriate and adequate remedy in this case as it challenges the aforesaid interlocutory orders and the decision in the main case.

Moreover, petitioners' appeal and *certiorari* petition effectively seek to annul the February 2, 2004 Decision of the trial court. In their pending appeal before the appellate court, petitioners argued, among others, that they were unduly deprived of their right to avail of modes of discovery, specifically, the deposition taking subject matter of this case.[24] This is one of their arguments in their appeal which prays for the annulment of the February 2, 2004 Decision on due process grounds.[25] On the other hand, petitioners argued in their *certiorari* petition that the disallowance of the taking of the subject depositions deprived them of the opportunity to bring to fore crucial evidence determinative of this case. According to petitioners, this brought about the erroneous February 2, 2004 Decision issued by the trial court.[26] In fine, the appeal and *certiorari* petition raise similar arguments and effectively seek to achieve the same purpose of annulling the February 2, 2004 Decision which petitioners perceive to be in gross error. Thus, as in *Ley Construction & Development Corporation*, the *certiorari* petition must perforce be dismissed on the ground of forum shopping.

WHEREFORE, the petition is *DENIED*. The February 27, 2004 Decision and June 22, 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 76518 are *AFFIRMED*.

The records of CA-G.R. CV No. 83161 are *RETURNED* to the Court of Appeals which is *ORDERED* to resolve the aforesaid case with reasonable dispatch.

Costs against petitioners.

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[23] RULES OF COURT, Rule 65, Section 1.

[24] CA *rollo* (CA-G.R. CV No. 83161), p. 70.

[25] *Id.* at 95.

[26] *Rollo*, pp. 34-35, 41-42.

SO ORDERED.

Velasco, Jr. (Acting Chairperson), Leonardo-de Castro, Bersamin,[*] and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 165548. June 13, 2011]

PHILIPPINE REALTY AND HOLDINGS CORPORATION, *petitioner, vs.* **LEY CONSTRUCTION AND DEVELOPMENT CORPORATION,** *respondent.*

[G.R. No. 167879. June 13, 2011]

LEY CONSTRUCTION AND DEVELOPMENT CORPORATION, *petitioner, vs.* **PHILIPPINE REALTY AND HOLDINGS CORPORATION,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; PRIVATE CORPORATIONS; DOCTRINE OF APPARENT AUTHORITY; ELUCIDATED.— In *Yao Ka Sin Trading v. Court of Appeals, et al.*, this Court discussed the applicable rules on the doctrine of apparent authority, to wit: "The rule is of course settled that '[a]lthough an officer or agent acts without, or in excess of, his actual authority if he acts within the scope of an apparent authority with which the corporation has clothed him by holding him out or permitting him to appear as having such authority, the corporation is bound thereby in

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[*] In lieu of Chief Justice Renato C. Corona, per Special Order No. 1000 dated June 8, 2011.

favor of a person who deals with him in good faith in reliance on such apparent authority, as where an officer is allowed to exercise a particular authority with respect to the business, or a particular branch of it, continuously and publicly, for a considerable time.' Also, 'if a private corporation intentionally or negligently clothes its officers or agents with apparent power to perform acts for it, the corporation will be estopped to deny that such apparent authority is real, as to innocent third persons dealing in good faith with such officers or agents.'" In *People's Aircargo and Warehousing Co. Inc. v. Court of Appeals, et al.*, we held that apparent authority is derived not merely from practice: "Its existence may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers." We rule that Santos and Abcede held themselves out as possessing the authority to act, negotiate and sign documents on behalf of PRHC; and that PRHC sanctioned these acts. It would be the height of incongruity to now allow PRHC to deny the extent of the authority with which it had clothed both individuals. We find that Abcede's role as construction manager, with regard to the construction projects, was akin to that of a general manager with regard to the general operations of the corporation he or she is representing. Consequently, the escalation agreement entered into by LCDC and Abcede is a valid agreement that PRHC is obligated to comply with. This escalation agreement – whether written or verbal – has lifted, through novation, the prohibition contained in the Tektite Building Agreement.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; REQUISITES.— In order for novation to take place, the concurrence of the following requisites is indispensable: 1. There must be a previous valid obligation. 2. The parties concerned must agree to a new contract. 3. The old contract must be extinguished. 4. There must be a valid new contract.

3. ID.; ID.; ESTOPPEL; AN EQUITABLE PRINCIPLE ROOTED IN NATURAL JUSTICE WHICH IS MEANT TO PREVENT

PERSONS FROM GOING BACK ON THEIR OWN ACTS AND REPRESENTATIONS TO THE PREJUDICE OF OTHERS WHO RELIED ON THEM.— What makes this Court believe that it is incorrect to allow PRHC to escape liability for the escalation price is the fact that LCDC was never informed of the board of directors' supposed non-approval of the escalation agreement until it was too late. Instead, PRHC, for its own benefit, waited for the former to finish infusing the entire amount into the construction of the building before informing it that the said agreement had never been approved by the board of directors. LCDC diligently informed PRHC each month of the partial amounts the former infused into the project. PRHC must be deemed estopped from denying the existence of the escalation agreement for having allowed LCDC to continue infusing additional money spending for its own project, when it could have promptly notified LCDC of the alleged disapproval of the proposed escalation price by its board of directors. Estoppel is an equitable principle rooted in natural justice; it is meant to prevent persons from going back on their own acts and representations, to the prejudice of others who have relied on them.

4. ID.; ID.; ID.; ELEMENTS.— This Court has identified the elements of estoppel as: "[F]irst, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; second, the other in fact relies, and relies reasonably or justifiably, upon that communication; third, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and fourth, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action."

5. ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; WHEN PRESENT.— Unjust enrichment exists "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." Under Art. 22 of the Civil Code, there is unjust enrichment when (1) a person is unjustly benefited, and (2) such benefit

is derived at the expense of or with damages to another. x x x In order for an unjust enrichment claim to prosper, one must not only prove that the other party benefited from one's efforts or the obligations of others; it must also be shown that the other party was unjustly enriched in the sense that the term "unjustly" could mean "illegally" or "unlawfully."

6. ID.; OBLIGATIONS AND CONTRACTS; CONTRACT OF LOAN; IN A CONTRACT OF LOAN, OWNERSHIP OF THE MONEY IS TRANSFERRED FROM THE LENDER TO THE BORROWER.— In a contract of loan, ownership of the money is transferred from the lender to the borrower. In this case, ownership of the ₱36 million was never transferred to PRHC. As previously mentioned, such amount was paid directly to the suppliers. We find that arrangement between PRHC and LCDC cannot be construed as a loan agreement but rather, it was an agreement to advance the costs of construction.

7. ID.; ID.; NATURE AND EFFECT OF OBLIGATIONS; GENERALLY, NO PERSON SHALL BE RESPONSIBLE FOR THOSE EVENTS WHICH COULD NOT BE FORESEEN, OR THOUGH FORESEEN, WERE INEVITABLE.— Article 1174 of the Civil Code provides: "Except in cases expressly specified by the law, or when it is otherwise declared by stipulation or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable." A perusal of the construction agreements shows that the parties never agreed to make LCDC liable even in cases of *force majeure*. Neither was the assumption of risk required. Thus, in the occurrence of events that could not be foreseen, or though foreseen were inevitable, neither party should be held responsible. x x x The shortage in supplies and cement may be characterized as *force majeure*. In the present case, hardware stores did not have enough cement available in their supplies or stocks at the time of the construction in the 1990s. Likewise, typhoons, power failures and interruptions of water supply all clearly fall under *force majeure*. Since LCDC could not possibly continue constructing the building under the circumstances prevailing, it cannot be held liable for any delay that resulted from the causes aforementioned.

8. ID.; ID.; ID.; ID.; EXEMPTION FROM LIABILITY FOR BREACH OF OBLIGATION DUE TO *FORCE MAJEURE*; REQUISITES.— Under Article 1174 of the Civil Code, to exempt the obligor from liability for a breach of an obligation due to an "act of God" or *force majeure*, the following must concur: "(a) the cause of the breach of the obligation must be independent of the will of the debtor; (b) the event must be either unforseeable or unavoidable; (c) the event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (d) the debtor must be free from any participation in, or aggravation of the injury to the creditor."

9. REMEDIAL LAW; COURTS; MAY RULE OR DECIDE ON MATTERS THAT WERE NOT SUBMITTED AS ISSUES BUT WERE PROVEN DURING TRIAL.— We affirm in this case the doctrine that courts may rule or decide on matters that, although not submitted as issues, were proven during trial. The admission of evidence, presented to support an allegation not submitted as an issue, should be objected to at the time of its presentation by the party to be affected thereby; otherwise, the court may admit the evidence, and the fact that such evidence seeks to prove a matter not included or presented as an issue in the pleadings submitted becomes irrelevant, because of the failure of the appropriate party to object to the presentation. No objection was raised when LCDC presented evidence to prove the outstanding balances for Project 3, its driver's quarters, and the concreting works in the Tektite Building. x x x Considering the absence of timely and appropriate objections, the trial court did not err in admitting evidence of the unpaid balances for Project 3, its driver's quarters, and the concreting works in the Tektite Building. Furthermore, both the lower and the appellate courts found that the supporting evidence presented by LCDC were sufficient to prove that the claimed amounts were due, but that they remained unpaid.

10. CIVIL LAW; SPECIAL CONTRACTS; AGENCY; NOT ESTABLISHED IN CASE AT BAR.— The principles of agency are not to be applied to this case, since the legal relationship between PRHC and LCDC was not one of agency, but was rather that between the owner of the project and an independent contractor under a contract of service. Thus, it is the agreement between the parties and not the Civil Code

provisions on agency that should be applied to resolve this issue. Art. XIV of the Project 2 Agreement clearly states that if the contractor sublets any part of the agreement to a third party, who in effect becomes a sub-contractor, the losses or expenses that result from the acts/inactions of the sub-contractor should be for the contractor's account x x x.

11. ID.; DAMAGES; ATTORNEY'S FEES; MAY BE AWARDED WHEN THE ACT OR OMISSION OF THE DEFENDANT COMPELLED THE PLAINTIFF TO INCUR EXPENSES TO PROTECT THE LATTER'S INTEREST.— Attorney's fees may be awarded when the act or omission of the defendant compelled the plaintiff to incur expenses to protect the latter's interest. x x x LCDC has failed to establish bad faith on the part of PRHC so as to sustain its position that it is entitled to attorney's fees. Nevertheless, the CA erred in reversing the lower court's Decision granting LCDC's claim for attorney's fees considering that the construction agreements contain a penal clause that deals with the award of attorney's fees x x x.

12. ID.; ID.; ID.; MAY BE REDUCED BY COURTS WHEN FOUND TO BE EXCESSIVE.— As long as a stipulation does not contravene the law, morals, and public order, it is binding upon the obligor. Thus, LCDC is entitled to recover attorney's fees. Nevertheless, this Court deems it proper to equitably reduce the stipulated amount. Courts have the power to reduce the amount of attorney's fees when found to be excessive x x x. We reverse the appellate court's Decision and reinstate the lower court's award of attorney's fees, but reduce the amount from ₱750,000 to ₱200,000.

APPEARANCES OF COUNSEL

Santiago & Santiago for Phil. Realty & Holdings Corp.

Quisumbing Torres Law Offices for Ley Construction and Dev't. Corp.

D E C I S I O N

SERENO, *J.*:

These are consolidated petitions for review under Rule 45 of the New Rules of Civil Procedure filed by both parties from a Court of Appeals (CA) Decision in CA-GR No. 71293 dated 30 September 2004. This Decision reversed a Decision of the Regional Trial Court (RTC), National Capital Judicial Region (NCJR), Branch 135 in Makati City dated 31 January 2001 in Civil Case No. 96-160.

The foregoing are the facts culled from the record, and from the findings of the CA and the RTC.

Ley Construction and Development Corporation (LCDC) was the project contractor for the construction of several buildings for Philippine Realty & Holdings Corporation (PRHC), the project owner. Engineer Dennis Abcede (Abcede) was the project construction manager of PRHC, while Joselito Santos (Santos) was its general manager and vice-president for operations.

Sometime between April 1988 and October 1989, the two corporations entered into four major construction projects, as evidenced by four duly notarized "construction agreements." LCDC committed itself to the construction of the buildings needed by PRHC, which in turn committed itself to pay the contract price agreed upon. These were the four construction projects the parties entered into involving a Project 1, Project 2, Project 3 (all of which involve the Alexandra buildings) and a Tektite Building:

1. Construction Agreement dated 25 April 1988 – Alexandra-Cluster C – involving the construction of two units of seven-storey buildings with basement at a contract price of ₱68,000,000 (Project 1);

2. Construction Agreement dated 25 July 1988 – Alexandra-Cluster B – involving the construction of an eleven-storey

twin-tower building with a common basement at a contract price of ₱ 140,500,000 (Project 2);

3. Construction Agreement dated 23 November 1988 – Alexandra-Cluster E – involving the construction of an eleven-storey twin-tower building with common basement at a contract price of ₱ 140,500,000 (Project 3); and

4. Construction Agreement dated 10 October 1989 – Tektite Towers Phase I – involving the construction of Tektite Tower Building I at Tektite Road at a contract price of ₱ 729,138,964 (Tektite Building).

The agreement covering the construction of the Tektite Building was signed by a Mr. Campos under the words "Phil. Realty & Holdings Corp." and by Santos as a witness. Manuel Ley, the president of LCDC, signed under the words "Ley Const. & Dev. Corp."

The terms embodied in the afore-listed construction agreements were almost identical. Each agreement provided for a fixed price to be paid by PRHC for every project.

All the aforementioned agreements contain the following provisions:

ARTICLE IV – CONTRACT PRICE

. . . . . .

The Contract Price shall not be subject to escalation except due to work addition, (approved by the OWNER and the ARCHITECT) and to official increase in minimum wage as covered by the Labor Adjustment Clause below. All costs and expenses over and above the Contract Price except as provided in Article V hereof shall be for the account of the CONTRACTOR. It is understood that there shall be no escalation on the price of materials. However, should there be any increase in minimum daily wage level, the adjustment on labor cost only shall be considered based on conditions as stipulated below.

. . . . . .

ARTICLE VII – TIME OF COMPLETION

. . . . . .

Should the work be delayed by any act or omission of the OWNER or any other person employed by or contracted by the OWNER in the project, including days in the delivery or (sic) materials furnished by the OWNER or others, or by any appreciable additions or alterations in the work ordered by the OWNER or the ARCHITECT, under Article V or by *force majeure*, war, rebellion, strikes, epidemics, fires, riots, or acts of the civil or military authorities, the CONTRACTOR shall be granted time extension.

Sometime after the execution of these agreements, two more were entered into by the parties:

1. Letter-agreement dated 24 August 1989 – Project 3 – for the construction of the drivers' quarters in Project 3; and
2. Agreement dated 7 January 1993 – Tektite Towers – for the concreting works on "GL, 5, 9, & A" (ground floor to the 5th floor) of the Tektite Towers.

Santos signed the letter-agreement on the construction of the drivers' quarters in Project 3,[1] while both he and Abcede signed the letter-agreement on the concreting works on GL, 5, 9, and A, and also of Project 3.[2]

In order to jump-start the construction operations, LCDC was required to submit a performance bond as provided for in the construction agreements. As stated in these agreements, as soon as PRHC received the performance bond, it would deliver its initial payment to LCDC. The remaining balance was to be paid in monthly progress payments based on actual work completed. In practice, these monthly progress payments were used by LCDC to purchase the materials needed to continue the construction of the remaining parts of the building.

In the course of the construction of the Tektite Building, it became evident to both parties that LCDC would not be able

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[1] *Rollo* (G.R. No. 167879) at 1090.

[2] *Id.* at 1091.

to finish the project within the agreed period. Thus, through its president, LCDC met with Abcede to discuss the cause of the delay. LCDC explained that the unanticipated delay in construction was due mainly to the sudden, unexpected hike in the prices of cement and other construction materials. It claimed that, without a corresponding increase in the fixed prices found in the agreements, it would be impossible for it to finish the construction of the Tektite Building. In their analysis of the project plans for the building and of all the external factors affecting the completion of the project, the parties discovered that even if LCDC were able to collect the entire balance from the contract, the collected amount would still be insufficient to purchase all the materials needed to complete the construction of the building.

Both parties agreed that their foremost objective should be to ensure that the Tektite Building project would be completed. To achieve this goal, they entered into another agreement. Abcede asked LCDC to advance the amount necessary to complete construction. Its president acceded, on the absolute condition that it be allowed to escalate the contract price. It wanted PRHC to allow the escalation and to disregard the prohibition contained in Article VII of the agreements. Abcede replied that he would take this matter up with the board of directors of PRHC.

The board of directors turned down the request for an escalation agreement.[3] Neither PRHC nor Abcede gave notice to LCDC of the alleged denial of the proposal. However, on 9 August 1991 Abcede sent a formal letter to LCDC, asking for its conformity, to the effect that should it infuse ₱36 million into the project, a contract price escalation for the same amount would be granted in its favor by PRHC.[4]

This letter was signed by Abcede above the title "Construction Manager," as well as by LCDC.[5] A plain reading of the letter-

[3] *Id.* at 1084.

[4] Exhibit "A" of Annex "L" of LCDC's Petition for Review.

[5] *Rollo* (G.R. No. 167879) at 390.

agreement will reveal that the blank above the words "PHIL. REALTY & HOLDINGS CORP." was never signed,[6] *viz*:

> Very truly yours,
>
> (Signed)
> DENNIS A. ABCEDE
> Construction Manager
>
> C O N F O R M E :
>
> (Signed)
> LEY CONST. & DEV. CORP.
>
> APPROVED & ACCEPTED :
>
> PHIL. REALTY & HOLDINGS CORP.

Notwithstanding the absence of a signature above PRHC's name, LCDC proceeded with the construction of the Tektite Building, expending the entire amount necessary to complete the project. From August to December 1991, it infused amounts totaling ₱38,248,463.92. These amounts were not deposited into the joint account of LCDC and PRHC, but paid directly to the suppliers upon the instruction of Santos.[7]

LCDC religiously submitted to PRHC monthly reports[8] that contained the amounts of infusion it made from the period August 1991 to December 1991. These monthly reports all had the following heading:

> . . . . . .
>
> MR. JOSELITO L. SANTOS
> VICE PRESIDENT OPERATION
> PHIL. REALTY & HOLDINGS CORP.
> 4TH Floor Quad Alpha Centrum Bldg.
> 125 Pioneer St., Mandaluyong, M.M.

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[6] *Id.*

[7] *Id.* at 1076-1077.

[8] Exhibits "I" to "M" of Annex "L" of LCDc's Petition for Review (G.R. No. 167879).

THRU : D.A. ABCEDE & ASSOCIATES
Construction Managers

SUBJECT : ₱ 36.0M INFUSION-TEKTITE
TOWERS PROJECT

From these monthly reports, it can be gleaned that the following were the cash infusions made by LCDC:

Month	Amount	Date of monthly report
August 1991	PhP 6,724,632.26	15 October 1991[9]
September 1991	PhP 7,326,230.69	7 October 1991[10]
October 1991	PhP 7,756,846.88	7 November 1991[11]
November 1991	PhP 8,553,313.50	7 December 1991[12]
December 1991	PhP 7,887,440.50	9 January 1992[13]
	PhP 38,248,463.92	

PRHC never replied to any of these monthly reports.

On 20 January 1992, LCDC wrote a letter addressed to Santos stating that it had already complied with its commitment as of 31 December 1991 and was requesting the release of ₱2,248,463.92. It attached a 16 January 1992 letter written by D.A. Abcede & Associates, informing PRHC of the total cash infusion made by LCDC to the project, to wit:

in compliance with the commitment of Ley Construction and Dev't Corp. to infuse ₱36.00M for the above subject project x x x

x x x we would like to present the total cash infusion by LCDC for the period covering the month of August, 1991 to December 1991 broken down as follows:

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[9] Exhitbit "I", *supra* note 8; TSN, 21 August 1998, at 16-17.

[10] Exhitbit "J", *supra* note 8; TSN, 21 August 1998, at 17.

[11] Exhitbit "K", *supra* note 8; TSN, 21 August 1998, at 18-19.

[12] Exhitbit "L", *supra* note 8; 21 August 1998, at 19.

[13] Exhitbit "M", *supra* note 8; 21 August 1998, at 20.

. . . . . .

T O T A L: ₱ 38,248,463.92

PRHC never replied to this letter.

In another letter dated 7 September 1992, there was a reconciliation of accounts between the two corporations with respect to the balances due for Projects 1, 2, and 3. The reconciliation of accounts resulted in PRHC owing LCDC the sum of ₱ 20,862,546.41, broken down as follows:

Project 1	₱ 1,783,046.72
Project 2	₱ 13,550,003.93
Project 3	₱ 5,529,495.76
	₱ 20,862,546.41

In a letter dated 8 September 1992,[14] when 96.43% of Tektite Building had been completed, LCDC requested the release of the ₱ 36 million escalation price. PRHC did not reply, but after the construction of the building was completed, it conveyed its decision in a letter on 7 December 1992.[15] That decision was to set off, in the form of liquidated damages, its claim to the supposed liability of LCDC, to wit:

. . . . . .

In this regard, please be advised that per owner's decision; your claim of ₱36,000,00.00 adjustment will be applied to the liquidated damages for concreting works computed in the amount of Thirty Nine Million Three Hundred Twenty Six Thousand Eight Hundred Seventeen & 15/100 (₱39,326,817.15) as shown in the attached sheet.

Further, the net difference ₱3,326,817.15 will also be considered waived as additional consideration.

. . . . . .

In a letter dated 18 January 1993, LCDC, through counsel, demanded payment of the agreed escalation price of ₱ 36 million.

[14] Exhibit "O", *supra* note 8.

[15] Exhibit "B", *supra* note 8.

In its reply on 16 February 1993, PRHC suddenly denied any liability for the escalation price. In the same letter, it claimed that LCDC had incurred 111 days of delay in the construction of the Tektite Building and demanded that the latter pay ₱39,326,817.15 as liquidated damages. This claim was set forth in PRHC's earlier 7 December 1992 letter.

LCDC countered that there were many times when its requests for time extension – although due to reasonable causes sanctioned by the construction agreement such as power failures, water supply interruption, and scarcity of construction materials – were unreasonably reduced to shorter periods by PRHC. In its letter dated 9 December 1992, LCDC claimed that in a period of over two years, out of the 618 days of extension it requested, only 256 days – or not even half the number of days originally requested – were considered. It further claimed that its president inquired from Abcede and Santos why its requests for extension of time were not granted in full. The two, however, assured him that LCDC would not be penalized with damages for even a single day of delay, because the fact that it was working hard on the Tektite Building project was known to PRHC.[16]

Thereafter, in a letter dated 18 January 1993, LCDC demanded payment of the agreed total balance for Projects 1, 2, and 3. Through a reply letter dated 16 February 1993, PRHC denied any liability. During the course of the proceedings, both parties conducted another reconciliation of their respective records. The reconciliation showed the following balances in favor of LCDC:

Project 1	₱ 1,703,955.07
Project 2	₱ 13,251,152.61
Project 3	₱ 5,529,495.76
Total:	₱ 20,484,603.44

In addition to the agreed-upon outstanding balance in favor of LCDC, the latter claimed another outstanding balance of

[16] TSN, 14 March 2000, at 25-26.

₱232,367.96 in its favor for the construction of the drivers' quarters in Project 3.

It also further claimed the amount of ₱7,112,738.82, representing the balance for the concreting works from the ground floor to the fifth floor of the Tektite Building.

Seeking to recover all the above-mentioned amounts, LCDC filed a Complaint with Application for the Issuance of a Writ of Preliminary Attachment on 2 February 1996 before the RTC in Makati City docketed as Civil Case No. 96-160:

WHEREFORE, it is respectfully prayed that:

1. Immediately upon the filing of this Complaint, an order of preliminary attachment be issued over defendant Philrealty's properties as security for any judgment which plaintiff may recover against said defendant; and

2. After trial, judgment be rendered as follows:

    2.1. On the first, second and third alternative causes of action,

        (a) Ordering defendant Philrealty to pay plaintiff actual damages in the amount of ₱36,000,00.00 with legal interest thereon from the filing of this Complaint until fully paid;

        (b) In the alternative, ordering defendants Abcede and Santos to jointly and severally, in the event that they acted without necessary authority, to pay plaintiff actual damages in the amount of ₱36,000,00.00 with legal interest thereon from the filing of this Complaint until fully paid; and

        (c) Ordering defendant Philrealty or defendants Abcede and Santos to pay plaintiff exemplary damages in the amount to be determined by the Honorable Court but not less than ₱5,000,000.00

    2.2. On the fourth cause of action, ordering defendant Philrealty to pay plaintiff

(a) Actual damages in the amount of ₱7,112,738.82 with legal interest thereon from the filing of this Complaint until fully paid; and

(b) Exemplary damages in the amount to be determined by the Honorable Court but not less than ₱1,000,000.00

2.3. On the fifth cause of action, ordering defendant Philrealty to pay plaintiff

(a) Actual damages in the amount of ₱20,862,546.41 with legal interest thereon from the filing of this Complaint until fully paid; and

(b) Exemplary damages in an amount to be determined by the Honorable Court but not less than ₱5,000,000.00.

2.4. On the sixth cause of action, ordering defendant Philrealty to pay plaintiff

(a) Actual damages in the amount of ₱232,367.96 with legal interest thereon from the filing of this Complaint until fully paid; and

(b) Exemplary damages in the amount to be determined by the Honorable Court but not less than ₱100,000.00

2.5. On the seventh cause of action, ordering defendant Philrealty and/or defendants Abcede and Santos to pay plaintiff attorney's fees in the amount of ₱750,000.00 and expenses of litigation in the amount of ₱50,000.00, plus costs.

Plaintiff prays for such other just and equitable reliefs as may be warranted by the circumstances.

On 23 July 1999, a joint Stipulation of Facts[17] was filed by the parties. In the said stipulation, they reconciled their respective claims on the payments made and the balances due for the construction of the Tektite Building project, Project 1, and Project

[17] *Rollo* (G.R. No. 167879) at 957.

2. The reconciliation shows that the following amounts are due and/or overpaid:

	Due to LCDC	Overpaid to LCDC
Tektite Building		₱4,646,947.35
Project 1	₱1,703,955.07	
Project 2	₱3,251,152.61	
	₱14,955,107.68	₱4,646,947.35

Both parties agreed that the only remaining issues to be resolved by the court, with respect to the Tektite Building project and Projects 1 to 3, were as follows:

a) The validity of Ley Construction's claim that Philrealty had granted the former a contract price escalation for Tektite Tower I in the amount of ₱36,000,000.00

b) The validity of the claim of Philrealty that the following amounts should be charged to Ley Construction:

Payments/Advances without LCDC's conformity and recommendation of the Construction Manager, D.A. Abcede & Associates that subject items are LCDC's account:

a. Esicor, Inc. – waterproofing works Cluster B ₱1,121,000.00

b. Ideal Marketing, Inc. – waterproofing works at Cluster B, Quadrant 2 ₱ 885,000.00

₱2,006,000.00

c) The claim of Philrealty for liquidated damages for delay in completion of the construction as follows:

d) Tektite Tower I	-	₱39,326,817.15
Alexandra Cluster B	-	12,785,000.00
Alexandra Cluster C	-	1,100,000.00

and

e) The claim of Ley Construction for additional sum of ₱2,248,463.92 which it allegedly infused for the Tektite Tower

> I project over and above the original ₱36,000,000.00 it had allegedly bound itself to infuse.[18]

On 31 January 2001, the RTC promulgated its Decision. LCDC filed a Motion for Partial Reconsideration, which was granted.

It must be noted that in the Stipulation of Facts, the parties had jointly agreed that the ₱7,112,738.82 unpaid account in the concreting of Tektite Building would no longer be included in the list of claims submitted to the RTC for decision. Nonetheless, this amount was still included as an award in the trial court's 7 May 2001 amended Decision, the dispositive portion of which provides:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> A. Dismissing the counter-claim of defendant DENNIS ABCEDE and the cross-claim of defendant JOSELITO SANTOS; and
>
> B. Ordering defendant PHILIPPINE REALTY AND HOLDING CORPORATION to pay plaintiff LEY CONSTRUCTION AND DEVELOPMENT CORPORATION:
>
> 1. ₱33,601,316.17, for the Tektite Tower I Project with legal interest thereon from date of the filing of the complaint until fully paid;
>
> 2. ₱13,251,152.61 for Alexandra Cluster B with legal interest thereon from date of the filing of the complaint until fully paid;
>
> 3. ₱1,703,955.07 for Alexandra Cluster C with legal interest thereon from date of the filing of the complaint until fully paid;
>
> 4. ₱7,112,738.82 in actual damages for the concreting works of Tektite Tower I, with legal interest thereon from the date of the filing of the complaint until fully paid;
>
> 5. ₱5,529,495.76 in actual damages for the construction of Alexandra Cluster E, with legal interest thereon from the date of the filing of the complaint until fully paid;

[18] *Id.* at 961.

6. ₱232,367.96 in actual damages for the construction of the driver's quarters of Alexandra Cluster E, with legal interest thereon from the date of the filing of the complaint until fully paid;

7. ₱750,000.00 for attorney's fees and expenses of litigation; and

8. Costs.

SO ORDERED.[19]

PRHC filed a Notice of Appeal on 14 June 2001. The Court of Appeals, in CA-G.R. CV No. 71293,[20] reversed the lower court's amended Decision on 30 September 2004 and ruled thus:

WHEREFORE, premises considered, the assailed January 31, 2001 decision and the May 7, 2001 amended decision are hereby **REVERSED** and **SET ASIDE** and a new one is entered:

I. **FINDING** plaintiff-appellee LCDC **LIABLE** to defendant-appellant PRHC in the amount of Sixty million Four Hundred Sixty Four (Thousand) Seven Hundred Sixty Four 90/100 (₱60,464,764.90) PESOS detailed as follows:

[1] ₱39,326,817.15 liquidated damages pursuant to contract for delay incurred by plaintiff-appellee LCDC in the construction of Tektite Tower Phase I, the length of delay having been signed and confirmed by LCDC;

[2] ₱12,785,000.00 liquidated damages pursuant to contract for delay incurred by plaintiff-appellee LCDC in the construction of Alexandra Cluster B, the length of delay having been signed and confirmed by LCDC;

[3] ₱1,700,000.00 liquidated damages pursuant to contract for delay incurred by plaintiff appellee LCDC in the construction of Alexandra Cluster C, the length of delay having been confirmed by LCDC;

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[19] *Id.* at 114-115.

[20] *Id*. at 113-177. Penned by Associate Justice Vicente Q. Roxas, concurred in by Associate Justice Salvador J. Valdez, Jr., with a Dissenting Opinion from Associate Justice Juan Q. Enriquez, Jr.

[4] ₱4,646,947.75 overpayment by defendant-appellant PRHC to plaintiff-appellee LCDC for the Tektite Tower Phase I Project;

[5] ₱1,121,000.00 expenses incurred by defendant-appellant PRHC for corrective works to redo/repair allegedly defective Waterproofing construction work or plaintiff-appellee LCDC in the Alexander Cluster B Project which was paid by defendant-appellant PRHC to contractor Escritor, Inc.;

[6] ₱885,000.00 expenses incurred by defendant-appellant PRHC for corrective works to redo/repair allegedly defective Waterproofing construction work of plaintiff-appellee LCDC at the Alexandra Cluster B *Quadrant* in the Alexander Cluster B Project which was paid by defendant-appellant PRHC to contractor Ideal Marketing Inc., and

II. **FINDING** defendant-appellant PRHC **LIABLE** to plaintiff-appellee LCDC in the amount of Fifty Six million Seven Hundred Sixteen Thousand Nine Hundred Seventy One 40/100 (₱56,716,971.40) detailed as follows:

[1] ₱36,000,000.00 as acknowledged and agreed to by PHRC as a loan by LCDC, reimbursable when the Tektite Tower I project was 95% completed, but this was not classified by this Court as an escalation for increase in price of materials because an escalation for price increase of cost of materials is expressly prohibited by 10 October 1989 original contract;

[2] All expenditures for the projects are at the risk of the contractor LCDC who is to be paid, according to the contract, a *fixed contract price* so that there is no such thing as *overinfusion* of expenses by plaintiff-appellee LCDC guaranteed under the contract that it would pay all costs of materials irregardless (sic) of any increase in costs;

[3] ₱13,251,152.61 balance yet unpaid by defendant-appellant in the Alexandra Cluster B Project;

[4] ₱1,703,955.07 balance yet unpaid by defendant-appellant in the Alexander Cluster C Project;

[5] Defendant-appellant PRHC is hereby held not liable for ₱750,000.00 attorney's fees;

[6] Plaintiff-appellee LCDC is not entitled to claim ₱7,112,738.82 for concreting works for Tektite Towers Phase I which cause of

action had already been dismissed by the parties in the 23 July 1999 Joint Stipulation of Facts that the contract price for the October 10, 1989 Construction Agreement had been fully paid;

[7] ₱5,529,495.76 balance yet unpaid in the Alexandra Cluster E Project;

[8] ₱232,367.96 balance yet unpaid for construction of the drivers' quarters at the Alexandra Cluster E.

The respective liabilities of the parties as set forth above are hereby **SET OFF** against each other and plaintiff-appellee LCDC is hereby **DIRECTED** to pay defendant-appellant PRHC the net amount due of Three million Seven Hundred Forty Seven Thousand Seven Hundred Ninety Three 50/100 (₱3,747,793.50) PESOS with legal interest from date of filing of complaint.

SO ORDERED.

PRHC came directly to this Court and filed a petition for review on *certiorari* docketed as SC-G.R. No. 165548 to assail in part the appellate court's Decision. LCDC, on the other hand, filed on 25 October 2004 a Motion for Reconsideration with the Court of Appeals. In its Resolution dated 12 April 2005, the appellate court denied the motion. LCDC then filed its own Petition for Review on *certiorari*, which was docketed as SC-G.R. No. 167879.

In a Resolution dated 6 August 2008, this Court consolidated G.R. Nos. 165548 and 16789.

PRHC, in its Petition for Review[21] in G.R. No. 165548, submits the following issues for resolution:

1. Whether the finding and ruling of the Court of Appeals that the letter dated 07 December 1992 was a counter-offer on the part of LCDC and a confirmation to treat the ₱36,000,000.00 as a loan deductible from liquidated damages is contrary to the allegations in the pleadings and the evidence on record.

2. Whether the finding and ruling of the Court of Appeals that LCDC is liable to PRHC in the amount of ₱5,529,495.76

[21] *Rollo* (G.R. No. 165548) at 64-95.

representing the balance of the contract price for the construction of Alexandra Cluster E Project is contrary to the Stipulation of Facts jointly submitted by the parties to the Trial Court.

3. Whether the finding and ruling of the Court of Appeals that LCDC is liable to PRHC in the amount of ₱232,367.96 representing the cost of the construction of the driver's quarters at Alexandra Cluster E Project is contrary to the Stipulation of Facts jointly submitted by the parties to the trial court.[22]

For its part, LCDC submits the following grounds in support of its Petition for Review[23] docketed as G.R. No. 167879:

I. The Court of Appeals seriously erred in ruling that there is no ₱36 million escalation agreement between LCDC and PRHC.

. . . . . .

II. The Court of Appeals seriously erred in ruling that PHRC is not obliged to pay LCDC the sum of ₱2,248,463.92 representing the cash infused by LCDC over and above the ₱36 million escalation price.

III. The Court of Appeals seriously erred in ruling that PRHC is not obliged to pay LCDC the ₱7,112,738.82 balance for the concreting works of the ground floor to the fifth floor of the PSE.

IV. The Court of Appeals seriously erred in awarding liquidated damages to PHRC under the TTI Project Agreement and the Alexandra-Clusters B and C agreements.

V. The Court of Appeals seriously erred in ruling that LCDC is liable for the corrective works in Alexandra-Cluster B.

VI. The Court of Appeals seriously erred in deleting the lower court's award of ₱750,000.00 attorney's fees and expenses of litigation to LCDC and holding the latter liable to pay costs.[24]

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[22] *Id.* at 80.

[23] *Rollo* (G.R. No. 167879) at 11-110.

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

At the outset, it must be noted that PRHC does not question the following amounts granted by the Court of Appeals:

(a) ₱13,251,152.61 awarded to LCDC as balance yet unpaid by PRHC for Project 2;

(b) ₱1,703,955.07 awarded to LCDC as balance yet unpaid by PRHC for Project 1; and

(c) ₱4,646,947.75 awarded to PRHC for its overpayment to LCDC for the Tektite Building.

No appeal having been filed from the immediately preceding rulings, they attained finality.

We reduce the issues to the following:

I

Whether or not a valid escalation agreement was entered into by the parties and, if so, to what amount;

II

Whether or not LCDC was delayed in the performance of its obligation to construct the buildings for PRHC and, corollary thereto, whether or not the latter is entitled to liquidated damages for this supposed delay in the construction of the Tektite Building and Projects 1 and 2;

III

Whether or not the CA can make an award or should have made an award for the following causes of action not alleged in the pleadings or omitted in the stipulation of facts:

a. The supposed remaining balance of ₱5,529,495.76 for Project 3, which was awarded by the appellate court;

b. The supposed remaining balance of ₱232,367.96, which the appellate court also awarded, representing the cost of the construction of the drivers' quarters in Project 3; and

c. The supposed remaining balance of ₱7,112,738.82, the cost of the concreting works from the ground floor to the fifth floor of the Tektite Building, which was not awarded by the CA but was awarded by the lower court;

IV

Whether or not LCDC should be held liable for the amount of ₱2,006,000 for the corrective works to redo or repair the defective waterproofing in Project 2; and

V

Whether or not LCDC is entitled to the appellate court's award of ₱750,000 for attorney's fees and expenses of litigation and costs.

We shall review the findings of fact of the Court of Appeals in view of some inconsistencies with those of the trial court and the evidence on record, and as a result of our analysis of the threshold legal issues.

A subsequent escalation agreement was validly entered into by the parties, but only to the extent of ₱ 36 million.

The construction agreements, including the Tektite Building agreement, expressly prohibit any increase in the contracted price. It can be inferred from this prohibition that the parties agreed to place all expenses over and above the contracted price for the account of the contractor.[25] PRHC claims that since its board of directors never acceded to the proposed escalation agreement, the provision in the main agreement prohibiting any increase in the contract price stands.

LCDC, on the other hand, claims that the fact that any increase in the contract price is prohibited under the Tektite Building agreement does not invalidate the parties' subsequent decision to supersede or disregard this prohibition. It argues that all the documentary and testimonial evidence it presented clearly established the existence of a ₱ 36 million escalation agreement.[26]

LCDC now comes to this Court, asking that the escalation agreement with PRHC, as represented by Abcede and Santos,

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[25] *Rollo* (G.R. No. 167879) at 850.

[26] *Id.* at 1074.

be declared to have effectively novated the prohibition in the Tektite Building agreement.

After examining the extensive evidence presented by both parties, we resolve to rule in favor of LCDC.

LCDC relies in part on PRHC's 19 August 1991 letter-agreement,[27] which provides as follows:

August 09, 1991

LEY CONSTRUCTION DEV. CORP.
10th Flr., Pacific Star Bldg.
Makati Avenue, Makati
Metro Manila

Attention: Mr. Manuel Ley
Subject: TEKTITE TOWERS

Gentlemen:

Relative to your contract for subject project this will confirm agreement between your goodselves and Philippine Realty & Holdings Corporation as follows:

1.0 Ley Construction & Development Corporation shall put in funds for Tektite project with a total amount of THIRTY SIX MILLION PESOS (₱36,000,000.00) ONLY in accordance with the following schedule:

. . . . . .

2.0 If Ley Construction & Dev. Corp. faithfully complies with above commitment then Philippine Realty & Holdings Corporation shall grant a contract price escalation to Ley Const. & Dev. Corp. in the amount of THIRTY SIX MILLION PESOS (₱36,000,000.00) ONLY in view of the increase in cost of materials during the construction period which amount shall be payable to Ley Const. & Dev. Corp. when the LCDC contract work is at least 95% complete.

(over)

Very truly yours,

(Signed)
DENNIS A. ABCEDE
Construction Manager

[27] *Id.* at 389-390.

C O N F O R M E :

(Signed)
LEY CONST. & DEV. CORP.

APPROVED & ACCEPTED :

PHIL. REALTY & HOLDINGS CORP.

It is apparent from its face that the letter was not signed by PRHC. This fact allegedly proves, according to PRHC, that it never expressed its consent to the letter and, hence, cannot and should not be bound by the contents thereof. It further claims that its internal rules require the signatures of at least two of its officers to bind the corporation.

LCDC, for its part, submits that the fact that the letter is unsigned by PRHC is insignificant, considering that other pieces of documentary and testimonial evidence were presented to prove the existence of the escalation agreement.[28]

The appellate court found for PRHC and ruled that an unsigned letter does not bind the party left out,[29] *viz*:

> But it is ***patent on the face*** of that letter that PRHC did not sign the document. It is ***patent on its face*** that between the words: "APPROVED:" and the name "Philippine Realty & Holdings Corporation", there is ***no signature***. Apparent therefore on its face, there was no meeting of the minds between the parties LCDC and PRHC in the ₱36,000,000.00 escalation for materials.[30]

The Court of Appeals further held that a simple letter cannot novate a notarized agreement.[31]

The appellate court is incorrect. The 9 August 1991 letter is not a simple letter, but rather a letter-agreement—a contract—

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[28] *Id*. at 1082.

[29] *Id.* at 148.

[30] *Id*. at 149.

[31] *Id*.

which because of the existence of the consent of both parties become valid and binding. It is true that no representative of PRHC signed under its typewritten name, where a signature should traditionally appear, to show the company's acceptance and approval of the contents of the letter-agreement. This Court, however, finds that the signature of Abcede is sufficient to bind PRHC. As its construction manager, his very act of signing a letter embodying the ₱36 million escalation agreement produced legal effect, even if there was a blank space for a higher officer of PHRC to indicate approval thereof. At the very least, he indicated authority to make such representation on behalf of PRHC.

On direct examination, Abcede admitted that, as the construction manager, he represented PRHC in running its affairs with regard to the execution of the aforesaid projects. He testified as follows:[32]

> Q. What is your profession by the way?
> A. I'm a Civil Engineer by profession and presently, I am engaged in the construction management.
> Q. And what is your company engaged in the construction management?
> A. We actually, as construction managers, we represent the owners, of the construction.[33]

All throughout the existence and execution of the construction agreements, it was the established practice of LCDC, each time it had concerns about the projects or something to discuss with PRHC, to approach Abcede and Santos as representatives of the latter corporation. As far as LCDC was concerned, these two individuals were the fully authorized representatives of PRHC. Thus, when they entered into the ₱ 36 million escalation agreement with LCDC, PRHC effectively agreed thereto.

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[32] *Rollo* (G.R. No. 167879) at 1086.

[33] TSN, 23 March 1999, at 4.

In fact, correspondences to the construction manager that were addressed to or that had to be noted by PRHC were most of the time coursed through and noted by Santos. Likewise, its correspondences to LCDC were signed by him alone.[34]

Santos testified that, as the vice president and general manager of PRHC, he was responsible for the implementation of the policies of the board,[35] to wit:

Q: Why do you know the defendant Philippine Realty and Holding Corporation?

A: I used to serve that company as Vice President and Director, sir.

Q: During what year did you serve as Vice President and Director of Philippine Realty.

A: I started serving that company as General Manager in 1987 and I resigned in 1993, sir.

Q: Will you state your duties and functions as General Manager and Director of the company?

A: I was responsible for the implementation of the policies approved by the board and the day to day general management of the company from operation to administration to finance and marketing, sir.[36]

In addition, LCDC was able to establish that Abcede and Santos had signed, on behalf of PRHC, other documents that were almost identical to the questioned letter-agreement.[37] Santos was actually the one who signed for PRHC in the letter-agreement for the construction of the drivers' quarters in Project 3.[38] He signed under the words "Approved: Phil. Realty & Holdings Corp."[39] While both he and Abcede signed the letter-agreement

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[34] *Rollo* (G.R. No. 167879) at 1091.

[35] *Id.* at 1087.

[36] TSN, 27 July 1999, at 3-4.

[37] *Rollo* (G.R. No. 167879) at 1090.

[38] *Id.* at 1090-1091.

[39] *Id.* at 380.

for concreting works on "GL, 5, 9, and A,"[40] Santos again signed under the word "Approved."[41] PRHC does not question the validity of these agreements; it thereby effectively admits that these two individuals had actual authority to sign on its behalf with respect to these construction projects.

We cannot fault LCDC for relying on the representation of PRHC that the authority to contract with the former, in matters relating to the construction agreements, resided in Abcede and Santos.

Furthermore, PRHC does not question the validity of its 7 December 1992 letter to LCDC wherein it seeks to apply LCDC's claim for the ₱36 million escalation price to its counterclaim for liquidated damages, which was signed by Santos under the words "Approved: Phil. Realty & Holdings Corp.":

07 December 1992
LEY CONST. & DEV. CORP.
23rd Floor Pacific Star Bldg.
Sen. Gil Puyat Ave. corner
Makati Avenue, Makati
Metro Manila.

Attention : **MR. MANUEL T. LEY**

Subject : **TEKTITE TOWERS**

Gentlemen :

This is in connection with your previous request for materials cost adjustment in the amount of Thirty Six Million & 0/100 (₱36,000,000.00).

In this regard, please be advised that per owner's decision; your claim of ₱36,000,00.00 adjustment will be applied to the liquidated damages for concreting works computed in the amount of Thirty Nine Million Three Hundred Twenty Six Thousand Eight Hundred Seventeen & 15/100 (₱39,326,817.15) as shown in the attached sheet.

Further, the net difference ₱3,326,817.15 will also be considered waived as additional consideration.

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[40] *Id*. at 1091.

[41] *Id*. at 391.

We trust you will find the above fair and equitable.

Very truly yours,

(Signed)
DENNIS A. ABCEDE
Construction Manager

Approved:

(Signed by Santos)
PHIL. REALTY & HOLDINGS CORP.

This letter was signed by Abcede, again as the construction manager, while Santos signed above "PHIL. REALTY & HOLDINGS CORP.," which was notably the unsigned part in the 9 August 1991 letter. PRHC claims that neither one of them had the authority to sign on behalf of the corporation; yet, it is not questioning the validity of the above-quoted letter.

We consider this letter as additional evidence that PRHC had given Abcede and Santos the authority to act on its behalf in making such a decision or entering into such agreements with LCDC.

LCDC additionally argues that a subsequent escalation agreement was validly entered into, even on the following assumptions: (a) that Abcede and Santos had no authority to agree to the escalation of the contract price without the approval of the board of directors; and (b) that the 7 December 1992 letter cannot be construed as an acknowledgment by PRHC that it owed LCDC ₱36 million. It posits that the actions of Abcede and Santos, assuming they were beyond the authority given to them by PRHC which they were representing, still bound PRHC under the doctrine of apparent authority.[42] Thus, the lack of authority on their part should not be used to prejudice it, considering that the two were clothed with apparent authority to execute such agreements. In addition, PRHC is allegedly barred by promissory estoppel from denying the claims of the other corporation.

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[42] *Rollo* (G.R. No. 167879) at 63.

We agree with LCDC.

In *Yao Ka Sin Trading v. Court of Appeals, et al.*,[43] this Court discussed the applicable rules on the doctrine of apparent authority, to wit:

> The rule is of course settled that "[a]lthough an officer or agent acts without, or in excess of, his actual authority if he acts within the scope of an apparent authority with which the corporation has clothed him by holding him out or permitting him to appear as having such authority, the corporation is bound thereby in favor of a person who deals with him in good faith in reliance on such apparent authority, as where an officer is allowed to exercise a particular authority with respect to the business, or a particular branch of it, continuously and publicly, for a considerable time."Also, "if a private corporation intentionally or negligently clothes its officers or agents with apparent power to perform acts for it, the corporation will be estopped to deny that such apparent authority is real, as to innocent third persons dealing in good faith with such officers or agents."[44]

In *People's Aircargo and Warehousing Co. Inc. v. Court of Appeals, et al.*,[45] we held that apparent authority is derived not merely from practice:

> Its existence may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers.

We rule that Santos and Abcede held themselves out as possessing the authority to act, negotiate and sign documents on behalf of PRHC; and that PRHC sanctioned these acts. It would be the height of incongruity to now allow PRHC to deny the extent of the authority with which it had clothed both

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[43] G.R. No. 53820, 15 June 1992, 209 SCRA 763.

[44] *Id.* citing FLETCHER, *CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS*, Vol. 2 (Perm. Ed.), 1969 Revised Volume, 614; and 19 C.J.S. 458.

[45] G.R. No. 1871447, 7 October 1998, 297 SCRA 170.

individuals. We find that Abcede's role as construction manager, with regard to the construction projects, was akin to that of a general manager with regard to the general operations of the corporation he or she is representing.

Consequently, the escalation agreement entered into by LCDC and Abcede is a valid agreement that PRHC is obligated to comply with. This escalation agreement – whether written or verbal – has lifted, through novation, the prohibition contained in the Tektite Building Agreement.

In order for novation to take place, the concurrence of the following requisites is indispensable:

1. There must be a previous valid obligation.
2. The parties concerned must agree to a new contract.
3. The old contract must be extinguished.
4. There must be a valid new contract.[46]

All the aforementioned requisites are present in this case. The obligation of both parties not to increase the contract price in the Tektite Building Agreement was extinguished, and a new obligation increasing the old contract price by ₱ 36 million was created by the parties to take its place.

What makes this Court believe that it is incorrect to allow PRHC to escape liability for the escalation price is the fact that LCDC was never informed of the board of directors' supposed non-approval of the escalation agreement until it was too late. Instead, PRHC, for its own benefit, waited for the former to finish infusing the entire amount into the construction of the building before informing it that the said agreement had never been approved by the board of directors. LCDC diligently informed PRHC each month of the partial amounts the former

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[46] CIVIL CODE, Art. 1292; *Agro Conglomerates, Inc. v. Court of Appeals*, G.R. No. 117660, 18 December 2000, 348 SCRA 450, 459; *Security Bank and Trust Company, Inc. v. Cuenca*, G.R. No. 138544, 3 October 2000, 341 SCRA 781, 796; *Reyes v. Court of Appeals*, G.R. No. 120817, 4 November 1996, 264 SCRA 35, 43.

infused into the project. PRHC must be deemed estopped from denying the existence of the escalation agreement for having allowed LCDC to continue infusing additional money spending for its own project, when it could have promptly notified LCDC of the alleged disapproval of the proposed escalation price by its board of directors.

Estoppel is an equitable principle rooted in natural justice; it is meant to prevent persons from going back on their own acts and representations, to the prejudice of others who have relied on them.[47] Article 1431 of the Civil Code provides:

> Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

Article 1431 is reflected in Rule 131, Section 2 (a) of the Rules of Court, *viz.*:

> Sec. 2. Conclusive presumptions. — The following are instances of conclusive presumptions:
>
> (a) Whenever a party has by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission be permitted to falsify it.

This Court has identified the elements of estoppel as:

> [F]irst, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; second, the other in fact relies, and relies reasonably or justifiably, upon that communication; third, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and fourth, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action.[48]

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[47] *Philippine National Bank v. Palma*, G.R. No. 157279, 9 August 2005, 466 SCRA 307, 324.

[48] *Philippine Bank of Communications v. Court of Appeals and Fernandez-Puen*, G.R. No. 109803, 20 April 1998, 289 SCRA 178 citing DOBBS,

This liability of PRHC, however, has a ceiling. The escalation agreement entered into was for ₱36 million—the maximum amount that LCDC contracted itself to infuse and that PRHC agreed to reimburse. Thus, the Court of Appeals was correct in ruling that the ₱2,248,463.92 infused by LCDC over and above the ₱36 million should be for its account, since PRHC never agreed to pay anything beyond the latter amount. While PRHC benefited from this excess infusion, this did not result in its unjust enrichment, as defined by law.

Unjust enrichment exists "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience."[49] Under Art. 22 of the Civil Code, there is unjust enrichment when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another.[50] The term is further defined thus:

> Unjust enrichment is a term used to depict result or effect of failure to make remuneration of or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them; to be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request.[51]

In order for an unjust enrichment claim to prosper, one must not only prove that the other party benefited from one's efforts or the obligations of others; it must also be shown that the

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LAW OF REMEDIES, 2nd ed., (1983), at 65; *British American Tobacco v. Camacho*, G.R. No. 163583, 20 August 2008, 562 SCRA 511.

[49] *LBP v. Alfredo Ong*, G.R. No. 190755, 24 November 2010, citing *Car Cool Philippines v. Ushio Realty and Development Corporation*, 479 SCRA 404, 412 (2006).

[50] *H.L. Carlos Corporation, Inc. v. Marina Properties Corporation*, G.R. No. 147614, 29 January 2004, 421 SCRA 428, 437, citing *MC Engineering, Inc. v. Court of Appeals*, 380 SCRA 116, 138 (2002).

[51] *University of the Philippines v. PHILAB Industries, Inc.*, G.R. No. 152411, 29 September 2004, citing *Callaway Golf Company v. Dunlop Slazenger Group Americas, Inc.*, 318 F.Supp.2d 216 (2004); *Dinosaur Dev., Inc. v. White*, 216 Cal.App.3d 1310, 265 Cal.Rptr. 525 (1989).

other party was unjustly enriched in the sense that the term "unjustly" could mean "illegally" or "unlawfully."[52] LCDC was aware that the escalation agreement was limited to ₱36 million. It is not entitled to remuneration of the excess, since it did not confer this benefit by mistake, fraud, coercion, or request. Rather, it voluntarily infused the excess amount with full knowledge that PRHC had no obligation to reimburse it.

Parenthetically, we note that the CA had ruled that the 7 December 1992 letter demonstrates that PRHC treated the ₱36 million as a loan deductible from the liquidated damages for which LCDC is supposedly liable.[53] It ruled that when PRHC informed LCDC that it would apply the ₱ 36 million to the liquidated damages, PRHC, in effect, acknowledged that it was in debt to LCDC in the amount of ₱ 36 million, and that forms the basis for PRHC's liability to LCDC for the said amount.

We disagree with this analysis.

In a contract of loan, ownership of the money is transferred from the lender to the borrower.[54] In this case, ownership of the ₱ 36 million was never transferred to PRHC. As previously mentioned, such amount was paid directly to the suppliers.[55] We find that arrangement between PRHC and LCDC cannot be construed as a loan agreement but rather, it was an agreement to advance the costs of construction. In *Liwanag v. Court of Appeals et al.*, we state:

Neither can the transaction be considered a loan, since in a contract of loan once the money is received by the debtor, ownership over the same is transferred. Being the owner, the borrower can dispose of it for whatever purpose he may deem proper. In the instant petition,

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[52] *University of the Philippines v. PHILAB Industries*, Inc., G.R. No. 152411, 29 September 2004, 439 SCRA 467, citing *Mon-Ray, Inc. v. Granite Re, Inc.*, 677 N.W.2d 434 (2004) and *First National Bank of St. Paul v. Ramier*, 311 N.W. 2d 502, 504 (1981).

[53] *Rollo* (G.R. No. 167879) at 150.

[54] REYNALDO B. ARALAR, *AGENCY, SALES, BAILMENTS, AND/OR CREDIT TRANSACTIONS LAW AND JURISPRUDENCE*, 241 (2006).

[55] *Rollo* (G.R. No. 167879) at 1076-1077.

however, it is evident that Liwanag could not dispose of the money as she pleased because it was only delivered to her for a single purpose, namely, for the purchase of cigarettes, and if this was not possible then to return the money to Rosales.

LCDC is not liable for liquidated damages for delay in the construction of the buildings for PRHC.

There is no question that LCDC was not able to fully construct the Tektite Building and Projects 1, 2, and 3 on time. It reasons that it should not be made liable for liquidated damages, because its rightful and reasonable requests for time extension were denied by PRHC.[56]

It is important to note that PRHC does not question the veracity of the factual representations of LCDC to justify the latter's requests for extension of time. It insists, however, that in any event LCDC agreed to the limits of the time extensions it granted.[57]

The practice of the parties is that each time LCDC requests for more time, an extension agreement is executed and signed by both parties to indicate their joint approval of the number of days of extension agreed upon.

The applicable provision in the parties' agreements is as follows:

ARTICLE VII – TIME OF COMPLETION

. . . . . .

Should the work be delayed by any act or omission of the OWNER or any other person employed by or contracted by the OWNER in the project, including days in the delivery or (sic) materials furnished by the OWNER or others, or by any appreciable additions or alterations in the work ordered by the OWNER or the ARCHITECT, under Article V or by *force majeure*, war, rebellion, strikes, epidemics,

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[56] *Rollo* (G.R. No. 167879) at 859.

[57] *Rollo* (G.R. No. 167879) at 860.

fires, riots, or acts of the civil or military authorities, the CONTRACTOR shall be granted time extension.

In case the CONTRACTOR encounters any justifiable cause or reason for delay, the CONTRACTOR shall within ten (10) days, after encountering such cause of delay submit to the OWNER in writing a written request for time extension indicating therein the requested contract time extension. Failure by the CONTRACTOR to comply with this requirements (sic) will be adequate reason for the OWNER not to grant the time extension.

The following table shows the dates of LCDC's letter-requests, the supposed causes justifying them, the number of days requested, and the number of days granted by PRHC and supposedly conformed to by LCDC:

	Cause	# of days requested	# of days granted
1 Mar 1990	Due to additional works and shortage of supplies and cement	30	11
14 Apr 1990	Shortage of cement supply	18	6
10 May 1990	Frequent power failures	10	2
9 Jul 1990	Bad weather which endangered the lives of the construction workers ("heavy winds")	10	2
4 Sep 1990	Inclement weather that endangered the lives of the construction workers	10	3
28 Feb 1991	Architectural and structural revisions of R.C. beams at the 8th floor level	20	8

28 Aug 1991	For change order work and revisions in the plans initiated by the architect and Abcede's delay in giving the revised plans to contractor	271	136
2 Sep 1991	Inclement weather and scarcity of cement	25	17
13 Oct 1991	Water supply interruption and power failures preventing the mixing of cement	15	6
5 Dec 1991	Typhoon Uring and water supply interruption (typhoon Uring alone caused a delay for more than 10 days due to strong and continuous rains)	15	2
2 Apr 1992	Inadequate supply of Portland cement and frequent power failures	15	12
5 May 1992	Inadequate supply of cement and frequent power failures	17	12
		456	217
	additions and alterations in the work ordered by the owner and architect	108	20
		564	237

As previously mentioned, LCDC sent a 9 December 1992 letter to PRHC claiming that, in a period of over two years, only 256 out of the 618 days of extension requested were considered. We disregard these numbers presented by LCDC because of its failure to present evidence to prove its allegation. The tally that we will accept—as reflected by the evidence

submitted to the lower court—is as follows: out of the 564 days requested, only 237 were considered.

Essentially the same aforementioned reasons or causes are presented by LCDC as defense against liability for both Projects 1 and 2.[58] In this regard, the CA ruled:

> Plaintiff-appellee's allegation that determination by PHRC of extensions of time were unreasonable or arbitrary is untenable in the light of express provisions of the Construction Agreements which prescribed precise procedures for extensions of time. In fact the procedure is fool-proof because both OWNER and CONTRACTOR sign to indicate approval of the number of days of extension. Computation of the penalty becomes mechanical after that. Each extension as signed by the parties is a contract by itself and has the force of law between them.
>
> In fact, the parties followed that prescribed procedure strictly – the CONTRACTOR first requested the OWNER to approve the number of days applied for as extension of time to finish the particular project and the OWNER will counter-offer by approving only a lower number of days extension of time for CONTRACTOR to finish the contract as recommended by the CONSTRUCTION MANAGER ABCEDE, and in the end, both CONTRACTOR and OWNER sign jointly the approved number of days agreed upon. That signed extension of time is taken to be the contract between the parties.[59]

The appellate court further ruled that each signed extension is a separate contract that becomes the law between the parties:[60]

> there is nothing arbitrary or unreasonable about the number of days extension of time because each extension is a meeting of the minds between the parties, each under joint signature OWNER and CONTRACTOR witnessed by the CONSTRUCTION MANAGER.[61]

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[58] *Rollo* (G.R. No. 167879) at 97-99.

[59] *Id.* at 156.

[60] *Id.*

[61] *Id.* at 157.

Inasmuch as LCDC's claimed exemption from liability are beyond the approved time extensions, LCDC, according to the majority of the CA, is liable therefor.

Justice Juan Q. Enriquez, in his Dissenting Opinion, held that the reasons submitted by LCDC fell under the definition of *force majeure*.[62] This specific point was not refuted by the majority.

We agree with Justice Enriquez on this point and thereby disagree with the majority ruling of the CA.

Article 1174 of the Civil Code provides: "Except in cases expressly specified by the law, or when it is otherwise declared by stipulation or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable." A perusal of the construction agreements shows that the parties never agreed to make LCDC liable even in cases of *force majeure*. Neither was the assumption of risk required. Thus, in the occurrence of events that could not be foreseen, or though foreseen were inevitable, neither party should be held responsible.

Under Article 1174 of the Civil Code, to exempt the obligor from liability for a breach of an obligation due to an "act of God" or *force majeure*, the following must concur:

(a) the cause of the breach of the obligation must be independent of the will of the debtor; (b) the event must be either unforseeable or unavoidable; (c) the event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (d) the debtor must be free from any participation in, or aggravation of the injury to the creditor.[63]

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[62] *Id*. at 175.

[63] *Juan F. Nakpil & Sons v. Court of Appeals*, 144 SCRA 596 (1986) citing *Vasquez v. Court of Appeals*, 138 SCRA 553 (1985); *Estrada v. Consolacion*, 71 SCRA 423 (1976); *Austria v. Court of Appeals*, 39 SCRA 527 (1971); *Republic of the Phil. v. Luzon Stevedoring Corp.*, 128 Phil. 313 (1967); *Lasam v. Smith*, 45 Phil. 657 (1924).

The shortage in supplies and cement may be characterized as *force majeure*.[64] In the present case, hardware stores did not have enough cement available in their supplies or stocks at the time of the construction in the 1990s. Likewise, typhoons, power failures and interruptions of water supply all clearly fall under *force majeure*. Since LCDC could not possibly continue constructing the building under the circumstances prevailing, it cannot be held liable for any delay that resulted from the causes aforementioned.

Further, PRHC is barred by the doctrine of promissory estoppel from denying that it agreed, and even promised, to hold LCDC free and clear of any liquidated damages. Abcede and Santos also promised that the latter corporation would not be held liable for liquidated damages even for a single day of delay despite the non-approval of the requests for extension.[65] Mr. Ley testified to this fact as follows:

Q: So, Mr. Witness in all those requests for extension and whenever the D.A. Abcede & Associates did not grant you the actual number of days stated in your requests for extension, what did Ley construction and Development do, if any?
A: We talked to Dennis Abcede and Mr. Santos, Ma'am.

Q: And what did you tell them?
A: I will tell them why did you not grant the extension for us, Ma'am.

Q: What was the response of Mr. Abcede and Mr. Santos?
A: Mr. Abcede and Mr. Santos told me, Mr. Ley don't worry, you will not be liquidated of any single day for this because we can see that you worked so hard for this project, Ma'am.

Q: And what did you do after you were given that response of Mr. Abcede and Mr. Santos?
A: They told me you just relax and finish the project, and we will pay you up to the last centavos, Ma'am.

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[64] *Rollo* (G.R. No. 167879) at 87.

[65] *Id.* at 95.

Q: What did you do after taking that statement or assurance?
A: As gentleman's agreement I just continued working without complaining anymore, Ma'am.[66]

The above testimony is uncontradicted. Even assuming that all the reasons LCDC presented do not qualify as fortuitous events, as contemplated by law, this Court finds that PRHC is estopped from denying that it had granted a waiver of the liquidated damages the latter corporation may collect from the former due to a delay in the construction of any of the buildings.

Courts may rule on causes of action not included in the Complaint, as long as these have been proven during trial without the objection of the opposing party.

PRHC argues that since the parties had already limited the issues to those reflected in their joint stipulation of facts, neither the trial court nor the appellate court has the authority to rule upon issues not included therein. Thus it was wrong for the trial court and the CA to have awarded the amounts of ₱5,529,495.76 representing the remaining balance for Project 3 as well as for the ₱232,367.96 representing the balance for the construction of the drivers' quarters in Project 3. PRHC claims that in the Stipulation of Facts, all the issues regarding Project 3 were already made part of the computation of the balances for the other projects. It thus argues that the computation for the Tektite Building showed that the overpayment for Project 3 in the amount of ₱ 9,531,181.80 was credited as payment for the Tektite Tower Project.[67] It reasons that, considering that it actually made an overpayment for Project 3, it should not be made liable for the remaining balances for Project 3 and the drivers' quarters in Project 3.[68] It is LCDC's position, however,

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[66] TSN, 14 March 2000, at 25-26.

[67] *Rollo* (G.R. No. 165548) at 90.

[68] *Id.* at 91.

that the Stipulation of Facts covers the balances due only for the Tektite Tower Project, Project 1, and Project 2.[69] Since Project 3 was not included in the reconciliation contained in the said stipulation, it maintains that the balance for Project 3 remains at ₱5,529,495.76,[70] and that the balance for the construction of the drivers' quarters in Project 3 remains at ₱232,367.96.

On its part, LCDC disputes the deletion by the CA of the lower court's grant of the alleged ₱7,112,738.82 unpaid balance for the concreting works in the Tektite Building. The CA had ruled that this cause of action was withdrawn by the parties when they did not include it in their Joint Stipulation of Facts. LCDC argues that to the contrary, the silence of the Stipulation of Facts on this matter proves that the claim still stands.[71]

Considering that the unpaid balances for Project 3, its driver's quarters, and the concreting works in the Tektite Building were not covered by the Stipulation of Facts entered into by the parties, we rule that no judicial admission could have been made by LCDC regarding any issue involving the unpaid balances for those pieces of work.

We affirm in this case the doctrine that courts may rule or decide on matters that, although not submitted as issues, were proven during trial. The admission of evidence, presented to support an allegation not submitted as an issue, should be objected to at the time of its presentation by the party to be affected thereby; otherwise, the court may admit the evidence, and the fact that such evidence seeks to prove a matter not included or presented as an issue in the pleadings submitted becomes irrelevant, because of the failure of the appropriate party to object to the presentation.

No objection was raised when LCDC presented evidence to prove the outstanding balances for Project 3, its driver's quarters, and the concreting works in the Tektite Building.

[69] *Id*. at 1072.

[70] *Id*. at 26

[71] *Id*. at 77.

In *Phil. Export and Foreign Loan Guarantee Corp. v. Phil. Infrastructures, et al.*,[72] this Court held:

> It is settled that even if the complaint be defective, but the parties go to trial thereon, and the plaintiff, without objection, introduces sufficient evidence to constitute the particular cause of action which it intended to allege in the original complaint, and the defendant voluntarily produces witnesses to meet the cause of action thus established, an issue is joined as fully and as effectively as if it had been previously joined by the most perfect pleadings. Likewise, when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

Considering the absence of timely and appropriate objections, the trial court did not err in admitting evidence of the unpaid balances for Project 3, its driver's quarters, and the concreting works in the Tektite Building. Furthermore, both the lower and the appellate courts found that the supporting evidence presented by LCDC were sufficient to prove that the claimed amounts were due, but that they remained unpaid.

LCDC should be held liable for the corrective works to redo or repair the defective waterproofing in Project 2.

The waterproofing of Project 2 was not undertaken by LCDC. Instead, Vulchem Corporation (Vulchem), which was recommended by Santos and Abcede, was hired for that task. Vulchem's waterproofing turned out to be defective. In order to correct or repair the defective waterproofing, PRHC had to contract the services of another corporation, which charged it ₱2,006,000.

Denying liability by alleging that PRHC forced it into hiring Vulchem Corporation for the waterproofing works in Project 2, LCDC argues that under Article 1892, an agent is responsible for the acts of the substitute if he was given the power to appoint a substitute. Conversely, if it is the principal and not

[72] G.R. No. 120384, 13 January 2004, 419 SCRA 55.

the agent who appointed the substitute, the agent bears no responsibility for the acts of the sub-agent.[73] The provision reads:

"Art. 1892. The agent may appoint a substitute if the principal has not prohibited him from doing so; but he shall be responsible for the acts of the substitute:

(1) When he was not given the power to appoint one;

(2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent."

LCDC argues that because PRHC, as the principal, had designated Vulchem as sub-agent, LCDC, as the agent, should not be made responsible for the acts of the substitute, even in the instance where the latter were notoriously incompetent.[74]

LCDC's reliance on Art. 1892 is misplaced. The principles of agency are not to be applied to this case, since the legal relationship between PRHC and LCDC was not one of agency, but was rather that between the owner of the project and an independent contractor under a contract of service. Thus, it is the agreement between the parties and not the Civil Code provisions on agency that should be applied to resolve this issue.

Art. XIV of the Project 2 Agreement clearly states that if the contractor sublets any part of the agreement to a third party, who in effect becomes a sub-contractor, the losses or expenses that result from the acts/inactions of the sub-contractor should be for the contractor's account, to wit:

ARTICLE XIV – ASSIGNMENT

This Agreement, and/or any of the payments to be due hereunder shall not be assigned in whole or in part by the CONTRACTOR nor shall any part of the works be sublet by CONTRACTOR without the prior written consent of OWNER, and such consent shall not relieve the CONTRACTOR from full responsibility and liability for the works

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[73] *Rollo* (G.R. No. 167879) at 102.

[74] *Id*. at 100.

hereunder shall not be granted in any event until CONTRACTOR has furnished OWNER with satisfactory evidence that the Sub-Contractor is carrying ample insurance to the same extent and in the same manner as herein provided to be furnished by CONTRACTOR. If the agreement is assigned or any part thereof is sublet, CONTRACTOR shall exonerate, indemnify and save harmless the OWNER from and against any and all losses or expenses caused thereby.[75]

LCDC had every right to reject Vulchem as sub-contractor for the waterproofing work of Project 2 but it did not do so and proceeded to hire the latter. It is not unusual for project owners to recommend sub-contractors, and such recommendations do not diminish the liability of contractors in the presence of an Article XIV-type clause in the construction agreement. The failure of LCDC to ensure that the work of its sub-contractor is satisfactory makes it liable for the expenses PRHC incurred in order to correct the defective works of the sub-contractor. The CA did not err in ruling that the contract itself gave PRHC the authority to recover the expenses for the "re-do" works arising from the defective work of Vulchem.[76]

LCDC is entitled to attorney's fees and the expenses of litigation and costs.

According to the CA, LCDC was not entitled to attorney's fees, because it was not the aggrieved party, but was the one that violated the terms of the construction agreements and should thus be made to pay costs.[77] LCDC claims, on the other hand, that the CA seriously erred in deleting the lower court's award of ₱750,000 attorney's fees and the expenses of litigation in its favor, since this award is justified under the law.[78] To support its claim, LCDC cites Article 2208(5), which provides:

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[75] *Id.* at 441-442.

[76] *Id.* at 164.

[77] *Id.* at 866.

[78] *Id.* at 102.

ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

. . . . . .

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

. . . . . .

Attorney's fees may be awarded when the act or omission of the defendant compelled the plaintiff to incur expenses to protect the latter's interest.[79] In *ABS-CBN Broadcasting Corp. v. CA*,[80] we held thus:

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.

LCDC has failed to establish bad faith on the part of PRHC so as to sustain its position that it is entitled to attorney's fees. Nevertheless, the CA erred in reversing the lower court's Decision granting LCDC's claim for attorney's fees considering that the construction agreements contain a penal clause that deals with the award of attorney's fees, as follows:

In the event the OWNER/CONTRACTOR institutes a judicial proceeding in order to enforce any terms or conditions of this Agreement, the CONTRACTOR/OWNER should it be adjudged liable in whole or in part, shall pay the OWNER/CONTRACTOR reasonable

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[79] *Portes, Sr. v. Arcala,* G.R. No. 145264, 30 August 2005, 468 SCRA 343.

[80] 361 Phil. 499 (1999).

attorney's fees in the amount equivalent to Twenty Percent (20%) of the total amount claimed in addition to all expenses of litigation and costs of the suit.

Equivalent to at least Twenty Percent (20%) of the total amount claimed in addition to all expenses of litigation and costs of the suit.

As long as a stipulation does not contravene the law, morals, and public order, it is binding upon the obligor.[81] Thus, LCDC is entitled to recover attorney's fees. Nevertheless, this Court deems it proper to equitably reduce the stipulated amount. Courts have the power to reduce the amount of attorney's fees when found to be excessive,[82] *viz*:

We affirm the equitable reduction in attorney's fees. These are not an integral part of the cost of borrowing, but arise only when collecting upon the Notes becomes necessary. The purpose of these fees is not to give respondent a larger compensation for the loan than the law already allows, but to protect it against any future loss or damage by being compelled to retain counsel – in-house or not—to institute judicial proceedings for the collection of its credit. Courts have has the power to determine their reasonableness based on *quantum meruit* and to reduce the amount thereof if excessive.[83]

We reverse the appellate court's Decision and reinstate the lower court's award of attorney's fees, but reduce the amount from ₱750,000 to ₱200,000.

WHEREFORE, we *SET ASIDE* the Decision of the Court of Appeals and *RULE* as follows:

I. We find Philippine Realty and Holdings Corporation (PRHC) *LIABLE* to Ley Construction Development Corporation (LCDC) in the amount of ₱64,029,710.22, detailed as follows:

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[81] *Bañas v. Asia Pacific Finance Corporation*, G.R. No. 128703, 18 October 2000, 343 SCRA 527.

[82] *Manila Trading & Supply Co. v. Tamaraw Plantation Co.*, 47 Phil. 513, 524, (1925).

[83] *New Sampaguita Builders Construction v. Philippine National Bank*, G.R. No. 148753, 30 July 2004, 435 SCRA 565.

1. ₱13,251,152.61 as balance yet unpaid by PRHC for Project 2;
2. ₱1,703,955.07 as balance yet unpaid by PRHC for Project 1;
3. ₱5,529,495.76 as balance yet unpaid by PRHC for Project 3;
4. ₱232,367.96 as balance yet unpaid by PRHC for the drivers' quarters for Project 3;
5. ₱36,000,000.00 as agreed upon in the escalation agreement entered into by PRHC's representatives and LCDC for the Tektite Building;
6. ₱7,112,738.82 as balance yet unpaid by PRHC for the concreting works from the ground floor to the fifth floor of the Tektite Building;
7. ₱200,000.00 as LCDC's reduced attorney's fees.

II. Further, we find LCDC *LIABLE* to PRHC in the amount of ₱6,652,947.75 detailed as follows:

1. ₱4,646,947.75 for the overpayment made by PRHC for the Tektite Building;
2. ₱2,006,000.00 for the expenses incurred by PRHC for corrective works to redo/repair the allegedly defective waterproofing construction work done by LCDC in Project 2.

The respective liabilities of the parties as enumerated above (except the ₱200,000.00 attorney's fees) are hereby *SET OFF* against each other, and PRHC is hereby *DIRECTED* to pay LCDC the net amount due, which is ₱57,176,762.47, with legal interest from the date of the filing of Complaint in Civil Case No. 96-160, plus ₱200,000.00 as attorney's fees.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 171628. June 13, 2011]

ARMANDO V. ALANO [Deceased], Substituted by Elena Alano-Torres,* *petitioner, vs.* **PLANTER'S DEVELOPMENT BANK, as Successor-in-Interest of MAUNLAD SAVINGS AND LOAN ASSOCIATION, INC.,**** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTION.— The rule that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court is not without exception. A review of factual issues is allowed when there is a misapprehension of facts or when the inference drawn from the facts is manifestly mistaken. This case falls under exception.

2. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; THE GENERAL RULE THAT A MORTGAGEE NEED NOT LOOK BEYOND THE TITLE DOES NOT APPLY TO BANKS AND OTHER FINANCIAL INSTITUTIONS AS GREATER CARE AND DUE DILIGENCE IS REQUIRED OF THEM.— The general rule that a mortgagee need not look beyond the title does not apply to banks and other financial institutions as greater care and due diligence is required of them. Imbued with public interest, they "are expected to be more cautious than ordinary individuals." Thus, before approving a loan, the standard practice for banks and other financial institutions is to conduct an ocular inspection of the property offered to be mortgaged and verify the genuineness of the title to determine the real owner or owners thereof. Failure to do so makes them mortgagees in bad faith.

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* As per Resolution dated March 9, 2009, *rollo*, p. 438.

** As per Resolution dated February 6, 2008, *rollo*, p. 198.

3. ID.; PROPERTY,OWNERSHIP, AND ITS MODIFICATIONS; CO-OWNERSHIP; A CO-OWNER CAN ALIENATE ONLY HIS *PRO INDIVISO* SHARE IN THE CO-OWNED PROPERTY, AND NOT THE SHARE OF HIS CO-OWNERS.— [W]hile the credit investigator conducted an ocular inspection of the property as well as a "neighborhood checking" and found the subject property occupied by the mortgagor Lydia and her children, he, however, failed to ascertain whether the property was occupied by persons other than the mortgagor. Had he done so, he would have discovered that the subject property is co-owned by petitioner and the heirs of his brother. Since Maunlad Savings and Loan Association, Inc. was remiss in its duty in ascertaining the status of the property to be mortgaged and verifying the owners thereof, it is deemed a mortgagee in bad faith. Consequently, the real estate mortgage executed in its favor is valid only insofar as the share of the mortgagor Lydia in the subject property. We need not belabor that under Article 493 of the Civil Code, a co-owner can alienate only his *pro indiviso* share in the co-owned property, and not the share of his co-owners.

APPEARANCES OF COUNSEL

Quisumbing Fernando and Javellana for petitioner.
*Janda Asia and Associ*ates for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"No one can give what he does not have" (Nemo dat quod non habet).

This Amended Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the June 9, 2005 Decision[2] and

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[1] *Id.* at 199-366, with Annexes "A" to "Z" inclusive.

[2] *Id.* at 220-232; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Josefina Guevara Salonga and Noel G. Tijam.

the February 21, 2006 Resolution[3] of the Court of Appeals (CA) in CA G.R. CV No. 58554.

Factual Antecedents

Petitioner Armando V. Alano and his brother, the late Agapito V. Alano, Jr., inherited from their father a parcel of land located at Gov. Forbes St., Sampaloc, Manila.[4]

On June 30, 1988, petitioner executed a Special Power of Attorney[5] authorizing his brother to sell their property in Manila. From the proceeds of the sale, the brothers purchased on September 22, 1988 a residential house located at No. 60 Encarnacion St., BF Homes, Quezon City.[6] The title of the Quezon City property, however, was not immediately transferred to them because the duplicate and original copies of the title were destroyed by a fire that gutted the Quezon City Hall Building.[7]

On June 27, 1990, Agapito V. Alano, Jr. died leaving behind his wife, Lydia J. Alano (Lydia), and four legitimate children, who adjudicated to themselves the property in Quezon City.[8] Consequently, title to the said property was reconstituted as Transfer Certificate of Title (TCT) No. 18990 and registered solely in the names of Lydia and her four children.[9] This prompted petitioner to execute an Affidavit of Adverse Claim[10] which was annotated on TCT No. 18990.[11] But because of

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[3] *Id.* at 233-237; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Josefina Guevara Salonga and Noel G. Tijam.

[4] *Id.* at 221.

[5] *Id.* at 257-258.

[6] *Id.* at 221.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at 261 & 263.

[11] *Id.* at 222.

the assurance of his nieces that they would put things right, petitioner agreed to delay the filing of a case in court.[12]

Meanwhile, Lydia filed with the Register of Deeds of Quezon City an Affidavit of Cancellation of Adverse Claim,[13] which caused the cancellation of the adverse claim annotated on TCT No. 18990.[14] Thereafter, by virtue of a Deed of Absolute Sale[15] allegedly executed by her children in her favor, TCT No. 18990 was cancelled and a new one, TCT No. 90388, was issued solely in her name.[16]

On February 8, 1994, Slumberworld, Inc., represented by its President, Melecio A. Javier, and Treasurer, Lydia, obtained from Maunlad Savings and Loan Association, Inc. a loan of ₱2.3 million, secured by a Real Estate Mortgage[17] over the property covered by TCT No. 90388.[18]

On April 20, 1994, petitioner filed a Complaint[19] against Lydia, Melecio A. Javier, Maunlad Savings and Loan Association, Inc. and the Register of Deeds of Quezon City before the Regional Trial Court (RTC) of Quezon City, which was raffled to Branch 92. Petitioner sought the cancellation of TCT No. 90388, the issuance of a new title in his name for his one-half share of the Quezon City property, and the nullification of real estate mortgage insofar as his one-half share is concerned.[20]

Defendants Maunlad Savings and Loan Association, Inc. and the Register of Deeds of Quezon City filed their respective

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[12] *Id.*

[13] *Id.* at 262.

[14] *Id.* at 222.

[15] *Id.* at 264-265.

[16] *Id.* at 222.

[17] *Id.* at 268-269.

[18] *Id.* at 222.

[19] *Id.* at 238-246.

[20] *Id.* at 243-244.

Answers.[21] Defendants Lydia and Melecio A. Javier, however, failed to file their respective Answers. Thus, the RTC in an Order[22] dated August 29, 1994 declared them in default.

Ruling of the Regional Trial Court

On September 12, 1996, the RTC rendered its Decision[23] declaring petitioner the owner of one-half of the subject property since an implied trust exists between him and the heirs of his brother.[24] The RTC, however, sustained the validity of the real estate mortgage.[25] According to the RTC, Maunlad Savings and Loan Association, Inc. had the right to rely on the Torrens title as there was no reason for it to doubt the mortgagor's ownership over the subject property.[26] Accordingly, the *fallo* of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. Declaring plaintiff Armando Alano the owner of one-half of the property in question;
>
> 2. Ordering the Register of Deeds of Quezon City to cancel TCT No. 90388 issued in the name of Lydia J. Alano and the corresponding owner's duplicate certificate and to issue a new one in the names of Armando V. Alano, single[,] ½ share pro indiviso and Lydia Alano, widow, ½ share pro indiviso with the corresponding mortgage lien annotation in favor of the Maunlad Savings and Loan [Association,] Inc. upon finality of this decision;
>
> 3. Ordering the defendant Maunlad Savings and Loan [Association,] Inc. to surrender [the] owner's duplicate copy of TCT No. 90388 to the Register of Deeds of Quezon City for cancellation upon finality of this decision;

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[21] Records, pp. 38-39 & 49-52.

[22] *Rollo*, p. 287.

[23] *Id.* at 296-300; penned by Judge Juan Q. Enriquez, Jr.

[24] *Id.* at 298.

[25] *Id.* at 299.

[26] *Id.*

4. Ordering defendants Lydia J. Alano and Melecio Javier to jointly and severally pay the plaintiff the sum of ₱20,000.00 as attorney's fees and to pay the costs of suit.

SO ORDERED.[27]

Dissatisfied, petitioner moved for partial reconsideration[28] but the RTC denied the same in its Order[29] dated February 24, 1997.

Ruling of the Court of Appeals

Petitioner appealed[30] to the CA but to no avail. The CA found Maunlad Savings and Loan Association, Inc. to be a mortgagee in good faith since it took the necessary precautions to ascertain the status of the property sought to be mortgaged as well as the identity of the mortgagor by conducting an ocular inspection of the property and requiring the submission of documents, such as the latest tax receipts and tax clearance.[31] The CA thus disposed of the appeal as follows:

WHEREFORE, premises considered, the appeal is hereby **DISMISSED** for lack of merit. The September 12, 1996 Decision of the Regional Trial Court of Quezon City, Branch 92, is hereby **AFFIRMED.**

SO ORDERED.[32]

Petitioner sought reconsideration[33] but the CA denied the same in its Resolution[34] dated February 21, 2006.

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[27] *Id.* at 299-300.

[28] *Id.* at 301-306.

[29] *Id.* at 312.

[30] *Id.* at 313.

[31] *Id.* at 228-230.

[32] *Id.* at 231-232.

[33] CA *rollo,* pp. 84-89.

[34] *Rollo*, pp. 233-237.

Issues

Hence, the present recourse, petitioner raising the following issues:

I. WHETHER THE REAL ESTATE MORTGAGE EXECUTED BY DEFENDANT LYDIA J. ALANO WAS VALID AND BINDING WITH RESPECT TO PETITIONER'S CO-OWNER'S SHARE IN THE SUBJECT PROPERTY.

II. WHETHER DEFENDANT MAUNLAD SAVINGS AND LOAN ASSOCIATION, INC. WAS AN INNOCENT MORTGAGEE IN GOOD FAITH.

III. WHETHER PETITIONER MAY RIGHTFULLY BE MADE TO SUFFER THE CONSEQUENCES OF DEFENDANT LYDIA J. ALANO'S WRONGFUL ACT OF MORTGAGING THE SUBJECT PROPERTY.[35]

Petitioner's Arguments

Petitioner insists that Maunlad Savings and Loan Association, Inc. is not a mortgagee in good faith as it failed to exercise due diligence in inspecting and ascertaining the status of the mortgaged property. Petitioner calls attention to the testimony of Credit Investigator Carlos S. Mañosca, who admitted that when he inspected the mortgaged property, he only checked the finishing of the house and the number of rooms.[36] Hence, he failed to see petitioner's apartment at the back portion of the property.[37] Moreover, the fact that there was an adverse claim annotated on the previous title of the property should have alerted Maunlad Savings and Loan Association, Inc. to conduct further investigation to verify the ownership of the mortgaged property.[38] All these prove that Maunlad Savings and Loan Association, Inc. was not a mortgagee in good faith. Corollarily, pursuant to Articles

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[35] *Id.* at 404.

[36] *Id.* at 407-408.

[37] *Id.* at 408.

[38] *Id.* at 410-412.

2085[39] and 493[40] of the Civil Code, the real estate mortgage executed by Lydia is void insofar as petitioner's share in the mortgaged property is concerned.[41]

Respondent's Arguments

Respondent contends that the issue of whether Maunlad Savings and Loan Association, Inc. is a mortgagee in good faith is a question of fact, which is beyond the jurisdiction of this Court.[42] As to petitioner's allegation that there was a separate apartment at the back portion of the property, respondent claims that this was never raised during the trial or on appeal.[43] Hence, it is barred by estoppel.[44]

Respondent further claims that Maunlad Savings and Loan Association, Inc. has no obligation to look beyond the title considering that there was no adverse claim annotated on TCT

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[39] Article 2085. The following requisites are essential to the contracts of pledge and mortgage:

(1) That they be constituted to secure the fulfillment of a principal obligation;

(2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;

(3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

[40] Article 493. Each co-owner shall have full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

[41] *Rollo*, pp. 405-406.

[42] *Id.* at 419.

[43] *Id.* at 427.

[44] *Id.*

No. 90388 covering the mortgaged property.[45] And since the mortgaged property was occupied by the mortgagor Lydia, there was also no need for Maunlad Savings and Loan Association, Inc. to verify the extent of her possessory rights.[46]

Our Ruling

The petition has merit.

The instant case is an exception to the rule that factual issues may not be raised in a petition under Rule 45 of the Rules of Court.

The rule that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court is not without exception. A review of factual issues is allowed when there is a misapprehension of facts or when the inference drawn from the facts is manifestly mistaken.[47] This case falls under exception.

Maunlad Savings and Loan Association, Inc. is not a mortgagee in good faith.

The general rule that a mortgagee need not look beyond the title does not apply to banks and other financial institutions as greater care and due diligence is required of them.[48] Imbued with public interest, they "are expected to be more cautious than ordinary individuals."[49] Thus, before approving a loan, the standard practice for banks and other financial institutions is to conduct an ocular inspection of the property offered to be

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[45] *Id.* at 423-426.

[46] *Id.* at 421-422.

[47] *Hi-Cement Corporation v. Insular Bank of Asia and America,* G.R. Nos. 132403 & 132419, September 28, 2007, 534 SCRA 269, 278.

[48] *Metropolitan Bank and Trust Co., v. Pascual,* G.R. No. 163744, February 29, 2008, 547 SCRA 246, 261.

[49] *Philippine National Bank v. Corpuz*, G.R. No. 180945, February 12, 2010, 612 SCRA 493, 496.

mortgaged and verify the genuineness of the title to determine the real owner or owners thereof.[50] Failure to do so makes them mortgagees in bad faith.

In this case, petitioner contends that Maunlad Savings and Loan Association, Inc. failed to exercise due diligence in inspecting and ascertaining the status of the mortgaged property because during the ocular inspection, the credit investigator failed to ascertain the actual occupants of the subject property and to discover petitioner's apartment at the back portion of the subject property.[51]

Indeed, the existence of petitioner's apartment at the back portion of the subject property was never brought up before the trial court and the appellate court. Nevertheless, we find petitioner's allegation of negligence substantiated by the testimony of the credit investigator, to wit:

ATTY. JAVELLANA

x x x x x x x x x

Q - You said also that you inspected the property that was offered as collateral which is a house and lot located at Encarnacion Street, BF Homes. Did you enter the property?

A - Yes, ma'am.

Q - And then you found out that the property was the home of Mrs. Lydia Alano and her children?

A - Yes, ma'am.

ATTY. JAVELLANA

Q - And you also saw that her brother-in-law Armando Alano was also residing there?

A - I do not recall if he was there, ma'am.

Q - You did not see him there?

A - When we went there ma'am, we only checked on the finishing of the house and also checked as to the number of bedrooms and number of CR, ma'am.

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[50] *Id.*

[51] *Rollo,* pp. 406-409.

Q - You did not verify who were actually residing there?
A - No, ma'am.

Q - You said that you also conducted a neighborhood checking, did you ask the neighbor who were residing in that property?
A - Yes, and we were told that Lydia Alano was the one residing there, ma'am.

Q - You did not verify from them as to whether anybody else was residing there?
A - No, ma'am.[52] (Emphasis supplied).

Clearly, while the credit investigator conducted an ocular inspection of the property as well as a "neighborhood checking" and found the subject property occupied by the mortgagor Lydia and her children,[53] he, however, failed to ascertain whether the property was occupied by persons other than the mortgagor. Had he done so, he would have discovered that the subject property is co-owned by petitioner and the heirs of his brother. Since Maunlad Savings and Loan Association, Inc. was remiss in its duty in ascertaining the status of the property to be mortgaged and verifying the ownership thereof, it is deemed a mortgagee in bad faith. Consequently, the real estate mortgage executed in its favor is valid only insofar as the share of the mortgagor Lydia in the subject property. We need not belabor that under Article 493[54] of the Civil Code, a co-owner can alienate only his *pro indiviso* share in the co-owned property, and not the share of his co-owners.

WHEREFORE, the petition is hereby *GRANTED*. The assailed June 9, 2005 Decision and the February 21, 2006,

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[52] TSN, January 11, 1995, Cross-Examination of Carlos Mañosca, pp. 23-25.

[53] *Rollo,* p. 229.

[54] Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

Resolution of the Court of Appeals in CA G.R. CV No. 58554 are *SET ASIDE*. The September 12, 1996 Decision of the Regional Trial Court of Quezon City, Branch 92, is hereby *MODIFIED* by declaring the mortgage in favor of respondent Maunlad Savings and Loan Association, Inc. *NULL* and *VOID* insofar as the ½ share of petitioner in the subject property is concerned, and ordering the annotation of the mortgage lien in favor of respondent only on the ½ share of Lydia J. Alano in the subject property.

SO ORDERED.

Velasco, Jr. (Acting Chairperson), Leonardo-de Castro, Bersamin,[***] and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 187083. June 13, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDUARDO DAHILIG *y* AGARAN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED. — Well-settled is the rule that the assessment of the credibility of witnesses and their testimonies is best undertaken by a trial court, whose findings are binding and conclusive on appellate courts. Matters affecting credibility are best left to the trial court because of its unique opportunity to observe the elusive and

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[***] In lieu of Chief Justice Renato C. Corona, per Special Order No. 1000 dated June 8, 2011.

incommunicable evidence of that witness' deportment on the stand while testifying, an opportunity denied to the appellate courts which usually rely on the cold pages of the silent records of the case.

2. CRIMINAL LAW; RAPE; SWEETHEART DEFENSE; NOT APPRECIATED ABSENT SUBSTANTIAL EVIDENCE THEREOF. — The sweetheart defense proffered by the accused likewise deserves scant consideration. For the said theory to prosper, the existence of the supposed relationship must be proven by convincing substantial evidence. Failure to adduce such evidence renders his claim to be self-serving and of no probative value. For the satisfaction of the Court, there should be a corroboration by their common friends or, if none, a substantiation by tokens of such a relationship such as love letters, gifts, pictures and the like.

3. ID.; ID.; WHERE RAPE UNDER THE PENAL CODE OR CHILD ABUSE UNDER RA 7610 WERE BOTH APPLICABLE FOR A SINGLE CRIMINAL ACT, ACCUSED MAY BE CHARGED WITH EITHER CRIME BUT NOT BOTH. — The question now is what crime has been committed? Is it Rape (Violation of Article 266-A par. 1 in relation to Article 266-B, 1st par. of the Revised Penal Code, as amended by R.A. No. 8353), or is it Child Abuse, defined and penalized by Sec. 5, (b), R.A. No. 7610? As elucidated by the RTC and the CA in their respective decisions, all the elements of both crimes are present in this case. The case of *People v. Abay*, however, is enlightening and instructional on this issue. It was stated in that case that if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of R.A. No. 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. x x x Accordingly, the accused can indeed be charged with either Rape or Child Abuse and be convicted therefor. Considering, however, that the information correctly charged the accused with rape in violation of Article 266-A par. 1 in relation to Article 266-B, 1st par. of the Revised Penal Code, as amended by R.A. No. 8353, and that he was convicted therefor, the CA should have merely affirmed the conviction.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the October 29, 2008 Decision[1] of the Court of Appeals *(CA)* in CA G.R. CR-H.C. No. 01488, which modified the July 19, 2005 Decision[2] of the Regional Trial Court, Branch 159, Pasig City *(RTC)*, in Criminal Case No. 121472-H, by finding the accused guilty of child abuse, defined and penalized in Sec. 5(b) of Republic Act *(R.A.)* No. 7610, instead of the crime of rape.

The Information, dated August 6, 2001, indicting the accused for rape reads:

Criminal Case No. 121472-H

The undersigned 2nd Assistant Provincial Prosecutor accuses **EDUARDO DAHILIG *Y* AGARAN**, of the crime of Rape (Violation of Article 266-A par. 1 in relation to Article 266-B, 1st par. of the Revised Penal Code, as amended by RA 8353 and in further relation to Section 5(a) of RA 8369), committed as follows:

> That on or about the 17th day of December 2000, in the municipality of San Juan, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, by means of force and intimidation, and taking advantage of night time and in the dwelling of complainant, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge with one AAA,[3] sixteen (16) year old minor

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[1] *Rollo*, pp. 3-14.

[2] CA *rollo*, pp. 16-25.

[3] The name of the victim, her personal circumstances and other information which tend to establish or compromise her identity are not disclosed to protect her privacy. Fictitious initials are used instead. (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419; *People v. Gardon*, G.R. No. 169872, September 27, 2006, 503 SCRA 757).

at the time of the commission of the offense, against her will and consent.

CONTRARY TO LAW.[4]

[Underscoring supplied]

During the trial, the prosecution presented AAA, the private complainant; and Police Senior Inspector Bonnie Y. Chua, the medico-legal officer, as its witnesses. The defense, on the other hand, presented the accused himself, Eduardo Dahilig *(accused),* as its sole witness.

Accused and AAA were both employed as house helpers by a certain Karen Gomez. AAA was only sixteen (16) years old at the time of the commission of the act, having been born on August 17, 1984. Their respective versions of the incident, as expected, were diametrically opposed.

Version of the Prosecution

On December 17, 2000, at around 4:00 o'clock in the morning, AAA was lying in bed with her fellow helper, Roxanne. As it was hot and humid that morning, AAA moved to the floor. While on the floor, she felt someone touching her. At that instant, she found out it was the accused. She tried to resist his advances, but he succeeded in pinning her down with his weight and he told her not to move. She shouted for help from Roxanne but to no avail because the latter was sound asleep. Eventually, the accused was able to remove her shirt, shorts and undergarments and afterwards was able to get on top of her. Then, he forced his penis into her vagina which caused her pain. After he was done with her, he returned to his quarters on the third floor.

The following day, AAA angrily confronted the accused and asked him why he did such an act against her. He reacted by getting all his belongings and immediately left their employer's house. AAA then informed her employer what the accused did to her. Their employer immediately assisted her in filing a

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[4] CA *rollo*, pp. 8-9.

case against him. This caused the arrest of the accused and, at this point, he offered to marry her. His offer, however, was rejected because AAA was determined to seek justice for the ordeal she suffered in his hands.

A few days after the incident, AAA was medically examined. The medico-legal examination disclosed that there was a healing laceration in her hymen although no spermatozoa was found. It was also stated in the medico-legal report that AAA could have lost her virginity on or about December 17, 2000.

Version of the Accused

Accused denied having raped AAA. According to him, the sexual congress that transpired between them was consensual as she was then his girlfriend. He related that he came to know AAA sometime in July 2000 and after a month of courtship, they became sweethearts. In fact, on November 10, 2000, at around 9:00 o'clock in the evening, she went up to the floor where he was sleeping and had sex with him. Afterwards, she returned to her room which was located on the second floor. It was also in the same month that his former girlfriend, Roxanne, arrived and demanded that he choose between her and AAA.

On the day of the incident, he was very tired and decided to lie down on the floor where AAA and Roxanne were sleeping. AAA noticed him and moved beside him. At around 4:00 o'clock in the morning, they made love. He noticed during that time Roxanne was awake because her eyes were open. When their employer arrived at around 5:00 o'clock in the morning, she asked him to go upstairs to his room.

At around 8:00 o'clock of that same morning, the accused was fetched by her sister to attend a birthday party. When he returned at around 5:00 o'clock in the afternoon, AAA and Roxanne were quarrelling about their love making. The latter threatened to report the incident to their employer. He tried to ease the tension between the two but both refused to be pacified. In fact, Roxanne threatened to stab both of them. This prompted him to flee by taking his personal belongings and leaving their

employer's premises. AAA wanted to join him but he told her that he would just return for her.

Accused went to Bulacan and stayed there for two (2) months. He then proceeded to Ilocos where he requested his grandfather and mother to fetch AAA because he wanted to marry her. She, however, refused to go with the two insisting that he personally fetch her.

Three weeks later, the accused returned to Manila together with his mother and grandfather to fetch AAA but again they failed. Instead, their employer sought the help of the police who invited him to the station to discuss the intended marriage. He was given two weeks to settle this matter. AAA said that she needed to call her parents first. In the meantime, he was allowed to go home to Ilocos. Subsequently, he received a call from their employer, telling him that her parents had already arrived in Manila. He could not, however, go to Manila because he had no money for transportation.

Sometime thereafter, he received a subpoena from the Office of the Prosecutor informing him that he had been charged with the crime of rape against AAA. For lack of funds, he was also not able to attend the hearings at the prosecutors' office either. Finally, after several months, he was arrested by virtue of a warrant of arrest issued against him.

Ruling of the Regional Trial Court

In convicting the accused, the RTC reasoned out that, in its observation, AAA never wavered in her assertion that the accused sexually molested her against her will. According to the trial court, her narration bore the earmarks of truth and was consistent throughout. As to his "sweetheart defense," the accused failed to prove it by clear and convincing evidence. What he laid before the court for its consideration was a mere self-serving claim of their relationship. It fell short of the rule that a sweetheart defense cannot be given credence in the absence of corroborative proof like love notes, mementos, and pictures, to name a few. Bolstering AAA's story was the medico-legal finding that there was a deep-healing laceration which was consistent with the

charge that she had been raped. Thus, the dispositive portion of the RTC decision reads:

> WHEREFORE, in view of the foregoing, the Court finds the accused **EDUARDO DAHILIG *Y* AGARAN GUILTY** beyond reasonable doubt for the crime of Rape (Violation of Article 266-A par. 1 in rel. to Article 266-B, 1st par. of the Revised Penal Code, as amended by RA 8353 and in further relation to Section 5(a) of R.A. No. 8369) and the accused is hereby sentenced to suffer imprisonment of ***reclusion perpetua.***
>
> Accused **EDUARDO DAHILIG *Y* AGARAN** is hereby adjudged to pay **AAA** the amount of **FIFTY THOUSAND PESOS** (₱50,000.00), as moral damages and **FIFTY THOUSAND PESOS** (₱50,000.00), as civil indemnity.
>
> SO ORDERED.[5] [Underscoring supplied]

Ruling of the Court of Appeals

On appeal, the CA affirmed the findings of fact of the RTC but clarified that the crime charged should have been "Child Abuse" as defined and penalized in Sec. 5 (b) of R.A. No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act." Its conclusion was based on the fact that the complainant was a minor, being 16 years of age at the time of the commission of the offense and, as such, was a child subject of sexual abuse. R.A. No. 7610 defines children as persons below eighteen years of age or those unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation, or discrimination because of her age. Considering that AAA was 16 years old at the time of the commission of the crime, having been born on August 17, 1984 and the accused had admitted having sexual intercourse with her, all the elements of child abuse were present. Thus, the decretal portion of the CA decision reads:

> WHEREFORE, the **DECISION DATED JULY 19, 2005** is **MODIFIED,** finding **EDUARDO DAHILIG *Y* AGARAN** guilty of child abuse as defined and penalized by Sec. 5, (b), Republic Act No. 7610,

[5] *Id.* at 24-25.

and, accordingly, sentencing him to suffer the indeterminate penalty of 11 years of *prision mayor*, as minimum, to 17 years, 4 months and 1 day of *reclusion temporal*, as maximum; and to pay to AAA ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity.

The total period of the preventive detention of the accused shall be credited to him provided he has satisfied the conditions imposed in Art. 29, *Revised Penal Code*, as amended.

SO ORDERED.[6] [Underscoring supplied]

In this forum, both the prosecution and the accused opted not to file any supplemental briefs and manifested that they were adopting their arguments in their respective briefs filed before the CA. In his Appellant's Brief, the accused presented the following:

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE TESTIMONIES OF THE PROSECUTION'S WITNESSES.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[7]

In advocacy of his position, the accused argues that the testimony of AAA was beclouded with inconsistencies and implausibility. He goes on to say that it was highly improbable for their co-worker, Roxanne, not to have been awakened despite AAA's shouts. He further argues that if the sex was not consensual, he would not have bothered removing her clothes considering that during the alleged time of commission, as recounted by AAA, she was shouting and struggling. With respect to the medico-legal's finding on forcible intercourse, it was not

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[6] *Rollo*, p. 13.

[7] CA *rollo*, p. 38.

conclusive because he precisely admitted having consensual sex with her.

The accused insists that he and AAA were sweethearts and the sexual congress that took place between them on the evening of December 17, 2000 was but the result of their love for one another. Roxanne's threat to stab him with a knife and to report the love making that transpired the previous night, was actually the result of jealousy since she was his ex-girlfriend. This forced him to leave his employer's house. He further averred that the filing of the case was but an afterthought by AAA on her mistaken belief that he had abandoned her.

The Court finds no merit in the appeal.

Well-settled is the rule that the assessment of the credibility of witnesses and their testimonies is best undertaken by a trial court, whose findings are binding and conclusive on appellate courts.[8] Matters affecting credibility are best left to the trial court because of its unique opportunity to observe the elusive and incommunicable evidence of that witness' deportment on the stand while testifying, an opportunity denied to the appellate courts which usually rely on the cold pages of the silent records of the case.[9]

In this case, the trial court observed that AAA never wavered in her assertion that she was molested by the accused. It even further wrote that "her narrations palpably bear the earmarks of truth and are in accord with the material points involved."[10]

There is no dispute that the accused had sexual intercourse with AAA, a fact which he clearly acknowledged. Contrary to his claim, however, the act was not consensual as proven by the convincing testimony of AAA who replied as follows:

Q: Let's start from the beginning Miss witness. You said that you went down to the floor from the bed?
A: Yes, ma'am.

[8] *People v. Dimacuha*, 467 Phil. 342, 349 (2004).

[9] *People v. Del Mundo, Jr.*, 408 Phil. 118, 129 (2001).

[10] CA *rollo*, p. 22.

Q: Was there anybody in the floor when you went down?
A: None.

Q: When you went down and there was no person there in the floor, what did you do?
A: I continued sleeping on the floor.

Q: Were you awakened by anything while you were sleeping on the floor?
A: Yes ma'am.

Q: What awakened you?
A: I felt that somebody was lying beside me on the floor.

Q: What was this person doing, if any?
A: "*Pinaghihipuan po ako*."

x x x x x x x x x

Q: What did you do when you were awakened when you felt that somebody was touching your breast, your face, and your legs?
A: I struggled.[11]

x x x x x x x x x

Q: When you were undressed, what did the accused do?
A: He kissed me on the face and on my lips.

Q: And while he was doing that, what were you doing?
A: I was resisting him ma'am.

Q: What happened after that?
A: He inserted his penis in my vagina.

Q: While he was inserting his organ in your vagina, what were you doing?
A: I was pleading to him and begging him not continue.

Q: What was the position of your hands at that time.
A: When he was inserting his organ to my vagina, he was holding my both hands very tightly.[12]

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[11] TSN, August 27, 2002, pp. 9-10.

[12] TSN, August 12, 2003, p. 4.

Moreover, the accused argues that AAA should not be believed because her narration of facts was inconsistent and highly improbable. The points he has raised, however, have no controlling significance and do not seriously affect the findings of the courts below.

The fact that Roxanne was not awakened by the cries for help of AAA does not negate her categorical and consistent assertion that the accused forcibly defiled her. It is not unnatural that some persons are simply deep sleepers who cannot easily be awakened even by loud noises.

The sweetheart defense proffered by the accused likewise deserves scant consideration. For the said theory to prosper, the existence of the supposed relationship must be proven by convincing substantial evidence. Failure to adduce such evidence renders his claim to be self-serving and of no probative value. For the satisfaction of the Court, there should be a corroboration by their common friends or, if none, a substantiation by tokens of such a relationship such as love letters, gifts, pictures and the like.[13]

Clearly, the accused sexually abused AAA.

The question now is what crime has been committed? Is it Rape (Violation of Article 266-A par. 1 in relation to Article 266-B, 1st par. of the Revised Penal Code, as amended by R.A. No. 8353), or is it Child Abuse, defined and penalized by Sec. 5, (b), R.A. No. 7610?

As elucidated by the RTC and the CA in their respective decisions, all the elements of both crimes are present in this case. The case of *People v. Abay*,[14] however, is enlightening and instructional on this issue. It was stated in that case that if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of R.A. No. 7610 or rape under Article 266-A (except paragraph 1[d]) of the

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[13] *People v. Madsali,* G.R. No. 179570, February 4, 2010, 611 SCRA 596, 609.

[14] G.R. No. 177752, February 24, 2009**,** 580 SCRA 235.

Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced.[15] A person cannot be subjected twice to criminal liability for a single criminal act.[16] Specifically, *Abay* reads:

> Under Section 5(b), Article III of RA 7610 in relation to RA 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A(1)(d) of the Revised Penal Code and penalized with *reclusion perpetua*. On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5(b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law.
>
> In this case, the victim was more than 12 years old when the crime was committed against her. The Information against appellant stated that AAA was 13 years old at the time of the incident. Therefore, appellant may be prosecuted either for violation of Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. While the Information may have alleged the elements of both crimes, the prosecution's evidence only established that appellant sexually violated the person of AAA through force and intimidation by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Thus, rape was established.

Accordingly, the accused can indeed be charged with either Rape or Child Abuse and be convicted therefor. Considering,

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[15] *People v. Optana*, 404 Phil. 316, 351 (2001).

[16] CONSTITUTION, Art. III, Sec. 21 which provides: Section 21. No person shall be put twice in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

however, that the information correctly charged the accused with rape in violation of Article 266-A par. 1 in relation to Article 266-B, 1st par. of the Revised Penal Code, as amended by R.A. No. 8353, and that he was convicted therefor, the CA should have merely affirmed the conviction.

For said reason, the Court sets aside the October 29, 2008 CA decision and reinstates the July 19, 2005 RTC Decision. In line with prevailing jurisprudence, however, the accused should also be made to pay the victim exemplary damages in the amount of ₱30,000.00.[17]

WHEREFORE, the October 29, 2008 Decision of the Court of Appeals is *SET ASIDE* and the July 19, 2005 Decision of the Regional Trial Court is *REINSTATED* with *MODIFICATION* in that the accused is also ordered to pay AAA the amount of ₱30,000.00 as exemplary damages.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Peralta,* and *Abad, JJ.,* concur.

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[17] *People v. Antonio Otos,* G.R. No. 189821, March 23, 2011; *People v. Aguilar,* G.R. No. 185206, August 25, 2010, 629 SCRA 437; and *People v. Macapanas,* G.R. No. 187049, May 4, 2010, 620 SCRA 54.

[*] Designated as acting member of the Second Division per Special Order No. 1006 dated June 10, 2011.

THIRD DIVISION

[G.R. No. 191065. June 13, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JONIE DOMINGUEZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; NOT NEGATED BY ABSENCE OF LACERATION IN HYMEN. — The absence of a laceration in BBB's hymen does not overturn the testimonies of the child-victims. As the Court held in *People v. Gabayron*: Accused-appellant draws attention to the fact that based on the medico-legal findings, there is no showing that his daughter's hymen was penetrated, nor there was any evidence of injuries inflicted. However, jurisprudence is well-settled to the effect that for rape to be consummated, rupture of the hymen is not necessary, nor it is necessary that the vagina sustained a laceration especially if the complainant is a young girl. ... The fact that there was no deep penetration of the victim's vagina and that her hymen was intact does not negate rape, since this crime is committed even with the slightest penetration of a woman's sex organ. **Presence of a laceration in the vagina is not (sic) essential prerequisite to prove that a victim has been raped.** Research in medicine even points out that negative findings are of no significance, since the hymen may not be torn despite repeated coitus. In fact, many cases of pregnancy have been reported in women with unruptured hymen.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF YOUNG RAPE VICTIM, UPHELD. — We find AAA's testimony credible and disregard the accused's attack on the same. x x x It should be pointed out that she was consistent and unwavering in her claim that the accused inserted his two fingers into her organ on two occasions. The trial court observed AAA's consistency in her testimony and ruled that she was a credible witness. We respect the trial court's ruling on this matter. This Court recognizes that: Ample margin of error and understanding is accorded to young witnesses who, much more than adults, would naturally be gripped with tension

due to the novelty of the experience of testifying before a court. We have reviewed the records and find no cogent reason to disturb the conviction. A reading of the TSN of the hearing of the case convinces us that the CA did not commit any reversible error. The victims were still minors at the time they testified. Nevertheless, they were able to narrate the incidents, albeit not exactly with the same coherence as a fully capacitated adult witness would. Leeway should be given to witnesses who are minors, especially when they are relating past incidents of abuse. x x x We find that AAA and BBB were able to candidly answer the questions propounded to them during the examination in court and to communicate the ordeal they suffered in the hands of the accused. They were credible witnesses. The legal doctrine that the assessment of the credibility of witnesses is left to the judgment of the trial court is well-established. Its findings of facts, when affirmed by the Court of Appeals, are deemed conclusive on this Court. In this case, both the trial court and the Court of Appeals found the prosecution witnesses credible.

3. ID.; ID.; DENIAL AND ALIBI; BELIED BY CONTRADICTING STATEMENTS OF ACCUSED. — Both the trial court and the CA found the defenses of denial and alibi incredible. The testimony of the accused was riddled with obvious inconsistencies. He denied knowing the victims, but eventually identified AAA as his grandniece. His own testimony contradicted his alibi, since he testified that from 2000 to 2002, he was residing in his brother's house. This was where one of the rape incidents happened, and was even near the house of the victims. On this point, we have stated previously: To establish alibi, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime.Physical impossibility "refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places."

4. CRIMINAL LAW; RAPE; ELEMENTS; IN CASE AT BAR, INTIMIDATION TOOK THE FORM OF THREATS AND FURTHER, RAPE WAS COMMITTED AGAINST MINORS UNDER THE AGE OF 12. — [T]he prosecution was able to show the existence of the elements of rape under the amended

Revised Penal Code, effectuated by R.A. No. 8353, or the Anti-Rape Law of 1997, which states: Art. 266-A. Rape: When and how committed Rape is committed: 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat, or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. Before and after the violations, the intimidation took the form of threats that the victims' family would be killed by the accused. The accused also employed trickery and took advantage of his authority over his grandnieces. Under these circumstances, the accused was able to have carnal knowledge of BBB and commit a series of sexual assaults against both her and AAA. The two incidents of rape against AAA happened before she reached 12 years of age, she being 9 and 10 then. For those incidents, proof of threats, force or intimidation, is not necessary.

5. ID.; ID.; AGGRAVATING CIRCUMSTANCES; RELATIONSHIP TO THE VICTIMS; RELATIVE WITHIN THE FOURTH CIVIL DEGREE WILL NOT QUALIFY THE CRIME; PROPER CIVIL INDEMNITY FOR SIMPLE RAPES COMMITTED. — [T]he accused's relationship to the victims cannot be considered as an aggravating circumstance. For relationship to aggravate or qualify the crime of rape committed against a minor, the accused must be a relative of the victim within the third civil degree. As a brother of the victim's paternal grandmother, he is but a relative within the fourth civil degree. This relationship cannot qualify the crime as to merit the punishment of *reclusion perpetua* to death under Article 266-B of the Revised Penal Code as amended. Thus, the rape of BBB by means of carnal knowledge was simple rape, and the amount of civil indemnity should be decreased from ₱75,000 to ₱50,000. With respect to the manner of rape committed against AAA twice and against BBB six times, which was rape by digital insertion, jurisprudence

from 2001 up to the present yields the information that the prevailing amount awarded as civil indemnity to victims of simple rape committed by means other than penile insertion is ₱30,000. We adhere to these precedents.

6. ID.; ID.; EXEMPLARY DAMAGES; PROPER WHERE THE CIRCUMSTANCES SHOW A HIGHLY REPREHENSIBLE CONDUCT. — An award of exemplary damages to AAA and BBB for all the instances of rape committed by the accused against them is also warranted. In *People v. Alfredo,* the Court reiterated an earlier decision held "that exemplary damages may be awarded not only in the presence of an aggravating circumstance, but also where the circumstances of the case show a highly reprehensible conduct." In the present case, the circumstances show the higher degree of perversity of the accused. Instead of showing any remorse in abusing children of tender age, he repeatedly committed the crime against the victims. Worse, he even degraded them before other people by making fun of the fact that their private parts were already non-virginal, something that society sees as outrageous and uncommon for their age. Surely, only a person who is outrageously perverse can brag about his vulgarities to others with seeming impunity. These are conducts and dispositions that are abhorrent to the norms of a civilized society and should be curtailed and discouraged. We apply the Court's rationale in *People v. Rayos,* wherein we held that "Article 2229 of the Civil Code sanctions the grant of exemplary or correction damages in order to deter the commission of similar acts in the future and to allow the courts to mould behaviour that can have grave and deleterious consequences to society." In *People v. Alfredo,* the Court clarified that the basis of awarding exemplary damages on account of a crime is not exclusively Article 2230 of the Civil Code, which provides that "*in criminal offenses, exemplary damages as a part of civil liability may be imposed when the crime was committed with one or more aggravating circumstances.*" x x x The records reveal the accused's perversity and moral corruption, which should not be replicated in our society. To deter such behavior, exemplary damages must be imposed on the accused as a warning to those persons who are similarly disposed.

7. ID.; ID.; RAPE BY SEXUAL ASSAULT AGGRAVATED BY THE USE OF KNIFE; PROPER MAXIMUM PENALTY AND

MINIMUM PENALTY APPLYING THE INDETERMINATE SENTENCE LAW. — Regarding the penalty of imprisonment, Article 266-B of the Revised Penal Code, as amended, reads: Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*. Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *prision mayor* to *reclusion temporal*. [I]n Criminal Case No. 02-583, for rape by sexual assault aggravated by the use of a knife. x x x We impose fifteen (15) years and four (4) months of *reclusion temporal*. As to the minimum penalty required by the Indeterminate Sentence Law, the RTC's Decision was appropriate. Article 61 paragraph 2 of the Revised Penal Code states that the penalty next lower in degree to a prescribed penalty of one or more divisible penalties imposed to their full extent is that immediately following the lesser of the penalties. The minimum of the penalty to be imposed is to be taken from within the entire period of *prision correccional*, or six (6) months and one (1) day to six (6) years. Considering the abhorrent character of the crime committed and the innocence of the victim in Criminal Case No. 02-583, we peg the minimum penalty at six (6) years of *prision correccional*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

SERENO, *J.*:

The appeal before us assails the 20 August 2009 Decision of the Court of Appeals (CA) in CA-G.R. CR HC No. 03130[1] affirming the conviction of Appellant Jonie Dominguez[2] for eight counts of the crime of rape.

[1] Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Arturo G. Tayag and Michael P. Elbinias.

[2] The accused signed as "Diony Dominguez" in the RTC Decision.

The present appeal stems from nine (9) criminal Informations filed with the Regional Trial Court, Branch 65, Bulan, Sorsogon, docketed as Criminal Case Nos. 02-582 to 02-590. In the Informations, Jonie Dominguez was accused of committing multiple counts of the crime of rape — under Republic Act (R.A.) No. 8353 in relation to R.A. No. 7610 — against two minor female relatives, hereinafter called AAA and BBB.

The aggravating circumstance of relationship was also alleged in the Informations — the accused was allegedly the victims' "grandfather."[3] In Criminal Case No. 02-583, the Information alleged that in committing the crime, the accused was armed with a knife — an aggravating circumstance.

AAA was allegedly raped twice: first in 2001 when she was only nine years old, and second on 12 July 2002. The first instance of rape was allegedly done by the accused's insertion of his two fingers into AAA's sex organ under the circumstance of intimidation with a knife,[4] described in the Information[5] docketed as Criminal Case No. 02-583, as follows:

> That sometimes (*sic*) in the year 2001, at Barangay XXX, municipality of YYY, province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, while armed with a knife, taking advantage of the youthfulness of the victim and his moral ascendancy over her, with lewd designs, did then and there, willfully, unlawfully and feloniously inserted his two (2) fingers to the sex organ of AAA, a minor, 9 years of age, against her will and without her consent, to her damage and prejudice.
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> The generic aggravating circumstance of relationship is present considering that the accused is the grandfather of the victim being the brother of the mother of the victim's father.

The second instance of rape was allegedly committed by the accused by inserting his fingers into AAA's vagina and

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[3] The proper nomenclature is "granduncle" instead of "grandfather."

[4] Records (Criminal Case 02-583) at 1.

[5] *Id.*

having carnal knowledge of her afterwards. The accused did not use a deadly weapon, but was able to perpetrate the crime through threats and the use of moral ascendancy over AAA.[6] The Information, docketed as 02-582, reads:

> That on or about July 12, 2002, in the afternoon, at Barangay XXX, municipality of YYY, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, taking advantage of the youthfulness of the victim and his moral ascendancy over her, did then and there, willfully, unlawfully and feloniously inserted his fingers to the sex organ of victim and then have carnal knowledge of the victim, AAA, a minor, 10 years of age, against her will and without her consent, to her damage and prejudice.
>
> The generic aggravating circumstance of relationship is present considering that the accused is the grandfather of the victim being the brother of the mother of the victim's father.

BBB, on the other hand, was allegedly raped seven times: first on 15 June 2000 when she was 12 years old; and again on 20 April 2001, 1 June 2001, 13 April 2001; and finally on 2, 8, and 12 June 2002. The first instance of rape was allegedly by carnal knowledge through force, violence and intimidation, and moral ascendancy.[7] The subsequent instances of rape were allegedly committed by the insertion of a finger into BBB's sex organ, also through force, violence and intimidation, and moral ascendancy.[8]

These accusations are contained in the following Informations:

Criminal Case No. 02-584[9]

> That on or about June 15, 2000, at more or less 10:00 o'clock (*sic*) in the morning at barangay XXX, municipality of YYY, province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and

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[6] Records (Criminal Case 02-582) at 1.

[7] Records (Criminal Case No. 02-584) at 1.

[8] *Supra* note 6 at 3-8.

[9] *Supra* note 7.

intimidation and taking advantage of the youthfulness of the victim and also his moral ascendancy over the latter, did then and there, willfully, unlawfully and feloniously had carnal knowledge of BBB, a minor, 12 years of age, against her will and without her consent, which acts likewise constitute child abuse and exploitation, as it demeans, debases and degrades the integrity of the child as a person, to her damage and prejudice.

The generic aggravating circumstance of relationship is present, the accused being the brother of the other (sic) of the victim's father.

Criminal Case No. 02-585[10]

That on or about midnight of April 20, 2001, at barangay XXX, municipality of YYY, province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, taking advantage of the youthfulness and his moral ascendancy over the victim did then and there, willfully, unlawfully and feloniously with lewd designs inserted his fingers to the sex organ of the victim BBB, a minor, 13 years of age, against her will and without her consent, which acts likewise constitute child abuse and exploitation as it debases, demeans and degrades the integrity of the victim as a person, to her damage and prejudice.

The generic aggravating circumstance of relationship is present, the accused is the grandfather of the victim being the brother of the mother of the victim's father.

Criminal Case Nos. 02-586, 02-587, 02-588 and 02-590, were also couched in the same language as Criminal Case No. 02-585, except for the dates of commission and the age of BBB.

AAA and BBB chose to stay silent about the instances of rape, until their mother accidentally discovered the commission of the crimes from the accused himself. Overhearing Dominguez in one of his drinking sessions, boasting that the children's vaginas were already wide, she confronted her daughters and asked them about the remark. The children reluctantly confided to her what had happened. As a result, the girls were brought to

[10] Records (Criminal Case No. 02-585) at 1.

a doctor for examination.[11] The examining physician, Dr. Estrella Payoyo, found AAA's hymen intact, but did not discount the fact that the child could have been molested.[12] In contrast, BBB was found to have old hymenal lacerations.[13]

The Informations, filed on 21 October 2001, were subsequently amended to state that the aggravating circumstance of relationship was a special qualifying circumstance. The accused, when arraigned, pleaded not guilty to the charges against him. Thereafter trial ensued.

During the trial, AAA and BBB testified against Dominguez by narrating the lascivious acts he had done to them. According to their testimonies, the accused had employed trickery so that either AAA or BBB would be left alone with him and thereafter raped, with threats of harm to her person or her family.[14] It should be noted that as to the second rape, AAA was silent on the alleged sexual intercourse. She in fact did not mention it, but merely testified that the accused inserted his fingers into her vagina on two occasions.[15]

The main theory of the defense was one of denial and alibi. The accused insisted that he was in the mountains on the dates that he was alleged to have committed the crimes.[16]

The trial court, after receiving the evidence, convicted the accused. It gave credence to the testimonies of the two child-victims, who had positively identified him and candidly narrated the sexual acts he had perpetrated against them. The court observed that he had failed to rebut the said allegations. The *fallo* of the Decision reads:

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[11] TSN, 13 December 2004, at 5-6.

[12] TSN, 13 May 2003, at 9-13.

[13] *Id.* at 5-8.

[14] TSN, 15 July 2003, at 6-10; TSN, 3 August 2004, at 3-5.

[15] TSN, 3 August 2004, at 2-6; TSN, 16 November 2004, at 5-8.

[16] TSN, 11 July 2006, pp 3-5; TSN, 4 September 2006, at 4-6.

WHEREFORE, premises considered, accused JONIE DOMINGUEZ having been found GUILTY of two (2) counts of Statutory Rape under par. (2) of Article 266-A in relation to Article III, Sec. 5(b) of RA 7610 and six (6) other counts of Simple Rape under pars. (1) and (2) pf Article 266-A in relation to Article III, Sec. 5(b) of RA 7610, is hereby sentenced as follows:

1) In Criminal Case No. 92-582 (Statutory Rape), he is sentenced to suffer the indeterminate penalty of 4 years 2 months and 1 day of *Prision Correccional* Maximum, as minimum, to 10 years of *Prision Mayor* medium, as maximum; to indemnify the offended party AAA in the amounts of Php50,000.00 as civil indemnity and another Php50,000.00 as moral damages;

2) In Criminal Case No. 02-583 (Statutory Rape), he is sentenced to suffer the indeterminate penalty of 4 years 2 months and 1 day of *Prision Correccional* Maximum, as minimum, to 12 years of *Prision Mayor* maximum as maximum, present the generic aggravating circumstance of USE OF DEADLY WEAPON (Article 266-B in relation to par. (2) of Article 266-A); to indemnify AAA the amounts of Php50,000.00 as civil indemnity, another Php50,000.00 as moral damages and Php20,000.00 as exemplary damages;

3) In Criminal Case No. 02-584 (Rape), he is sentenced to suffer the indivisible penalty of *RECLUSION PERPETUA* (Article 266-B in relation to par. (1) of Article 266-A, RPC as amended); to indemnify BBB the amounts of Php50,000.00 as civil indemnity and another Php50,000.00 as moral damages;

4) In Criminal Cases Nos. 02-585; 586; 587; 588 and 590 (Rape), he is sentenced to suffer the indeterminate penalty of 4 years 2 months and 1 day of *Prision Correccional* maximum, as minimum, to 10 years or *Prision Mayor* medium, as maximum, for EACH COUNT of RAPE; to indemnify BBB the amounts of Php50,000.00 civil indemnity and another Php50,000.00 as moral damages; and to pay the costs;

5) In Criminal Case No. 02-589 (Rape), accused is ACQUITTED for insufficiency of evidence and for failure of the prosecution to establish his GUILT beyond reasonable doubt.

The period of preventive imprisonment already served by the accused shall be credited in the service of his sentence pursuant to Article 29 of the Revised Penal Code as amended.

In the service of the sentences above-mentioned, the order of their respective severity shall be followed so that they may be executed

successively or as nearly as may be possible pursuant to the provision of Article 70 of the Revised Penal Code as amended.

SO ORDERED.[17]

The accused thereafter resorted to the CA for a review of the court *a quo*'s Decision. The assailed Decision was affirmed by the appellate court, which disposed as follows:

WHEREFORE, premises considered, the appeal interposed by Jonie Dominguez is DENIED, and accordingly his convictions as pronounced under the herein assailed November 5, 2007 Decision of the trial court is AFFIRMED together with the appropriate prison penalty, but with modification only as to the awards for civil indemnity and moral damages, for which appellant is hereby ordered to pay:

1) Php75,000.00 for civil indemnity, and Php75,000.00 by way of moral damages in Crim. Case No. 02-584.

2) Php30,000.00 for civil indemnity and Php30,000.00 by way of moral damages for each of appellant's convictions in Crim. Case Nos. 02-582, 02-583, 02-585, 02-586, 02-587, 02-588, and 02-590.

3) Php20,000.00 as exemplary damages in Crim. Case No. 02-583.

SO ORDERED.[18]

The accused timely filed a notice of appeal to elevate the case to this Court. He did not submit a Supplemental Brief, and instead filed a Manifestation that the case be deemed submitted for decision.[19] The Office of the Solicitor General, on behalf of the People, had earlier filed a similar Manifestation in Lieu of Supplemental Brief.[20] We thus refer to the Appellant's Brief filed with the CA, wherein the accused-appellant advanced this lone assignment of error:

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[17] *Supra* note 6 at 274-275.

[18] CA *rollo*, at 358-359.

[19] *Rollo* at 35-36.

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

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.[21]

We sustain the conviction.

Accused-appellant argues that the prosecutor's evidence was doubtful.

The charges against him, he says, were just fabricated, since the parents of the victims had an axe to grind against him. He claims that he had loaned an amount to the victim's aunt, who is the sister of the victims' father. When he demanded the return of the money, the victims' parents got mad at him. He insinuates that these ill feelings were the reason why he was falsely charged by AAA and BBB.[22] We disregard this allegation for being irrelevant to the question of whether the crime as charged did take place.

To introduce reasonable doubt on his criminal culpability, the accused highlights the testimony of Dr. Payoyo that BBB's old lacerations could also have been caused by infection from scratching her vagina or by injury from accidents. He also emphasizes Dr. Payoyo's finding that BBB's vagina could admit only one finger with resistance. As to Dr. Payoyo's report that AAA's hymen was intact, the accused-appellant relies on it to bolster his defense that there was no sexual intercourse or sexual abuse.

Jurisprudence is clear on this matter. The absence of a laceration in BBB's hymen does not overturn the testimonies of the child-victims. As the Court held in *People v. Gabayron*:[23]

Accused-appellant draws attention to the fact that based on the medico-legal findings, there is no showing that his daughter's hymen

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[21] *Supra* note 18 at 232.

[22] *Id.* at 242-252.

[23] *People v. Gabayron*, G.R. No. 102018, 21 August 1997, 278 SCRA 78.

was penetrated, nor there was any evidence of injuries inflicted. However, jurisprudence is well-settled to the effect that for rape to be consummated, rupture of the hymen is not necessary, nor it is necessary that the vagina sustained a laceration especially if the complainant is a young girl. ... The fact that there was no deep penetration of the victim's vagina and that her hymen was intact does not negate rape, since this crime is committed even with the slightest penetration of a woman's sex organ. **Presence of a laceration in the vagina is not (sic) essential prerequisite to prove that a victim has been raped.** Research in medicine even points out that negative findings are of no significance, since the hymen may not be torn despite repeated coitus. In fact, many cases of pregnancy have been reported in women with unruptured hymen.(emphasis supplied)[24]

Another point being raised by the accused-appellant concerns the consistency of AAA's testimony. He argues that the inconsistencies in her testimony taint her credibility. In effect, he claims that since rape is a traumatic event for the victim, there was no way AAA could have forgotten or been mistaken about it, including its place of occurrence, had rape really happened. Specifically, the accused is arguing that since AAA mentioned two places — their house and the back of the school – her testimony was not credible. In rebuttal, the Office of the Solicitor General states that AAA indeed testified that she was violated in their house and that, immediately prior to that incident, she was playing at the back of the school when the accused-appellant called her to come inside the house. AAA's house, where the second rape was committed, was at the back of the school.[25] She herself clarified this detail during the redirect examination. The relevant portion of the Transcript of Stenographic Notes is reproduced below:[26]

Q: AAA, during the last time that you were here in court, you declared that you were sexually molested by Jonie

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[24] *Id*. at 92-93, citing *People v. Lazaro*, 249 SCRA 234 (1995) and *People v. Sapurco*, 245 SCRA 519 (1995).

[25] *Supra* note 18, at 318-319.

[26] TSN, 7 December 2004, at 3.

Dominguez at the house of your uncle Rogelio, is that correct?

A: Yes, Ma'am.

Q: And the other sexual molestation happened at the back of your school in Butag Elementary School, is that also correct?

A: No, Ma'am.

Q: What do you mean no, Ma'am?

A: At the house of Uncle Rogelio and at our house.

Q: But during the last time when you were asked by Atty. Gojar, you said that you were also molested at the back of the elementary school, Barangay XXX, so which is correct now?

A: The truth is that I was sexually molested at the house of my Uncle Rogelio and at our house.

Q: And why did you say that you were molested at the back of the elementary school in Barangay XXX, if not true?

A: I was confused thinking that the question of Atty. Gojar is the location of our house and our house is situated at the back of the elementary school."

There was therefore no inconsistency to speak of. We find AAA's testimony credible on this point and disregard the accused's attack on the same.

The accused also cites AAA's testimony that after each incident of molestation, she told her parents about it. According to him, her testimony was discrepant with that of her mother. Recall that the mother had alleged that the discovery of the crime was due to his utterance regarding the state of her daughters' vaginas.[27] We reject the claim of the accused. It can clearly be deduced from AAA's answer during the cross-examination that when she told her parents about the molestations, she was referring to the time immediately before the filing of the Complaint and not immediately after the rape.[28] It should be pointed out that she was consistent and unwavering in her claim that the accused

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[27] *Supra* note 18, at 244-245.

[28] TSN, 16 November 2004, at 6.

inserted his two fingers into her organ on two occasions. The trial court observed AAA's consistency in her testimony and ruled that she was a credible witness.[29] We respect the trial court's ruling on this matter. This Court recognizes that:

> Ample margin of error and understanding is accorded to young witnesses who, much more than adults, would naturally be gripped with tension due to the novelty of the experience of testifying before a court.[30]

We have reviewed the records and find no cogent reason to disturb the conviction. A reading of the TSN of the hearing of the case convinces us that the CA did not commit any reversible error. The victims were still minors at the time they testified. Nevertheless, they were able to narrate the incidents, albeit not exactly with the same coherence as a fully capacitated adult witness would. Leeway should be given to witnesses who are minors, especially when they are relating past incidents of abuse.

Relevant to this, we quote the following discussion by retired Chief Justice Hilario G. Davide, Jr.:

> It is thus clear that any child, regardless of age, can be a competent witness if he can perceive, and perceiving, can make known his perception to others and of relating truthfully facts respecting which he is examined. In the 1913 decision in *United States vs. Buncad*, this Court stated:
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> Professor Wigmore, after referring to the common-law precedents upon this point, says: "But this much may be taken as settled, that no rule defines *any particular age* as conclusive of incapacity; in each instance the capacity of the particular child is to be investigated." (Wigmore on Evidence, Vol. I, p. 638)
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> While on the same subject, Underhill declares:
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> 257. *Children on the witness stand.* - Under the common law, competency of a child under the age of fourteen years to testify

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[29] *Supra* note 6, at 17-18.

[30] *People v. Lawa*, G.R. Nos. 126147/143925-26, 28 January 2003, citing *People v. dela Cruz*, 276 SCRA 352, 357 (1997).

must be shown to the satisfaction of the court. He is presumptively incompetent, but if he is shown to be competent it is immaterial how young he may be when he testifies. He is competent if he possesses mental capacity and memory sufficient to enable him to give a reasonable and intelligible account of the transaction he has seen, if he understands and has a just appreciation of the difference between right and wrong, and comprehends the character, meaning and obligation of an oath. If the witness fulfills these requirements, it is immaterial as bearing upon his competency that he is unable to define the oath or to define testimony. In the wise discretion of the court, a child four, five, six and for such ages as seven, eight, nine, ten, eleven, twelve, thirteen or fifteen years of age may be shown competent to testify. It may not be said that there is any particular age at which as a matter of law all children are competent or incompetent. x x x

The requirements then of a child's competency as a witness are the: (a) capacity of observation, (b) capacity of recollection, and (c) capacity of communication. And in ascertaining whether a child is of sufficient intelligence according to the foregoing requirements, it is settled that the trial court is called upon to make such determination. As held in *United States vs. Buncad*, quoting from *Wheeler vs. United States*, and reiterated in *People vs. Raptus* and *People vs. Libungan*:

The decision of (sic) this question rests primarily with the trial judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence, and may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligations of an oath. As many of these matters cannot be photographed into the record, the decision of the trial judge will not be disturbed on review unless from that which is preserved it is clear that it was erroneous. (citations omitted).[31]

We find that AAA and BBB were able to candidly answer the questions propounded to them during the examination in court and to communicate the ordeal they suffered in the hands of the accused. They were credible witnesses.

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[31] *People v. Mendoza*, G.R. No. 113791, 22 February 1996, 254 SCRA 18, 31-33.

The legal doctrine that the assessment of the credibility of witnesses is left to the judgment of the trial court is well-established.[32] Its findings of facts, when affirmed by the Court of Appeals, are deemed conclusive on this Court.[33] In this case, both the trial court and the Court of Appeals found the prosecution witnesses credible.

The narrated facts disprove the alibi of the accused-appellant that he was up in the mountains on the dates that he allegedly molested the victims. BBB testified that the accused was staying with another relative, their *Tia* Cita, whose husband is his brother. He invited BBB and her two siblings to go to the house of their *Tia* Cita. He then ordered the two siblings of BBB to go to the seashore and pull the crab catcher. BBB was left alone with appellant, who then perpetrated his lewd acts on her. BBB likewise testified that appellant lived with them, thus making it possible for him to be near her and to molest her even at night while she was sleeping. She also testified that she was threatened by the accused who warned her not to tell anyone, or else her family would be killed.[34]

Both the trial court and the CA found these defenses of denial and alibi incredible. The testimony of the accused was riddled with obvious inconsistencies. He denied knowing the victims, but eventually identified AAA as his grandniece. His own testimony contradicted his alibi, since he testified that from 2000 to 2002, he was residing in his brother's house. This was where one of the rape incidents happened, and was even near the house of the victims. On this point, we have stated previously:

> To establish alibi, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime. Physical impossibility "refers to the distance between

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[32] *People v. Barde*, G.R. No. 183094, 22 September 2010, citing *People v. Lalongisip*, G.R. No. 188331, 16 June 2010.

[33] *Id.* citing *People v. Beltran, Jr.*, 503 SCRA 715, 730 (2006).

[34] *Supra* note 18, at 308-315.

the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places."[35]

On its part, the prosecution was able to show the existence of the elements of rape under the amended Revised Penal Code, effectuated by R.A. No. 8353, or the Anti-Rape Law of 1997, which states:

> Art. 266-A. Rape: When and how committed
>
> Rape is committed:
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> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Before and after the violations, the intimidation took the form of threats that the victims' family would be killed by the accused. The accused also employed trickery and took advantage of his authority over his grandnieces. Under these circumstances, the accused was able to have carnal knowledge of BBB and commit a series of sexual assaults against both her and AAA. The two

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[35] *People v. Mosquerra*, G.R. No. 129209, 9 August 2001, 362 SCRA 441, 450, citing *People v. Saban*, 319 SCRA 36, 46 (1999); *People v. Reduca*, 301 SCRA 516, 534 (1999), and *People v. De Labajan*, 317 SCRA 566, 575 (1999).

incidents of rape against AAA happened before she reached 12 years of age, she being 9 and 10 then. For those incidents, proof of threats, force or intimidation, is not necessary.

As to damages, there is a need to modify the award of civil indemnity in Criminal Case No. 02-584.

Contrary to the claim of the prosecution, the accused's relationship to the victims cannot be considered as an aggravating circumstance. For relationship to aggravate or qualify the crime of rape committed against a minor, the accused must be a relative of the victim within the third civil degree.[36] As a brother of the victim's paternal grandmother, he is but a relative within the fourth civil degree. This relationship cannot qualify the crime as to merit the punishment of *reclusion perpetua* to death under Article 266-B of the Revised Penal Code as amended. Thus, the rape of BBB by means of carnal knowledge was simple rape, and the amount of civil indemnity should be decreased from ₱75,000 to ₱50,000.

With respect to the manner of rape committed against AAA twice and against BBB six times, which was rape by digital insertion, jurisprudence from 2001 up to the present yields the information that the prevailing amount awarded as civil indemnity to victims of simple rape committed by means other than penile insertion is ₱30,000.[37] We adhere to these precedents.

We note that prior to the amendment of the law on rape, the act of inserting the finger, with lewd designs, into the genital orifice of a girl or a non-consenting woman falls under acts of lasciviousness. The victim was awarded civil indemnity likewise

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[36] Revised Penal Code, Art. 266-B (1).

[37] *People v. Soriano*, G.R. No. 142779-95, 29 August 2002, 388 SCRA 140; *People v. Palma*, G.R. No. 148869-74. 11 December 2003, 418 SCRA 365; *People v. Olaybar*, G.R. No. 15060-31, 1 October 2003, 412 SCRA 490; *People v. Suyu*, G.R. No. 170191, 16 August 2006, 499 SCRA 177; *People v. Hermosilla*, G.R. No. 175830, July 10, 2007, 527 SCRA 296; *People v. Fetalino*, G.R. No. 174472, 19 June 2007, 525 SCRA 170; *People v. Senieres*, G.R. No. 172226, 23 March 2007, 519 SCRA 13; *Flordeliz v. People*, G.R. No. 186441, 3 March 2010, 614 SCRA 225; *People v. Alfonso*, G.R. No. 182094, 18 August 2010.

in the amount of ₱30,000.[38] In amending the law and renaming the act as rape, there is a recognition that the same evil, as that of conventional rape, is sought to be prevented. This was recognized in *People v. Jalosjos*[39] when the Court awarded civil indemnity, for each digital insertion committed by the accused against the victim, in the amount of ₱50,000 similar to conventional rape. Subsequent decisions, however, reverted to ₱30,000 the civil indemnity for the commission of rape under Art. 266-A (2) of the Revised Penal Code.[40] We follow the latter in the present case.

An award of exemplary damages to AAA and BBB for all the instances of rape committed by the accused against them is also warranted. In *People v. Alfredo*[41], the Court reiterated an earlier decision held "that exemplary damages may be awarded not only in the presence of an aggravating circumstance, but also where the circumstances of the case show a highly reprehensible conduct."[42] In the present case, the circumstances show the higher degree of perversity of the accused. Instead of showing any remorse in abusing children of tender age, he repeatedly committed the crime against the victims. Worse, he even degraded them before other people by making fun of the fact that their private parts were already non-virginal, something that society sees as outrageous and uncommon for their age. Surely, only a person who is outrageously perverse can brag about his vulgarities to others with seeming impunity. These are conducts and dispositions that are abhorrent to the norms of a civilized society and should be curtailed and discouraged. We apply the Court's rationale in *People v. Rayos*,[43] wherein

[38] *People v. Velasquez*, G.R. Nos. 132635 & 143872-75, 21 February 2001, 352 SCRA 445.

[39] G.R. Nos. 132875-76, 16 November 2001, 369 SCRA 179.

[40] *Supra* note 37.

[41] G.R. No. 188560, 15 December 2010.

[42] *Id.*, citing *People v. Dalisay*, G.R. No. 188106, 25 November 2009, 605 SCRA 807.

[43] G.R. No. 133823, 7 February 2001; see also *People v Serrano*, G.R. No. 137480, 28 February 2001.

we held that "Article 2229 of the Civil Code sanctions the grant of exemplary or correction damages in order to deter the commission of similar acts in the future and to allow the courts to mould behaviour that can have grave and deleterious consequences to society."

In *People v. Alfredo,*[44] the Court clarified that the basis of awarding exemplary damages on account of a crime is not exclusively Article 2230 of the Civil Code, which provides that "*in criminal offenses, exemplary damages as a part of civil liability may be imposed when the crime was committed with one or more aggravating circumstances.*" The Court held as that:

> In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*, the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*, the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. Recently, in *People of the Philippines v. Cristino Cañada*, *People of the Philippines v. Pepito Neverio* and *The People of the Philippines v. Lorenzo Layco, Sr.*, the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.
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> It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, to borrow Justice Carpio Morales' words in her separate opinion in *People of the Philippines v. Dante Gragasin y Par*, "**[t]he application of Article 2230 of the Civil Code *strictissimi juris* in such cases, as in the present one, defeats the underlying public policy behind the award of exemplary damages — to set a public example or correction for the public good**."[45]

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[44] *Supra* note 41.

[45] *Id.*

The records reveal the accused's perversity and moral corruption, which should not be replicated in our society. To deter such behavior, exemplary damages must be imposed on the accused as a warning to those persons who are similarly disposed.

Regarding the penalty of imprisonment, we find that a modification thereof is in order. Article 266-B of the Revised Penal Code, as amended, reads:

> Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> … … ...
>
> Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.
>
> Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *prision mayor* to *reclusion temporal*.
>
> … … …

The trial court failed to apply the proper penalty in Criminal Case No. 02-583, for rape by sexual assault aggravated by the use of a knife, in imposing a maximum of only 12 years of *prision mayor* instead of *prision mayor* to *reclusion temporal* with a duration of six (6) years and one (1) day to twenty (20) years. We impose fifteen (15) years and four (4) months of *reclusion temporal*.

As to the minimum penalty required by the Indeterminate Sentence Law, the RTC's Decision was appropriate. Article 61 paragraph 2 of the Revised Penal Code states that the penalty next lower in degree to a prescribed penalty of one or more divisible penalties imposed to their full extent is that immediately following the lesser of the penalties. The minimum of the penalty to be imposed is to be taken from within the entire period of *prision correccional*, or six (6) months and one (1) day to six (6) years. Considering the abhorrent character of the crime committed and the innocence of the victim in Criminal Case

No. 02-583, we peg the minimum penalty at six (6) years of *prision correccional*.

The sentence of imprisonment imposed in Criminal Case Nos. 02-582, 02-584 to 02-588 and 02-590 will remain undisturbed.

IN VIEW OF THE FOREGOING, the assailed Decision of the Court of Appeals is *AFFIRMED* with *MODIFICATION*. Accused JONIE DOMINGUEZ is sentenced to suffer the following:

a) In Criminal Case No. 02-583, the indeterminate penalty of six (6) years of *prision correccional* as minimum, to fifteen (15) years and four (4) months of *reclusion temporal* as maximum.

b) In Criminal Case Nos. 02-582, 02-585, 02-586, 02-587, 02-588 and 02-590, the indeterminate penalty of four (4) years of *prision correccional,* as minimum, to ten (10) years of *prision mayor,* as maximum for each count of rape; and

c) In Criminal Case No. 02-584, the indivisible penalty of *reclusion perpetua*.

Accused JONIE DOMINGUEZ is further ordered to pay the following civil liabilities:

a) To AAA:

   1) ₱30,000 as civil indemnity for each count of rape in Criminal Case Nos. 02-582 and 02-583;

   2) ₱30,000 as moral damages for each count of rape in Criminal Case Nos. 02-582 and 02-583; and

   3) ₱30,000.00 exemplary damages for each count of rape in Criminal Case Nos. 02-582 and 02-583.

b) To BBB:

   1) ₱50,000 as civil indemnity in Criminal Case No. 02-584;

   2) ₱50,000 as moral damages in Criminal Case No. 02-584;

3) ₱30,000 as civil indemnity for each count of rape in Criminal Case Nos. 02-585, 02-586, 02-587, 02-588 and 02-590;

4) ₱30,000 as moral damages for each count of rape in Criminal Case Nos. 02-585, 02-586, 02-587, 02-588 and 02-590;

5) ₱30,000 as exemplary damages for each count of rape in Criminal Case Nos. 02-584, 02-585, 02-586, 02-587, 02-588 and 02-590.

SO ORDERED.

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

EN BANC

[A.M. No. 10-11-5-SC. June 14, 2011]

RE: PETITION FOR RADIO AND TELEVISION COVERAGE OF THE MULTIPLE MURDER CASES AGAINST MAGUINDANAO GOVERNOR ZALDY AMPATUAN, *ET AL.*

[A.M. No. 10-11-6-SC. June 14, 2011]

RE: PETITION FOR THE CONSTITUTION OF THE PRESENT COURT HANDLING THE TRIAL OF THE MASSACRE OF 57 PERSONS, INCLUDING 32 JOURNALISTS, IN AMPATUAN, MAGUINDANAO INTO A SPECIAL COURT HANDLING THIS CASE ALONE FOR THE PURPOSE OF ACHIEVING GENUINE SPEEDY

TRIAL and FOR THE SETTING UP OF VIDEOCAM AND MONITOR JUST OUTSIDE THE COURT FOR JOURNALISTS TO COVER AND FOR THE PEOPLE TO WITNESS THE "TRIAL OF THE DECADE" TO MAKE IT TRULY PUBLIC AND IMPARTIAL AS COMMANDED BY THE CONSTITUTION.

[A.M. No. 10-11-7-SC. June 14, 2011]

RE: LETTER OF PRESIDENT BENIGNO S. AQUINO III FOR THE LIVE MEDIA COVERAGE OF THE MAGUINDANAO MASSACRE TRIAL.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; BROADCASTING THE TRIAL OF THE MAGUINDANAO MASSACRE CASES; COURT PARTIALLY GRANTS *PRO HAC VICE* THE LIVE BROADCAST OF THE TRIAL COURT PROCEEDINGS, SUBJECT TO CERTAIN GUIDELINES. — The Court partially GRANTS *pro hac vice* petitioners' prayer for a live broadcast of the trial court proceedings, *subject* to the guidelines which shall be enumerated shortly**. x x x The rationale for an outright total prohibition was shrouded, as it is now, inside the comfortable cocoon of a feared speculation which no scientific study in the Philippine setting confirms, and which fear, if any, may be dealt with by safeguards and safety nets under existing rules and exacting regulations**. In this day and age, it is about time to craft a **win-win situation** that shall not compromise rights in the criminal administration of justice, sacrifice press freedom and allied rights, and interfere with the integrity, dignity and solemnity of judicial proceedings. Compliance with regulations, not curtailment of a right, provides a workable solution to the concerns raised in these administrative matters, while, at the same time, maintaining the same underlying principles upheld in the two previous cases.

2. ID.; ID.; ID.; ID.; IMPOSSIBILITY OF ACCOMMODATING THE PARTIES AND WITNESSES INSIDE THE COURTROOM, CONSIDERED.— One apparent circumstance that sets the

> Maguindanao Massacre cases apart from the earlier cases is the impossibility of accommodating even the parties to the cases – the private complainants/families of the victims and other witnesses – inside the courtroom. x x x Even before considering what is a "reasonable number of the public" who may observe the proceedings, the peculiarity of the subject criminal cases is that the proceedings already necessarily entail the presence of hundreds of families. It cannot be gainsaid that the families of the 57 victims and of the 197 accused have as much interest, beyond mere curiosity, to attend or monitor the proceedings as those of the impleaded parties or trial participants. It bears noting at this juncture that the prosecution and the defense have listed more than 200 witnesses each. The impossibility of holding such judicial proceedings in a courtroom that will accommodate all the interested parties, whether private complainants or accused, is unfortunate enough. What more if the right itself commands that a reasonable number of the general public be allowed to witness the proceeding as it takes place inside the courtroom. Technology tends to provide the only solution to break the inherent limitations of the courtroom, to satisfy the imperative of a transparent, open and public trial. x x x Indeed, the Court cannot gloss over what advances technology has to offer in distilling the abstract discussion of key constitutional precepts into the workable context. Technology *per se* has always been neutral. It is the use and regulation thereof that need fine-tuning. Law and technology can work to the advantage and furtherance of the various rights herein involved, within the contours of defined guidelines.

APPEARANCES OF COUNSEL

Public Interest Law Center for petitioners in A.M. No. 10-11-5-SC.

Michael J. Mella Ronaldo F. Renta and *Cirilo P. Sabarre* for petitioners in A.M. No. 10-11-6-SC.

Fortun Narvasa & Salazar Law Offices for Andal Ampatuan, Jr.

Re: Petition for Radio and Television Coverage of the Multiple Murder Cases against Maguindanao Governor Ampatuan, et al.

R E S O L U T I O N

CARPIO MORALES, *J.*:

On November 23, 2009, 57 people including 32 journalists and media practitioners were killed while on their way to Shariff Aguak in Maguindanao. Touted as the worst election-related violence and the most brutal killing of journalists in recent history, the tragic incident which came to be known as the "Maguindanao Massacre" spawned charges for 57 counts of murder and an additional charge of rebellion against 197 accused, docketed as Criminal Case Nos. Q-09-162148-72, Q-09-162216-31, Q-10-162652-66, and Q-10-163766, commonly entitled *People v. Datu Andal Ampatuan, Jr., et al*. Following the transfer of venue and the reraffling of the cases, the cases are being tried by Presiding Judge Jocelyn Solis-Reyes of Branch 221 of the Regional Trial Court (RTC) of Quezon City inside Camp Bagong Diwa in Taguig City.

Almost a year later or on November 19, 2010, the National Union of Journalists of the Philippines (NUJP), ABS-CBN Broadcasting Corporation, GMA Network, Inc., relatives of the victims,[1] individual journalists[2] from various media entities, and members of the academe[3] filed a petition before this Court praying that live television and radio coverage of the trial in these criminal cases be allowed, recording devices (*e.g.*, still cameras, tape recorders) be permitted inside the courtroom to assist the working journalists, and reasonable

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[1] Ma. Reynafe Momay-Castillo, Editha Mirandilla-Tiamzon, and Glenna Legarta.

[2] Horacio Severino, Glenda Gloria, Mariquit Almario Gonzales, Arlene Burgos, Abraham Balabad, Jr., Joy Gruta, Ma. Salvacion Varona, Isagani De Castro, Danilo Lucas, Cecilia Victoria Orena Drilon, Cecilia Lardizabal, Vergel Santos, Romula Marinas, Noel Angel Alamar, Joseph Alwyn Alburo, Rowena Paraan, Ma. Cristina Rodriguez, Luisita Cruz Valdes, David Jude Sta. Ana, and Joan Bondoc.

[3] Roland Tolentino, Danilo Arao, Elena Pernia, Elizabeth Enriquez, Daphne Tatiana Canlas, Rosalina Yokomori, Marinela Aseron, Melba Estonilo, Lourdes Portus, Josefina Santos, and Yumina Francisco.

guidelines be formulated to govern the broadcast coverage and the use of devices.[4] The Court docketed the petition as **A.M. No. 10-11-5-SC**.

In a related move, the National Press Club of the Philippines[5] (NPC) and *Alyansa ng Filipinong Mamamahayag*[6] (AFIMA) filed on November 22, 2010 a petition praying that the Court constitute Branch 221 of RTC-Quezon City as a special court to focus only on the Maguindanao Massacre trial to relieve it of all other pending cases and assigned duties, and allow the installation inside the courtroom of a sufficient number of video cameras that shall beam the audio and video signals to the television monitors outside the court.[7] The Court docketed the petition as **A.M. No. 10-11-6-SC**.

President Benigno S. Aquino III, by letter of November 22, 2010[8] addressed to Chief Justice Renato Corona, came out "in support of those who have petitioned [this Court] to permit television and radio broadcast of the trial." The President expressed "earnest hope that [this Court] will, within the many considerations that enter into such a historic deliberation, attend to this petition with the dispatch, dispassion and humaneness, such a petition merits."[9] The Court docketed the matter as **A.M. No. 10-11-7-SC**.

By separate Resolutions of November 23, 2010,[10] the Court consolidated A.M. No. 10-11-7-SC with A.M. No. 10-11-5-SC. The Court shall treat in a separate Resolution A.M. No. 10-11-6-SC.

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[4] *Vide rollo* (A.M. No. 10-11-5-SC), p. 95.

[5] Represented by its president, Jerry Yap.

[6] Represented by its president, Benny Antiporda.

[7] *Vide rollo* (A.M. No. 10-11-6-SC), p. 19.

[8] *Rollo* (A.M. No. 10-11-7-SC), pp. 1-2.

[9] *Id.* at 2.

[10] *Rollo* (A.M. No. 10-11-7-SC), p. 3; *rollo* (A.M. No. 10-11-5-SC), p. 186.

Meanwhile, various groups[11] also sent to the Chief Justice their respective resolutions and statements bearing on these matters.

The principal accused in the cases, Andal Ampatuan, Jr. (Ampatuan), filed a Consolidated Comment of December 6, 2010 in A.M. No. 10-11-5-SC and A.M. No. 10-11-7-SC. The President, through the Office of the Solicitor General (OSG), and NUJP, *et al.* filed their respective Reply of January 18, 2011 and January 20, 2011. Ampatuan also filed a Rejoinder of March 9, 2011.

On Broadcasting the Trial of the Maguindanao Massacre Cases

Petitioners seek the lifting of the absolute ban on live television and radio coverage of court proceedings. They principally urge the Court to revisit the 1991 ruling in *Re: Live TV and Radio Coverage of the Hearing of President Corazon C. Aquino's Libel Case*[12] and the 2001 ruling in *Re: Request Radio-TV*

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[11] The *Sangguniang Panlungsod* of General Santos City endorsed Resolution No. 484 of November 22, 2010 which resolved to "strongly urge the Supreme Court of the Philippines to allow a live media coverage for public viewing and information on the court proceedings/trial of the multiple murder case filed against the suspects of the Maguindanao massacre." The Court noted it by Resolution of December 14, 2010. *Rollo*, (A.M. No. 10-11-5-SC), pp. 429-431, 434.

The Integrated Bar of the Philippines (IBP) Cebu City Chapter passed Resolution No. 24 (December 7, 2010) which resolved, *inter alia*, "respectfully ask the Supreme Court to issue a circular or order to allow Judge Jocelyn Solis-Reyes to concentrate on the case of the Maguindanao massacre, unencumbered by other cases until final decision in this case is rendered." The Court noted it by Resolution of January 18, 2011. *Rollo*, (A.M. No. 10-11-6-SC), pp. 90-91, 97.

The *Sangguniang Panlungsod* of Cagayan de Oro City also carried Resolution Nos. 10342-2010 and 10343-2010, both dated November 23, 2010, which resolved to support the clamor for "speedy trial" and that "the hearing of the Maguindanao massacre be made public" with a request "to consider the appeal to air live the hearings thereof." The Court noted it by Resolution of December February 1, 2011. *Rollo*, (A.M. No. 10-11-5-SC), pp. 671-674, 676.

[12] *En Banc* Resolution of October 22, 1991.

Coverage of the Trial in the Sandiganbayan of the Plunder Cases Against the Former President Joseph E. Estrada[13] which rulings, they contend, violate the doctrine that proposed restrictions on constitutional rights are to be narrowly construed and outright prohibition cannot stand when regulation is a viable alternative.

Petitioners state that the trial of the Maguindanao Massacre cases has attracted intense media coverage due to the gruesomeness of the crime, prominence of the accused, and the number of media personnel killed. They inform that reporters are being frisked and searched for cameras, recorders, and cellular devices upon entry, and that under strict orders of the trial court against live broadcast coverage, the number of media practitioners allowed inside the courtroom has been limited to one reporter for each media institution.

The record shows that NUJP Vice-Chairperson Jose Jaime Espina, by January 12, 2010 letter[14] to Judge Solis-Reyes, requested a dialogue to discuss concerns over media coverage of the proceedings of the Maguindanao Massacre cases. Judge Solis-Reyes replied, however, that "matters concerning media coverage should be brought to the Court's attention through appropriate motion."[15] Hence, the present petitions which assert the exercise of the freedom of the press, right to information, right to a fair and public trial, right to assembly and to petition the government for redress of grievances, right of free access to courts, and freedom of association, *subject* to regulations to be issued by the Court.

The Court partially GRANTS *pro hac vice* petitioners' prayer for a live broadcast of the trial court proceedings, *subject* to the guidelines which shall be enumerated shortly**.**

Putt's Law[16] states that "technology is dominated by two

[13] A.M. No. 01-4-03-SC, June 29, 2001, 360 SCRA 248; *Perez v. Estrada*, 412 Phil. 686 (2001).

[14] *Rollo*, (A.M. No. 10-11-5-SC), p. 121.

[15] *Id.* at 122.

[16] Based on the 1981 book entitled "Putt's Law and the Successful Technocrat" which is attributed to the pseudonym Archibald Putt.

types of people: those who understand what they do not manage, and those who manage what they do not understand." Indeed, members of this Court cannot strip their judicial robe and don the experts' gown, so to speak, in a pretense to foresee and fathom all serious prejudices or risks from the use of technology inside the courtroom.

A decade after *Estrada* and a score after *Aquino*, the Court is once again faced with the same task of striking that delicate balance between seemingly competing yet certainly *complementary* rights.

The indication of "serious risks" posed by live media coverage to the accused's right to due process, left unexplained and unexplored in the era obtaining in *Aquino* and *Estrada,* has left a blow to the exercise of press freedom and the right to public information.

The rationale for an outright total prohibition was shrouded, as it is now, inside the comfortable cocoon of a feared speculation which no scientific study in the Philippine setting confirms, and which fear, if any, may be dealt with by safeguards and safety nets under existing rules and exacting regulations.

In this day and age, it is about time to craft a **win-win situation** that shall not compromise rights in the criminal administration of justice, sacrifice press freedom and allied rights, and interfere with the integrity, dignity and solemnity of judicial proceedings. Compliance with regulations, not curtailment of a right, provides a workable solution to the concerns raised in these administrative matters, while, at the same time, maintaining the same underlying principles upheld in the two previous cases.

The basic principle upheld in *Aquino* is firm — "[a] trial of any kind or in any court is a matter of serious importance to all concerned and should not be treated as a means of entertainment[, and t]o so treat it deprives the court of the dignity which pertains to it and departs from the orderly and serious quest for truth for which our judicial proceedings are

formulated." The observation that "[m]assive intrusion of representatives of the news media into the trial itself can so alter and destroy the constitutionally necessary atmosphere and decorum" stands.

The Court concluded in *Aquino*:

> Considering the prejudice it poses to the defendant's right to due process as well as to the fair and orderly administration of justice, and considering further that the freedom of the press and the right of the people to information may be served and satisfied by less distracting, degrading and prejudicial means, live radio and television coverage of court proceedings shall not be allowed. Video footages of court hearings for news purposes shall be restricted and limited to shots of the courtroom, the judicial officers, the parties and their counsel taken prior to the commencement of official proceedings. No video shots or photographs shall be permitted during the trial proper.
>
> Accordingly, in order to protect the parties' right to due process, to prevent the distraction of the participants in the proceedings and in the last analysis, to avoid miscarriage of justice, the Court resolved to PROHlBIT live radio and television coverage of court proceedings. Video footage of court hearings for news purposes shall be limited and restricted as above indicated.[17]

The Court had another unique opportunity in *Estrada* to revisit the question of live radio and television coverage of court proceedings in a criminal case. It held that "[t]he propriety of granting or denying the instant petition involve[s] the weighing out of the constitutional guarantees of freedom of the press and the right to public information, on the one hand, and the fundamental rights of the accused, on the other hand, along with the constitutional power of a court to control its proceedings in ensuring a fair and impartial trial." The Court disposed:

> The Court is not all that unmindful of recent technological and scientific advances but to chance forthwith the life or liberty of any

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[17] *Supra* note 20 at 6-7.

person in a hasty bid to use and apply them, even before ample safety nets are provided and the concerns heretofore expressed are aptly addressed, is a price too high to pay.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.[18]

In resolving the motion for reconsideration, the Court in *Estrada*, by Resolution of September 13, 2001, provided a glimmer of hope when it ordered the audio-visual recording of the trial for documentary purposes, under the following conditions:

> x x x (a) the trial shall be recorded in its entirety, excepting such portions thereof as the Sandiganbayan may determine should not be held public under Rule 119, §21 of the Rules of Criminal Procedure; (b) cameras shall be installed inconspicuously inside the courtroom and the movement of TV crews shall be regulated consistent with the dignity and solemnity of the proceedings; (c) the audio-visual recordings shall be made for documentary purposes only and shall be made without comment except such annotations of scenes depicted therein as may be necessary to explain them; (d) the live broadcast of the recordings before the Sandiganbayan shall have rendered its decision in all the cases against the former President shall be prohibited under pain of contempt of court and other sanctions in case of violations of the prohibition; (e) to ensure that the conditions are observed, the audio-visual recording of the proceedings shall be made under the supervision and control of the Sandiganbayan or its Division concerned and shall be made pursuant to rules promulgated by it; and (f) simultaneously with the release of the audio-visual recordings for public broadcast, the original thereof shall be deposited in the National Museum and the Records Management and Archives Office for preservation and exhibition in accordance with law.[19]

Petitioners note that the 1965 case of *Estes v. Texas*[20] which *Aquino* and *Estrada* heavily cited, was borne out of the dynamics

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[18] *Perez v. Estrada*, 412 Phil. 686, 711.

[19] A.M. No. 01-4-03-SC, September 13, 2001, 365 SCRA 62, 70.

[20] 381 U.S. 532 (1965).

of a jury system, where the considerations for the possible infringement of the impartiality of a jury, whose members are not necessarily schooled in the law, are different from that of a judge who is versed with the rules of evidence. To petitioners, *Estes* also does not represent the most contemporary position of the United States in the wake of latest jurisprudence[21] and statistical figures revealing that as of 2007 all 50 states, except the District of Columbia, allow television coverage with varying degrees of openness.

Other jurisdictions welcome the idea of media coverage. Almost all the proceedings of United Kingdom's Supreme Court are filmed, and sometimes broadcast.[22] The International Criminal Court broadcasts its proceedings via video streaming in the internet.[23]

On the media coverage's influence on judges, counsels and witnesses, petitioners point out that *Aquino* and *Estrada*, like *Estes*, lack empirical evidence to support the sustained conclusion. They point out errors of generalization where the conclusion has been mostly supported by studies on American attitudes, as there has been no authoritative study on the particular matter dealing with Filipinos.

Respecting the possible influence of media coverage on the impartiality of trial court judges, petitioners correctly explain that prejudicial publicity insofar as it undermines the right to a fair trial must pass the **"totality of circumstances"** test, applied in *People v. Teehankee, Jr.*[24] and *Estrada v. Desierto,*[25] that the right of an accused to a fair trial is not incompatible to a free press, that pervasive publicity is not *per se* prejudicial to the right of an accused to a fair trial, and that there must be

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[21] *Chandler v. Florida,* 449 U.S. 560 (1981).

[22] <http://www.supremecourt.gov.uk/about/did-you-know.html> (Last accessed: May 25, 2011).

[23] *Vide* <http://livestream.xs4all.nl/icc1.asx> (Last accessed: June 7, 2011).

[24] G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54.

[25] G.R. Nos. 146710-15, March 2, 2001, 353 SCRA 452.

allegation and proof of the impaired capacity of a judge to render a bias-free decision. Mere fear of possible undue influence is not tantamount to actual prejudice resulting in the deprivation of the right to a fair trial.

Moreover, an aggrieved party has ample legal remedies. He may challenge the validity of an adverse judgment arising from a proceeding that transgressed a constitutional right. As pointed out by petitioners, an aggrieved party may early on move for a change of venue, for continuance until the prejudice from publicity is abated, for disqualification of the judge, and for closure of portions of the trial when necessary. The trial court may likewise exercise its power of contempt and issue gag orders.

One apparent circumstance that sets the Maguindanao Massacre cases apart from the earlier cases is the impossibility of accommodating even the parties to the cases – the private complainants/families of the victims and other witnesses – inside the courtroom. On public trial, *Estrada* basically discusses:

> An accused has a right to a public trial but it is a right that belongs to him, more than anyone else, where his life or liberty can be held critically in balance. A public trial aims to ensure that he is fairly dealt with and would not be unjustly condemned and that his rights are not compromised in secrete conclaves of long ago. A public trial is not synonymous with publicized trial; it only implies that the court doors must be open to those who wish to come, sit in the available seats, conduct themselves with decorum and observe the trial process. In the constitutional sense, a courtroom should have enough facilities for a reasonable number of the public to observe the proceedings, not too small as to render the openness negligible and not too large as to distract the trial participants from their proper functions, who shall then be totally free to report what they have observed during the proceedings.[26] (underscoring supplied)

Even before considering what is a "reasonable number of the public" who may observe the proceedings, the peculiarity of the subject criminal cases is that the proceedings already necessarily

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[26] *Perez v. Estrada, supra* note 26 at 706-707.

entail the presence of hundreds of families. It cannot be gainsaid that the families of the 57 victims and of the 197 accused have as much interest, beyond mere curiosity, to attend or monitor the proceedings as those of the impleaded parties or trial participants. It bears noting at this juncture that the prosecution and the defense have listed more than 200 witnesses each.

The impossibility of holding such judicial proceedings in a courtroom that will accommodate all the interested parties, whether private complainants or accused, is unfortunate enough. What more if the right itself commands that a reasonable number of the general public be allowed to witness the proceeding as it takes place inside the courtroom. Technology tends to provide the only solution to break the inherent limitations of the courtroom, to satisfy the imperative of a transparent, open and public trial.

In so allowing *pro hac vice* the live broadcasting by radio and television of the Maguindanao Massacre cases, the Court lays down the following **guidelines** toward addressing the concerns mentioned in *Aquino* and *Estrada*:

(a) An audio-visual recording of the Maguindanao massacre cases may be made both for documentary purposes and for transmittal to live radio and television broadcasting.

(b) Media entities must file with the trial court a letter of application, manifesting that they intend to broadcast the audio-visual recording of the proceedings and that they have the necessary technological equipment and technical plan to carry out the same, with an undertaking that they will faithfully comply with the guidelines and regulations and cover the entire remaining proceedings until promulgation of judgment.

No selective or partial coverage shall be allowed. No media entity shall be allowed to broadcast the proceedings without an application duly approved by the trial court.

(c) A single fixed compact camera shall be installed inconspicuously inside the courtroom to provide a single wide-angle full-view of the sala of the trial court. No panning and zooming shall be allowed to avoid unduly highlighting

or downplaying incidents in the proceedings. The camera and the necessary equipment shall be operated and controlled only by a duly designated official or employee of the Supreme Court. The camera equipment should not produce or beam any distracting sound or light rays. Signal lights or signs showing the equipment is operating should not be visible. A limited number of microphones and the least installation of wiring, if not wireless technology, must be unobtrusively located in places indicated by the trial court.

The Public Information Office and the Office of the Court Administrator shall coordinate and assist the trial court on the physical set-up of the camera and equipment.

(d) The transmittal of the audio-visual recording from inside the courtroom to the media entities shall be conducted in such a way that the least physical disturbance shall be ensured in keeping with the dignity and solemnity of the proceedings and the exclusivity of the access to the media entities.

The hardware for establishing an interconnection or link with the camera equipment monitoring the proceedings shall be for the account of the media entities, which should employ technology that can (i) avoid the cumbersome snaking cables inside the courtroom, (ii) minimize the unnecessary ingress or egress of technicians, and (iii) preclude undue commotion in case of technical glitches.

If the premises outside the courtroom lack space for the set-up of the media entities' facilities, the media entities shall access the audio-visual recording either via wireless technology accessible even from outside the court premises or from one common web broadcasting platform from which streaming can be accessed or derived to feed the images and sounds.

At all times, exclusive access by the media entities to

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[27] *Exclusion of the public*. — The judge may, *motu proprio*, exclude the public from the courtroom if the evidence to be produced during the trial is offensive to decency or public morals. He may also, on motion of the accused, exclude the public from the trial except court personnel and the counsel of the parties.

the real-time audio-visual recording should be protected or encrypted.

(e) The broadcasting of the proceedings for a particular day must be continuous and in its entirety, excepting such portions thereof where Sec. 21 of Rule 119 of the Rules of Court[27] applies, and where the trial court excludes, upon motion, prospective witnesses from the courtroom, in instances where, *inter alia*, there are unresolved identification issues or there are issues which involve the security of the witnesses and the integrity of their testimony (*e.g.*, the dovetailing of corroborative testimonies is material, minority of the witness).

The trial court may, with the consent of the parties, order only the pixelization of the image of the witness or mute the audio output, or both.

(f) To provide a faithful and complete broadcast of the proceedings, no commercial break or any other gap shall be allowed until the day's proceedings are adjourned, except during the period of recess called by the trial court and during portions of the proceedings wherein the public is ordered excluded.

(g) To avoid overriding or superimposing the audio output from the on-going proceedings, the proceedings shall be broadcast without any voice-overs, except brief annotations of scenes depicted therein as may be necessary to explain them at the start or at the end of the scene. Any commentary shall observe the *sub judice* rule and be subject to the contempt power of the court.

(h) No repeat airing of the audio-visual recording shall be allowed until after the finality of judgment, except brief footages and still images derived from or cartographic sketches of scenes based on the recording, only for news purposes, which shall likewise observe the *sub judice* rule and be subject to the contempt power of the court.

(i) The original audio-recording shall be deposited in the National Museum and the Records Management and

Archives Office for preservation and exhibition in accordance with law.

(j) The audio-visual recording of the proceedings shall be made under the supervision and control of the trial court which may issue supplementary directives, as the exigency requires, including the suspension or revocation of the grant of application by the media entities.

(k) The Court shall create a special committee which shall forthwith study, design and recommend appropriate arrangements, implementing regulations, and administrative matters referred to it by the Court concerning the live broadcast of the proceedings *pro hac vice*, in accordance with the above-outlined guidelines. The Special Committee shall also report and recommend on the feasibility, availability and affordability of the latest technology that would meet the herein requirements. It may conduct consultations with resource persons and experts in the field of information and communication technology.

(l) All other present directives in the conduct of the proceedings of the trial court (*i.e.*, prohibition on recording devices such as still cameras, tape recorders; and allowable number of media practitioners inside the courtroom) shall be observed in addition to these guidelines.

Indeed, the Court cannot gloss over what advances technology has to offer in distilling the abstract discussion of key constitutional precepts into the workable context. Technology *per se* has always been neutral. It is the use and regulation thereof that need fine-tuning. Law and technology can work to the advantage and furtherance of the various rights herein involved, within the contours of defined guidelines.

WHEREFORE, in light of the foregoing disquisition, the Court *PARTIALLY GRANTS PRO HAC VICE* the request for live broadcast by television and radio of the trial court proceedings of the Maguindanao Massacre cases, subject to the guidelines herein outlined.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Corona, C.J., on official leave.

Brion, J., on sick leave.

THIRD DIVISION

[G.R. No. 150462. June 15, 2011]

TOP MANAGEMENT PROGRAMS CORPORATION, *petitioner, vs.* **LUIS FAJARDO and THE REGISTER OF DEEDS OF LAS PIÑAS CITY,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; OWNERSHIP; QUIETING OF TITLE, AS A REMEDY; CONSTRUED. — Quieting of title is a common law remedy for the removal of any cloud, doubt, or uncertainty affecting title to real property. In an action for quieting of title, the plaintiffs must show not only that there is a cloud or contrary interest over the subject real property, but that they have a valid title to it. The court is tasked to determine the respective rights of the complainant and the other claimants, not only to place things in their proper places, and to make the claimant, who has no rights to said immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce the improvements he may desire, as well as use, and even abuse the property as he deems fit.

2. ID.; ID.; ID.; CERTIFICATES OF TITLE; IF TWO CERTIFICATES OF TITLE PURPORT TO INCLUDE THE SAME LAND WHETHER, WHOLLY OR PARTLY, THE BETTER APPROACH IS TO TRACE THE ORIGINAL CERTIFICATES FROM WHICH THE CERTIFICATES OF TITLE WERE DERIVED; SUSTAINED. — In *Degollacion v. Register of Deeds of Cavite* we held that if two certificates of title purport to include the same land, whether wholly or partly, the better approach is to trace *the original certificates* from which the certificates of title were derived. Citing our earlier ruling in *Mathay v. Court of Appeals* we declared: x x x where two *transfer* certificates of title have been issued on different dates, to two different persons, for the same parcel of land even if both are presumed to be title holders in good faith, *it does not necessarily follow that he who holds the earlier title should*

prevail. On the assumption that there was regularity in the registration leading to the eventual issuance of subject transfer certificates of title, **the better approach is *to trace* the *original* certificates from which the certificates of title in dispute were derived.** Should there be only one common original certificate of title, x x x, the *transfer* certificate issued on an earlier date along the line must prevail, absent any anomaly or irregularity tainting the process of registration.

3. ID.; ID.; LAND REGISTRATION; FINALITY OF JUDGMENT; FOLLOWING THE PRESCRIBED PROCEDURE, THE LAND REGISTRATION COURT SHOULD ISSUE AN ORDER FOR THE ISSUANCE OF DECREE OF REGISTRATION AND THE CORRESPONDING CERTIFICATE OF TITLE IN THE NAME OF THE APPLICANT. — It serves well to emphasize that upon finality of judgment in land registration cases, the winning party does not file a motion for execution as in ordinary civil actions. Instead, he files a petition with the land registration court for the issuance of an order directing the Land Registration Authority to issue a decree of registration, a copy of which is then sent to the Register of Deeds for inscription in the registration book, and issuance of the original certificate of title. The LRC upon the finality of the judgment adjudicating the land to an applicant shall, following the prescribed procedure, merely issues an order for the issuance of a decree of registration and the corresponding certificate of title in the name of such applicant.

4. ID.; ID.; ID.; A LAND REGISTRATION COURT HAS NO JURISDICTION TO ORDER THE REGISTRATION OF LAND ALREADY DECREED IN THE NAME OF ANOTHER IN AN EARLIER LAND REGISTRATION CASE; VIOLATION IN CASE AT BAR. — In this case, the RTC of Pasig, cognizant of a previous decree of registration instead ordered the Register of Deeds to issue *new* certificates in favor of the heirs of Gregorio, erroneously declaring that such certificates are *in* lieu of OCT Nos. 5677, 5678, 5679 and 5680. Said court exceeded its authority when it ordered the issuance of *transfer* certificates in the name of the heirs of Gregorio despite the existence of TCT No. S-91911 already issued to them covering the same parcel of land. This caused the duplication of titles held by the heirs of Gregorio over Lot 1. Thus, while there was only

one decree and original certificate issued to the common predecessor-in-interest of petitioner and private respondent, Emilio Gregorio, the latter's heirs were able to secure *two* transfer certificates covering the same land. Indeed it could not order the issuance of another OCT as it would result to duplication of titles or "double titling." A land registration court has no jurisdiction to order the registration of land already decreed in the name of another in an earlier land registration case. Issuance of another decree covering the same land is therefore null and void. In the light of the LRA Report dated September 12, 1984 stating that compliance with the July 30, 1971 final judgment rendered by the CA which reversed the LRC decision and adjudicated Lots 1, 3 and 4 in favor of Emilio Gregorio, would result in duplication of titles, it was grave error for the RTC of Pasig to grant the motion for execution filed by the heirs of Emilio Gregorio who sought, — *in the guise of implementing the July 30, 1971 CA decision* — the issuance of new titles in their name notwithstanding the existence of OCT No. 9587 and *TCT No. S-91911*. Given such vital information, there exists a compelling need for the land registration court to ascertain the facts and "address the likelihood of duplication of titles x x x, an eventuality that will undermine the Torrens system of land registration."

5. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION PENDING APPEAL; NOT APPLICABLE IN LAND REGISTRATION CASES; UPHELD. — In *Director of Lands v. Reyes*, this Court laid down the rule that execution pending appeal is not applicable in a land registration proceeding and the certificate of title thereby issued is null and void. In that case, the assignee of the original applicant applied for a motion for issuance of a decree of registration before the lower court pending the approval of the Record on Appeal. The motion was opposed by the Government which appealed the lower court's decision adjudicating the land to the said assignee. We thus ruled: Under the circumstances of this case, the failure of the appellants to serve a copy of their Notice of Appeal to the counsel for the adjudicatee Roman C. Tamayo is not fatal to the appeal because, admittedly, he was served with a copy of the original, as well as the Amended Record on Appeal in both of which the Notice of Appeal is embodied. Hence, such failure cannot impair the right of appeal. What is more, the

appeal taken by the Government was from the entire decision, which is not severable. Thus, the appeal affects the whole decision. In any event, We rule that execution pending appeal is not applicable in a land registration proceeding. It is fraught with dangerous consequences. Innocent purchasers may be misled into purchasing real properties upon reliance on a judgment which may be reversed on appeal. A Torrens title issued on the basis of a judgment that is not final is a nullity, as it is violative of the explicit provisions of the Land Registration Act which requires that a decree shall be issued only after the decision adjudicating the title becomes final and executory, and it is on the basis of said decree that the Register of Deeds concerned issues the corresponding certificate of title. Consequently, the lower court acted without jurisdiction or exceeded its jurisdiction in ordering the issuance of a decree of registration despite the appeal timely taken from the entire decision *a quo*.

6. ID.; ID.; ID.; *LIS PENDENS;* DEFINED AND CONSTRUED. — *Lis pendens*, which literally means pending suit, refers to the jurisdiction, power or control which a court acquires over property involved in a suit, pending the continuance of the action, and until final judgment. Founded upon public policy and necessity, *lis pendens* is intended to keep the properties in litigation within the power of the court until the litigation is terminated, and to prevent the defeat of the judgment or decree by subsequent alienation. Its notice is an announcement to the whole world that a particular property is in litigation and serves as a warning that one who acquires an interest over said property does so at his own risk or that he gambles on the result of the litigation over said property.

7. ID.; ID.; ID.; ID.; TWO-FOLD EFFECT OF FILING A NOTICE THEREOF; APPLICATION IN CASE AT BAR. — The filing of a notice of *lis pendens* has a two-fold effect: (1) to keep the subject matter of the litigation within the power of the court until the entry of the final judgment to prevent the defeat of the final judgment by successive alienations; and (2) to bind a purchaser, *bona fide* or not, of the land subject of the litigation to the judgment or decree that the court will promulgate subsequently. Once a notice of *lis pendens* has been duly registered, any subsequent transaction affecting the land involved would have to be subject to the outcome of the

litigation. Petitioner being a mere transferee at the time the decision of the RTC of Pasig in Civil Case No. 35305 had become final and executory on December 6, 1988, it is bound by the said judgment which ordered the heirs of Emilio Gregorio to convey Lots 1, 2, 3 & 4, Psu-204875 in favor of private respondent and Trinidad. As such buyer of one of the lots to be conveyed to private respondent pursuant to the court's decree with notice that said properties are in litigation, petitioner merely stepped into the shoes of its vendors who lost in the case. Such vested right acquired by the private respondent under the final judgment in his favor may not be defeated by the subsequent issuance of another certificate of title to the heirs of Gregorio respecting the same parcel of land. For it is well-settled that being an involuntary transaction, entry of the notice of *lis pendens* in the primary entry book of the Register of Deeds is sufficient to constitute registration and such entry is notice to all persons of such claim. "It is to be noted that the notation of the *lis pendens* on the back of the owner's duplicate is not mentioned for the purpose of constituting a constructive notice because usually such owner's duplicate certificate is presented for the purpose of the annotation later, and sometimes not at all until [it is] ordered by the court." Strictly speaking, the *lis pendens* annotation is not to be referred to "as a part of the doctrine of notice; the purchaser *pendente lite* is affected, not by notice, but because the law does not allow litigating parties to give to others, pending the litigation, rights to the property in dispute so as to prejudice the opposite party. The doctrine rests upon public policy, not notice." Thus we have held that one who buys land where there is a pending notice of *lis pendens* cannot invoke the right of a purchaser in good faith; neither can he have acquired better rights than those of his predecessor in interest.

APPEARANCES OF COUNSEL

Gana & Manlangit Law Office for petitioner.

Lopez Rasul Maliwanag Baybay & Palaran Law Office for private respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on certiorari under Rule 45 seeking the reversal of the Decision[1] dated May 30, 2001 and Resolution[2] dated October 23, 2001 of the Court of Appeals (CA) in CA-G.R. CV No. 60712 which affirmed the Order[3] of the Regional Trial Court (RTC) of Las Piñas City, Branch 275 in Civil Case No. 94-564 dismissing petitioner's complaint for quieting of title and damages against private respondent.

The factual antecedents:

On December 31, 1964, Emilio Gregorio (Gregorio) filed an application for registration of title over Lots 1 to 4 of Plan Psu-204785 situated at Mag-asawang Mangga, Las Piñas, Rizal, before the then Court of First Instance (CFI) of Rizal, Branch II (LRC Case No. N-5053, LRC Rec. No. N-27523). On January 4, 1966, said court issued an order declaring as abandoned the reserved oppositions of Jose T. Velasquez and Pablo Velasquez. Thereafter, the case proceeded to trial.

Meanwhile, on July 29, 1965, Jose T. Velasquez (Velasquez) filed an application for registration of title over six lots denominated as Lots 7 and 9 of Psu-80886, Ap-5538, and Lots 1, 7, 9 and 11 of Psu-56007 Amd., Ap-11135, situated at Almanza, Las Piñas, Rizal, in LRC Case No. N-5416, LRC Rec. No. N-28735, before the same court.

On January 31, 1966, the CFI rendered a decision[4] in LRC Case No. N-5053 declaring Gregorio to be the absolute owner of Lots 1, 2, 3 and 4 described in Plan Psu-204785. On March 9, 1966, an order was issued by said court for the issuance of the decree of registration, stating that the January 31, 1966

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[1] *Rollo*, pp. 34-49. Penned by Associate Justice Fermin A. Martin, Jr., with Associate Justices Mercedes Gozo-Dadole and Alicia L. Santos, concurring.

[2] *Id.* at 51-52. Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Godardo A. Jacinto and Alicia L. Santos, concurring.

[3] *Id.* at 54-59. Penned by Judge Alfredo R. Enriquez.

[4] Records (Vol. 2), pp. 460-463.

had become final.

On March 30, 1966, the same court promulgated a decision in LRC Case No. N-5416 adjudicating Lots 1, 7, 9 and 11 of Psu-56007-Amd, plan Ap-11135, and Lots 7 and 9 of Psu-80886 (Ap-5538) to Jose T. Velasquez. On May 3, 1966, said court ordered the issuance of a decree of registration in view of the finality of the March 30, 1966 decision.

In the meantime, on July 25, 1966, the LRA called the attention of the Director of Lands regarding the overlapping of Lots 1, 7 and 11 of Psu-56007-Amd awarded to Velasquez, with Lots 1 to 4 of Psu-204785 adjudicated to Gregorio, and requested that portions of these lots that are not in conflict be segregated. On September 16, 1966, the LRA informed the CFI that Lots 1 and 7 of Psu-56007-Amd (Ap-11135) had been amended by the Bureau of Lands to exclude therefrom portions covered by Lot 2, Psu-64894, Psu-96904, and Lots 1 to 4, Psu-204785 of Gregorio.[5] On the basis of the LRA report, Velasquez petitioned the CFI to set aside the award earlier made in favor of Gregorio in LRC Case No. N-5035 on the ground of lack of jurisdiction and to give due course to his application over the said lots in LRC Case No. N-5416. On November 23, 1966, the CFI issued an Order in LRC Case Nos. N-5053 and N-5416 declaring that the application of Velasquez be given due course insofar as Lots 1 and 7 of Ap-11135 which are identical to Lots 1 to 4, Plan Psu-204785, and the January 31, 1966 decision in LRC Case No. N-5053 in favor of Gregorio respecting the same lots as null and void.[6] On December 6, 1966, Decree Nos. N-111862 to N-111865 and the corresponding certificates **OCT Nos**. 5677, **5678**, 5679 and 5680 were issued in favor of Velasquez.

On January 7, 1967, Gregorio appealed the November 23, 1966 decision of the CFI to the CA (CA-G.R. No. 40739-40-R). On July 30, 1971, the CA rendered its Decision[7] reversing the CFI, as follows:

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[5] *Id.* at 479.

[6] *Id.* at 479-480.

WHEREFORE, the order appealed from is hereby reversed and, in lieu thereof, another is hereby rendered declaring null and void the Decision of the Court of First Instance of Rizal, dated March 30, 1966, in Land Registration Case No. N-5416, LRC Rec. No. N-28735, insofar as it adjudicates in favor of appellee Jose T. Velasquez Lots Nos. 1 and 7 of Plan Ap-11315; and directing that the Order of March 9, 1966 for the issuance of the decree in Land Registration Case No. N-5053, LRC Rec. No. N-27523, over Lots 1, 2, 3 and 4 of Plan Psu-204785, in the name of appellant Emilio Gregorio, be given due course.

No costs.

IT IS SO ORDERED.[8]

Per entry of judgment issued by the CA, the above decision became final and executory on February 1, 1972.[9] It appears, however, that a petition for review had been filed by Velasquez with this Court, docketed as G.R. Nos. L-34239-40 ("*Jose T. Velasquez v. Emilio Gregorio*"), which was given due course per Resolution dated March 7, 1972 of the Second Division. Eventually, this Court denied the petition under Resolution[10] dated February 8, 1984 stating that:

> We have carefully scrutinized the arguments of the parties stated in their respective briefs as well as the reasons adduced by the Court of Appeals to support its decision sought to be reviewed and We have Resolved to RECONSIDER the resolution of March 7, 1972, and enter instead another resolution DENYING the petition for lack of merit with COSTS against the petitioners.[11]

The above resolution became final and executory on March 2, 1984 as per entry of judgment[12] issued by this Court. Prior

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[7] Records (Vol. 1), pp. 39-47.

[8] *Id.* at 47.

[9] *Id.* at 34.

[10] *Id.* at 35-37.

[11] *Id.* at 37.

to this however, on October 31, 1972, Decree No. N-141990 over Lots 1, 3 and 4 of Plan Psu-204785 were issued by the LRA and the corresponding **OCT No. 9587** in the name of Gregorio, was subsequently issued on November 21, 1972.[13]

Lots 1, 3 and 4, Plan Psu-204785 covered by OCT No. 9587 also became the subject of Civil Case No. 16977 of the CFI of Rizal. Gregorio sought the annulment of the deed of sale over the said lots in favor of Luciana Parami. The CFI dismissed the complaint of Gregorio in a decision rendered on May 8, 1974. Gregorio appealed to the CA (CA-G.R. No. 56015-R, entitled *"Emilio Gregorio v. Spouses Luciana and Corpus Parami and the Register of Deeds of Rizal"*) which reversed the CFI. In its decision dated February 7, 1978, the CA declared the aforesaid deed of sale null and void, and ordered the cancellation of certificate of title (No. 38433) in the name of the Paramis and issuance of an OCT in favor of Gregorio covering Lots 1, 3 and 4, Plan Pasu-204785. On November 20, 1979, the court in the same case issued an order declaring the children (Ana, Paz, Carmen, Remedios and Rolando, all surnamed Gregorio) of the deceased Emilio Gregorio "as his compulsory heirs to substitute the said plaintiff."[14] Pursuant to the said decision, OCT No. 9587 in the name of Emilio Gregorio was cancelled and a new certificate of title, TCT No. S-91911 in favor of his heirs was issued.[15]

In a Report dated September 12, 1984, the LRA informed the CFI in LRC Case No. N-5416 that compliance with the July 30, 1971 CA decision in CA-G.R. No. 40739-40-R adjudicating Lots 1, 3 and 4 of Plan Psu-204785 in favor of Gregorio will result in duplication of titles over the said properties. The report further stated:

21. *That based on the records of this Commission, Lots 1, 3*

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[12] Records (Vol. 2), p. 476.

[13] *Id.* at 491.

[14] *Id.* at 481-482.

[15] *Rollo,* pp. 44-45.

and 4 of plan Psu-204785 were already covered by ***TCT No. S-91911*** *in the name of the Heirs of Emilio Gregorio with several annotations of encumbrances* x x x;

22. That among those encumbrances are the deeds of sale executed by them in favor of Herminia Galman covering an undivided portion of aforesaid Lot 1, and of Everlita Talusan of the whole Lots 3 and 4 denominated as Entry No. 21079/S-97421, and that the latter vendee E. Talusan had already acquire[d] TCT No. S-97421 over said two lots in her name also with several annotation of encumbrances x x x;

23. That as per our verification from the Registry of Deeds of Makati, corresponding titles were issued in the name of J.T. Velasquez denominated as OCT Nos. 5678, 5677, 5679 and 5680 x x x;

24. And that *these certificates of title were all cancelled and assigned in favor of J.V. Development Corporation* as per Entry Nos. 99377/T-195606, 195605, 195605 and 19505 all inscribed on *July 27, 1967*.

WHEREFORE, these facts are respectfully brought to the attention of this Honorable Court with the recommendation:

That Decree Nos. N-111862 to N-111865 issued on December 6, 1966 over Lots 1 to 4, Psu-204785, in favor of Jose T. Velasquez, as well as existing subsequent titles emanating from the same shall be declared null and void and ordered cancelled.[16]

On April 9, 1984, the heirs of Emilio Gregorio filed an *ex-parte* motion for execution before the RTC of Pasig, Metro Manila, Branch 152 in LRC Case Nos. N-5053 and N-5416. On March 21, 1986, the RTC of Pasig issued the following Order:[17]

Considering that the Resolution issued on February 8, 1984 by the Supreme Court in G.R. No. L-34239-40, entitled "*Jose T. Velasquez vs. Emilio Gregorio*," denying the petition for review on *certiorari* of the judgment of the Court of Appeals in CA-G.R. No. 40739-40-R, had on March 2, 1984 become final and executory in favor of Emilio Gregorio, and considering further the recommendation contained in

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[16] Records (Vol. 2), p. 483.

[17] *Id.* at 495-496.

the Report dated September 12, 1984 of the Acting Commissioner of Land Registration thru Silverio G. Perez, Chief, Division of Original Registration, relative to LRC Case No. N-5053, LRC Record No. N-27523, wherein Emilio Gregorio is the applicant and in LRC Case No. N-5416, LRC Record No. N-28735, wherein Jose T. Velasquez is the applicant, which report is hereby approved, the Court declares as null and void Decree Nos. N-111862 to N-111865, inclusive, issued on December 6, 1966, covering Lots 1, 2, 3 and 4, Psu-204785 in favor of Jose T. Velasquez in LRC Case No. No. 5416 as well as all existing subsequent titles emanating therefrom, and any and all encumbrances constituted against said Lots 1, 2, 3 and 4, Psu-204785 and other acts of disposition affecting the same.

WHEREFORE, the Register of Deeds of Pasay City is hereby directed to cancel Original Certificates of Title Nos. 5677, 5678, 5679 and 5680 issued in the name of Jose T. Velasquez and all titles and transactions emanating therefrom and which are annotated at the back of the said Certificates of Title, and to issue, in lieu thereof, new Certificates of Title in the name of the Heirs of Emilio Gregorio, after paying the prescribed fees therefor, pursuant to the Order for issuance of a decree dated March 9, 1966 in the LRC Case No. N-5053, Record No. N-27523.

SO ORDERED.[18]

On April 29, 1986, **TCT Nos.** 107727, 107728 and **107729** (covering Lot 1)[19] was issued by the Register of Deeds of Pasay City in the name of the Heirs of Emilio Gregorio. Subsequently, by virtue of a Partition Agreement with Herminia Galman, the property was subdivided into two lots between the heirs of Gregorio (Lot 1-A consisting of 20,000 sq. ms.) and Galman (Lot 1-B consisting of 27,536 sq. ms.). Consequently, TCT No. 107729 was cancelled and in lieu thereof TCT No. 4635 in the name of the heirs of Gregorio and TCT No. 4636 in the name of Herminia Galman, were issued by the Register of Deeds of Las Piñas.[20]

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[18] *Id.*

[19] *Id.* at 487-488.

[20] *Id.* at 487 (back), 489-490.

Undeniably, the duplication of titles over Lot 1, Psu-204785 with the issuance of **TCT No. S-91911** (transfer from **OCT No. 9587**) and **TCT No. 107729** and its derivative title, TCT No. 4635, both in the name of the same owners, gave rise to the present controversy.

The Claim of Luis Fajardo (TCT No. 27380, now TCT No. T-34923)

As earlier mentioned, Gregorio appealed the November 23, 1966 CFI decision in LRC Case Nos. N-5053 and N-5416 awarding Lots 1 to 4 of Psu-204785 in favor of Velasquez, docketed as CA-G.R. No. 40739-40-R. Sometime after this, he entered into an agreement with Tomas Trinidad (Trinidad) and Luis Fajardo (Fajardo) entitled "*Kasunduan na may Pambihirang Kapangyarihan.*" By virtue of this agreement, Fajardo would finance the cost of the litigation and in return he would be entitled to one-half of the subject property after deducting twenty per cent (20%) of the total land area as attorney's fees for Trinidad if the appeal is successful.

After the CA rendered a favorable ruling on Gregorio's appeal, Fajardo and Trinidad filed Civil Case No. 35305 before the RTC of Pasig, Branch 164 to enforce their agreement with Gregorio. On May 8, 1986, said court rendered judgment in their favor, as follows:

> WHEREFORE, premises considered, judgment is hereby rendered ordering herein defendants:
>
> (1) to convey to Atty. Tomas Trinidad as honorarium for his services an area of 14,684 sq.m. which is twenty percent (20%) of 72,424 sq.m. the total area of Lots 1, 2, 3 and 4;
>
> (2) to convey to Luis Fajardo an area of 29,369 sq.m. representing fifty percent (50%) of the remainder of the property after deducting the honorarium of Atty. Trinidad.
>
> (3) to pay the cost of suit and litigation expenses.
>
> SO ORDERED.[21]

[21] *Id.* at 370.

The heirs of Gregorio appealed the above decision but their appeal was declared abandoned and dismissed by the CA. By virtue of an Entry of Judgment issued by the CA dated December 8, 1988, Trinidad and Fajardo filed a motion for the issuance of a writ of execution. However, the writ issued remained unsatisfied as per the Return filed by the Sheriff on April 10, 1989. On August 14, 1989, the court appointed Deputy Sheriff Marcial Estrellado to execute the deed of conveyance in favor of the plaintiffs.

Deputy Sheriff Estrellado executed the Officer's Deed of Conveyance[22] dated August 15, 1989 in favor of Trinidad and Fajardo. While the plaintiffs moved for the approval of the subdivision plan needed for the transfer and issuance of separate titles as per decision, the Register of Deeds of Las Piñas wrote a letter-reply[23] to the Deputy Sheriff indicating that the deed of conveyance and Order of the Court dated August 14, 1989 entered as Entry No. 6503 and 6504 in their docket book could not be pursued because the subject property was already sold to other parties.

In compliance with the order of the CFI, then Register of Deeds of Las Piñas Alejandro R. Villanueva submitted an official report[24] stating that TCT No. S-91911, still existing in their records, should have been cancelled when TCT Nos. 107727, 107728 and 107729 were issued in compliance with the Order dated March 21, 1986 of the RTC of Pasig, and that such caused an anomalous situation of having two separate and distinct certificates of title covering the same parcels of land although in the name of the same registered owners. Villanueva opined that the issuance of TCT Nos. 107727, 107728 and 107729 covering Lots 1, 3 and 4 of Psu-204785, "placed TCT No. S-91911, as *deemed cancelled*, inasmuch as the latter certificate of title covers one and the same parcels of land" and hence TCT No. S-91911 should not anymore be subject of any transactions.

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[22] Records (Vol. 1), pp. 14-15.

[23] Records (Vol. 2), pp. 485-486.

[24] *Id.* at 492-494.

The CFI initially withdrew its Order dated August 14, 1989 but eventually reinstated the same and ordered the Register of Deeds to annotate the Deed of Conveyance at the back of TCT No. S-91911 within 24 hours upon receipt of the order. Said directive was reiterated by the CFI on June 7, 1991. On June 26, 1991, the court authorized the subdivision of Lot 1, Psu-204785 and directed the Register of Deeds to issue separate titles in favor of plaintiffs Trinidad and Fajardo. Consequently, **TCT No. T-27380**[25] covering 29,369 sq. ms. portion of Lot 1, Psu-204785 in the name of Luis Fajardo was issued on December 12, 1991. On April 26, 1993, said TCT No. T-27380 was cancelled per Order[26] of the court dated March 13, 1992 and in lieu thereof, **TCT No. T-34923**[27] was issued, still in the name of Luis Fajardo and without any of the encumbrances carried over from TCT No. S-91911.

The Claim of Top Management Programs Corporation (TCT No. T-8129)

On September 24, 1991, herein petitioner Top Management Programs Corporation sought the annulment of the CFI orders in Civil Case No. 35305 reinstating the August 14, 1989 order and directing the issuance of new certificates of title in the name of Trinidad and Fajardo, on the ground of extrinsic fraud. Petitioner claimed that by virtue of a Deed of Absolute Sale[28] dated November 29, 1988 which was notarized on January 9, 1989, the heirs of Gregorio sold to it a parcel of land with an area of 20,000 sq. ms., located at Las Piñas and identified as Lot 1-A Psd-293076, being a portion of Lot 1, Psu-204785 covered by TCT No. T-4635, and that on February 20, 1989, **TCT No. T-8129**[29] covering the said property was issued in its name.

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[25] *Rollo,* pp. 61-62.

[26] *Id.* at 62.

[27] *Id.* at 63.

[28] Records (Vol. 1), pp. 7-11.

[29] *Rollo,* p. 60.

On November 28, 1991, the CA rendered its decision dismissing the petition for annulment (CA-G.R. SP No. 26100). It held that there existed no extrinsic fraud which would justify the annulment of the questioned orders. Petitioner sought the reversal of the CA ruling before this Court via a petition for *certiorari*. By Decision[30] dated May 28, 1993, this Court dismissed the petition and affirmed the CA judgment. On the issue raised by petitioner as to whether the CA erred in holding that petitioner's claim of title to Lot 1-A should be served as third-party claim on the Deputy Sheriff who executed the Deed of Conveyance and caused its registration, or to vindicate the claim to the property through a separate independent action, the Court refrained from discussing the same since its resolution is inconsequential and would not alter in any way the outcome of the petition.[31]

Civil Case No. 94-564

Thus, on February 10, 1994, petitioner filed before the RTC of Makati Civil Case No. 94-564 for Quieting of Title With Damages. Petitioner alleged that the issuance of TCT No. T-27380 in the name of Fajardo — who obtained the same from the court in a case without the knowledge of petitioner who was not a party therein — despite the existence of TCT No. T-8129 in its name constitutes a cloud upon the title of petitioner. Petitioner claimed that it acquired the same property in good faith and for value from the original owners thereof.

In his Answer, private respondent Fajardo asserted that it is the title of petitioner which originated from a void title. OCT No. 5678 from which TCT No. 4635 was derived, was in effect declared null and void under this Court's Resolution dated February 8, 1984 in G.R. No. L-34239-40 which dismissed petitioner's appeal from the July 30, 1971 CA Decision in CA-G.R. No. 40739-40-R. The CA had nullified the CFI decision dated March 30, 1966 in LRC Case No. N-5416 insofar as it

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[30] *Top Management Programs Corp. v. Court of Appeals*, G.R. No. 102996, May 28, 1993, 222 SCRA 763.

[31] *Id.* at 772.

adjudicates the subject lots to Velasquez.

After petitioner's formal offer of evidence, private respondent filed a demurrer to evidence, which the trial court granted in its Order[32] dated June 8, 1998, as follows:

> WHEREFORE, premises considered, the case is hereby DISMISSED. No pronouncement as to costs. The Register of Deeds of Las Piñas City is hereby ordered to cancel TCT No. T-8129 in the name of plaintiff Top Management Programs Corporation.
>
> SO ORDERED.[33]

Petitioner appealed to the CA and on May 30, 2001 said court rendered the assailed Decision[34] affirming the trial court's dismissal of petitioner's complaint. The CA held that petitioner cannot invoke the rule that the title which bears the earlier date should prevail in view of the infirmity in TCT No. 107729 which on its face shows that its origin was a title already voided by the appellate court. Petitioner's motion for reconsideration was likewise denied by the CA.

Hence, this petition alleging that the CA erred in (a) declaring TCT No. T-8129 as defective based on a mere clerical error despite acknowledgment of its issuance resulting from a final determination by this Court of the validity of Emilio Gregorio's claim over the subject property, and (b) affirming the validity of private respondent's TCT No. T-27380 despite the clear nullity of its mother title (OCT No. 9587) which was issued pending the appeal filed by Velasquez from the decision of the appellate court in CA-G.R. No. 40739-40-R to this Court.

Petitioner reiterates that an error was made on the entries in TCT No. 107729. Instead of providing that said title, as well as TCT Nos. 107727 and 107728 issued in the name of the Heirs of Emilio Gregorio, emanated from the application for registration of Emilio Gregorio in LRC Case No. N-5053, LRC

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[32] *Rollo*, pp. 54-59.

[33] *Id.* at 59.

[34] *Id.* at 34-49.

Rec. No. N-27523 pursuant to the Order of the RTC in LRC Case Nos. N-5416 and N-5053, the Register of Deeds of Pasay City annotated on the face of said titles that these were derived from Jose T. Velasquez's OCT No. 5678 under Decree No. N-111862. Petitioner laments that deplorable situation of the legitimate successor of the winning litigant holding a title wrongly annotated to have been derived from the voided title of the loser in the case. The winning party was then given a title registered as derived from the title he fought so hard to set aside. Moreover, there is no logic in the appellate court's conclusion that petitioner's title traces its origin to a mother title already voided, when in fact it is undisputed that TCT No. 107729 was issued pursuant to the March 21, 1986 order of the RTC of Pasig in LRC Case Nos. N-5416 and N-5053 implementing the final and executory February 8, 1984 decision of this Court in G.R. Nos. L-34239-40 denying Velasquez's appeal.

Petitioner further claims that it is a buyer in good faith who had no knowledge of any defect in the title of his predecessor-in-interest. It paid the purchase price and acquired its title long before it discovered the right to compensation of private respondent through the Officer's Deed of Conveyance.

Finally, petitioner argues that the issuance of OCT No. 9587 during the pendency of Velasquez's appeal to this Court renders said title null and void *ab initio*, citing the ruling in *Director of Lands v. Reyes*.[35] Since OCT No. 9587 is a nullity, it follows that its derivative title, private respondent's TCT No. T-27380, is likewise a nullity.

Private respondent counters that petitioner's assertion of the existence of clerical errors in the annotations of the entries in TCT No. 8129 is, at the very least, an admission that said title is indeed defective. Obviously, petitioner may not file a petition to quiet its title and at the same time seek, in the same proceeding, the corrections of the entries therein.

As to the issue of premature issuance of OCT No. 9587,

[35] Nos. L-27594 & 28144, November 28, 1975, 68 SCRA 177.

private respondent points out that the decision in LRC Case No. N-5053 dated January 31, 1966 as a consequence of which Decree of Registration No. 141990 was issued, has already attained finality even before Velasquez sought the annulment of the award in favor of Emilio Gregorio utilizing the Report of the Commissioner of Land Registration dated September 16, 1966, to the effect, among others, that a portion of the land awarded in his favor overlapped with that adjudicated to Gregorio. Hence, the prohibition mentioned in the case of *Director of Lands v. Reyes (supra)* has no application to the case at bar, and therefore could not serve as basis to nullify OCT No. 9587, the mother title of TCT No. T-27380 in the name of private respondent.

We deny the petition.

Quieting of title is a common law remedy for the removal of any cloud, doubt, or uncertainty affecting title to real property. In an action for quieting of title, the plaintiffs must show not only that there is a cloud or contrary interest over the subject real property, but that they have a valid title to it.[36] The court is tasked to determine the respective rights of the complainant and the other claimants, not only to place things in their proper places, and to make the claimant, who has no rights to said immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce the improvements he may desire, as well as use, and even abuse the property as he deems fit.[37]

Petitioner anchors its claim over the disputed lot on TCT No. T-8129 issued on February 20, 1989 which is a transfer from TCT No. 107729 in the name of the Heirs of Emilio Gregorio, from whom it bought the property in January 1989. On the other hand, private respondent acquired the same land by virtue

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[36] *Secuya v. Vda. de Selma,* G.R. No. 136021, February 22, 2000, 326 SCRA 244, 246.

[37] *Baricuatro, Jr. v. Court of Appeals,* G.R. No. 105902, February 9, 2000, 325 SCRA 137, 146-147.

of the Officer's Deed of Conveyance dated August 15, 1989 executed in their favor pursuant to the final judgment in Civil Case No. 35305 of the RTC of Pasig, Branch 164 and was issued TCT No. T-27380 in his name on December12, 1991.

In *Degollacion v. Register of Deeds of Cavite*[38] we held that if two certificates of title purport to include the same land, whether wholly or partly, the better approach is to trace *the original certificates* from which the certificates of title were derived. Citing our earlier ruling in *Mathay v. Court of Appeals*[39] we declared:

> x x x where two *transfer* certificates of title have been issued on different dates, to two different persons, for the same parcel of land even if both are presumed to be title holders in good faith, *it does not necessarily follow that he who holds the earlier title should prevail.* On the assumption that there was regularity in the registration leading to the eventual issuance of subject transfer certificates of title, **the better approach is *to trace* the *original* certificates from which the certificates of title in dispute were derived.** Should there be only one common original certificate of title, x x x, the *transfer* certificate issued on an earlier date along the line must prevail, absent any anomaly or irregularity tainting the process of registration.[40]

From the recitals in the transfer certificates of title respectively held by petitioner and private respondent, as well as the records of the LRA, there appears not just one but *two* different original certificates. TCT No. T-8129 on its face shows that the land covered was originally registered as OCT No. 5678 under Decree No. N-111862 (Velasquez), while TCT No. T-27380 indicates the original registration as OCT No. 9587 under Decree No. N-141990 (Gregorio). Both the LRC and CA found TCT No. 107729 and its derivative titles TCT Nos. 4635 and T-8129 as void and inexistent since OCT No. 5678 in the name of Velasquez had been nullified under the order for execution of the final judgment in LRC Case Nos. N-5053 and N-5416 in which

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[38] G.R. No. 161433, August 29, 2006, 500 SCRA 108, 115.

[39] G.R. No. 115788, September 17, 1998, 295 SCRA 556.

[40] *Id.* at 578.

Gregorio prevailed. Consequently, the lower courts upheld the title of private respondent which alone can be traced to the original certificate in the name of Emilio Gregorio (OCT No. 9578).

Petitioner, however, asserts that the entries in his TCT contain errors and insists that TCT Nos. 107729, 4635 and T-8129 actually emanated from the application for registration of Emilio Gregorio in LRC Case No. N-5053, LRC Record No. N-27523 pursuant to the Order of the Regional Trial Court in LRC Case Nos. N-5053 and N-5416, as in fact TCT No. 107729 were issued along with TCT Nos. 107727 and 107728 covering two other lots also in the name of the Heirs of Emilio Gregorio by way of implementing the final judgment of said court in the case between Gregorio and Velasquez, as affirmed by the CA and this Court.

We disagree.

TCT No. 107729 in the name of the heirs of Emilio Gregorio issued on April 29, 1986, on its face showed badges of irregularity in its issuance. First, the technical description stated that it covers a portion of Lot 1, plan Psu-204785, *LRC Case No. N-5416* instead of N-5053. Second, the decree number and date of issuance, as well as OCT number clearly indicate that the original decree pertained to Velasquez and not Gregorio. Third, the name of the registered owner in the original certificate is not Velasquez or Gregorio but "Delta Motor Corp." And fourth, the certificate from which TCT No. 107729 was supposedly a transfer should have been the OCT (of Gregorio) and not those unfamiliar TCT numbers indicated therein. The annotations regarding the supposed original registration of TCT No. 107729 read as follows:

IT IS FURTHER CERTIFIED that said land was originally registered on the **12th** day of **December** in the year nineteen hundred and sixty-six in the Registration Book of the Office of the Register of Deeds of Rizal Volume A-69 page 78 as Original Certificate of Title No**. 5678** pursuant to Decree No. **N-111862** issued in L.R.C. _____ Record No. N-28735 Case No**. N-5416** in the name of **Delta Motor Corp.**

This certificate is **a transfer from Transfer Certificate of Title No. 27737/A/T-145-A S-8722/T-41** which is cancelled by virtue hereof in so far as the above-described land is concerned.[41] (Emphasis supplied.)

The foregoing errors are not mere typographical as petitioner claims, but serious discrepancies in the registration process. In fact, it is not far-fetched that the erroneous entries could have been intended to create the impression that TCT No. 107729 was a separate and distinct title from the previously issued TCT No. S-91911 even if they pertain to one and the same lot adjudicated to Emilio Gregorio. Such conclusion is reinforced by the unexplained inaction or failure of the heirs of Gregorio to rectify the alleged errors in their title before selling the property to petitioner. The heirs of Gregorio knew that their TCT No. S-91911 bore encumbrances in favor of third parties, notably the notice of pending litigation (*Lis Pendens*) involving the property covered by said title before the CFI of Pasig, Metro Manila in Civil Case No. 35305, which Trinidad caused to be annotated thereon. The issuance of a new certificate with exactly identical entries as that of TCT No. S-91911 (as to its original registration) would mean that the aforesaid annotations had to be carried over to such new certificate. Strangely, it is TCT No. 107729 which RD Alejandro R.Villanueva upheld in his February 5, 1989 Report notwithstanding its later issuance and the glaring errors in the entries of its original registration. It must be stressed that OCT No. 5677, 5678, 5679 and 5680 and its derivative titles were ordered cancelled precisely because they were issued pursuant to Decree Nos. N-111862 to N-111865 issued in LRC Case No. N-5416 in the name of Velasquez, who lost in the final judgment rendered in CA-G.R. No. 40739-40-R, and whose claim to the lots covered thereby were declared null and void. Logically, therefore, any new certificate of title to be issued to the heirs of Gregorio by virtue of the aforesaid final judgment adjudicating the land to *Emilio Gregorio*, could not possibly be a transfer or replacement of the aforesaid void OCTs in the name of *Velasquez*.

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[41] Records (Vol. 2), p. 487.

But even granting that the subject entries in TCT No. 107729 were mere clerical errors and assuming *arguendo* that said certificate was issued to implement the final judgment in CA-G.R. No. 40739-40-R, such execution is tainted with infirmity. The March 21, 1986 order issued by the RTC of Pasig did not only cancel OCT No. 5678 (and other titles in the name of Velasquez covering the same lots adjudicated to Gregorio), it also ordered the issuance of *new* certificates of title in the name of the heirs of Emilio Gregorio despite having been informed by the LRA and the Register of Deeds that there was already issued OCT No. 9587 over the same lot in the name of Emilio Gregorio, which was replaced with TCT No. S-91911 in the name of the heirs of Emilio Gregorio following the decision rendered by the appellate court (CA-G.R. No. 56015-R) in another case filed by Gregorio against spouses Parami (Civil Case No. 16977).

At this point, it serves well to emphasize that upon finality of judgment in land registration cases, the winning party does not file a motion for execution as in ordinary civil actions. Instead, he files a petition with the land registration court for the issuance of an order directing the Land Registration Authority to issue a decree of registration, a copy of which is then sent to the Register of Deeds for inscription in the registration book, and issuance of the original certificate of title.[42] The LRC upon the finality of the judgment adjudicating the land to an applicant shall, following the prescribed procedure, merely issues an order for the issuance of a decree of registration and the corresponding certificate of title in the name of such applicant.[43]

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[42] *Republic v. Heirs of Abrille,* No. L-39248, May 7, 1976, 71 SCRA 57, 66; *Realty Sales Enterprises, Inc. v. IAC,* No. 67451, May 4, 1988, 161 SCRA 56, 61.

[43] SEC. 30 of P.D. No. 1529 provides:

Sec. 30. *When judgment becomes final; duty to cause issuance of decree.* – x x x

After judgment has become final and executory, it shall devolve upon the court to forthwith issue an order in accordance with Section 39 of this Decree to the Commissioner for the issuance of the decree of registration and the corresponding certificate of title in favor of the person adjudged entitled to registration.

In this case, the RTC of Pasig, cognizant of a previous decree of registration instead ordered the Register of Deeds to issue *new* certificates in favor of the heirs of Gregorio, erroneously declaring that such certificates are *in* lieu of OCT Nos. 5677, 5678, 5679 and 5680. Said court exceeded its authority when it ordered the issuance of *transfer* certificates in the name of the heirs of Gregorio despite the existence of TCT No. S-91911 already issued to them covering the same parcel of land. This caused the duplication of titles held by the heirs of Gregorio over Lot 1. Thus, while there was only one decree and original certificate issued to the common predecessor-in-interest of petitioner and private respondent, Emilio Gregorio, the latter's heirs were able to secure *two* transfer certificates covering the same land. Indeed it could not order the issuance of another OCT as it would result to duplication of titles or "double titling."[44] A land registration court has no jurisdiction to order the registration of land already decreed in the name of another in an earlier land registration case.[45] Issuance of another decree covering the same land is therefore null and void.[46]

In the light of the LRA Report dated September 12, 1984 stating that compliance with the July 30, 1971 final judgment rendered by the CA which reversed the LRC decision and adjudicated Lots 1, 3 and 4 in favor of Emilio Gregorio, would result in duplication of titles, it was grave error for the RTC of Pasig to grant the motion for execution filed by the heirs of Emilio Gregorio who sought, — *in the guise of implementing the July 30, 1971 CA decision* — the issuance of new titles in their name notwithstanding the existence of OCT No. 9587 and *TCT No. S-91911*. Given such vital information, there exists a compelling need for the land registration court to ascertain the facts and "address the likelihood of duplication

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[44] See *Heirs of the Late Jose De Luzuriaga v. Republic*, G.R. Nos. 168848 & 169019, June 30, 2009, 591 SCRA 299, 314.

[45] *Laburada v. Land Registration Authority*, G.R. No. 101387, March 11, 1998, 287 SCRA 333, 343.

[46] See *Metropolitan Waterworks and Sewerage Systems v. Court of Appeals*, G.R. No. 103558, November 17, 1992, 215 SCRA 783, 788.

of titles x x x, an eventuality that will undermine the Torrens system of land registration."[47]

Petitioner nonetheless assails OCT No. 9587 as null and void, having been issued when the adverse decision of the appellate court in CA-G.R. No. 40739-40-R was elevated by it to this Court. Following the doctrine in *Director of Lands v. Reyes (supra)*, it is asserted that OCT No. 9587 should not have been issued because the decision in CA-G.R. No. 40739-40-R was not yet final at the time, pending resolution by this Court of the appeal by Velasquez (G.R. No. L-34239-40).

In *Director of Lands v. Reyes (supra)*, this Court laid down the rule that execution pending appeal is not applicable in a land registration proceeding and the certificate of title thereby issued is null and void. In that case, the assignee of the original applicant applied for a motion for issuance of a decree of registration before the lower court pending the approval of the Record on Appeal. The motion was opposed by the Government which appealed the lower court's decision adjudicating the land to the said assignee. We thus ruled:

> Under the circumstances of this case, the failure of the appellants to serve a copy of their Notice of Appeal to the counsel for the adjudicatee Roman C. Tamayo is not fatal to the appeal because, admittedly, he was served with a copy of the original, as well as the Amended Record on Appeal in both of which the Notice of Appeal is embodied. Hence, such failure cannot impair the right of appeal.
>
> What is more, the appeal taken by the Government was from the entire decision, which is not severable. Thus, the appeal affects the whole decision.
>
> In any event, We rule that execution pending appeal is not applicable in a land registration proceeding. It is fraught with dangerous consequences. Innocent purchasers may be misled into purchasing real properties upon reliance on a judgment which may be reversed on appeal.
>
> A Torrens title issued on the basis of a judgment that is not final is a nullity, as it is violative of the explicit provisions of the Land

[47] See *Heirs of the Late Jose De Luzuriaga v. Republic*, *supra* note 44.

Registration Act which requires that a decree shall be issued only after the decision adjudicating the title becomes final and executory, and it is on the basis of said decree that the Register of Deeds concerned issues the corresponding certificate of title.

Consequently, the lower court acted without jurisdiction or exceeded its jurisdiction in ordering the issuance of a decree of registration despite the appeal timely taken from the entire decision *a quo*.[48]

OCT No. 9587 on its face showed that its basis was Decree No. N-141990 issued on October 31, 1972 pursuant to the January 31, 1966 decision of the CFI in Land Reg. Case No. N-5053 and CA decision dated July 30, 1971. Per records of this Court, however, Velasquez had filed a petition for review of the CA decision. Be that as it may, the premature issuance of the decree in favor of Emilio Gregorio and the corresponding original certificate of title in his name did not affect his acquisition of title over the subject land considering that Velasquez's petition was eventually dismissed. Neither can petitioner, by reason alone of defective issuance of OCT No. 9587, claim a right over the subject land superior to that acquired by the private respondent.

A reading of the annotations of encumbrances at the back of TCT No. T-27380 which were carried over from *TCT No. S-91911* in the name of the Heirs of Gregorio, would show that during the pendency of Civil Case No. 35305 filed before the CFI of Rizal by private respondent and Trinidad, the latter caused the annotation of a Notice of *Lis Pendens* involving the same properties of the defendants therein, the heirs of Emilio Gregorio. The notice of *lis pendens* was registered as Entry No. 21398[49] on TCT No. S-91911.

Lis pendens, which literally means pending suit, refers to the jurisdiction, power or control which a court acquires over property involved in a suit, pending the continuance of the action, and until final judgment. Founded upon public policy and necessity, *lis pendens* is intended to keep the properties in litigation within

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[48] *Supra* note 35 at 185-186.

[49] *Rollo*, p. 62.

the power of the court until the litigation is terminated, and to prevent the defeat of the judgment or decree by subsequent alienation. Its notice is an announcement to the whole world that a particular property is in litigation and serves as a warning that one who acquires an interest over said property does so at his own risk or that he gambles on the result of the litigation over said property.[50]

The filing of a notice of *lis pendens* has a two-fold effect: (1) to keep the subject matter of the litigation within the power of the court until the entry of the final judgment to prevent the defeat of the final judgment by successive alienations; and (2) to bind a purchaser, *bona fide* or not, of the land subject of the litigation to the judgment or decree that the court will promulgate subsequently.[51] Once a notice of *lis pendens* has been duly registered, any subsequent transaction affecting the land involved would have to be subject to the outcome of the litigation.[52]

Petitioner being a mere transferee at the time the decision of the RTC of Pasig in Civil Case No. 35305 had become final and executory on December 6, 1988, it is bound by the said judgment which ordered the heirs of Emilio Gregorio to convey Lots 1, 2, 3 & 4, Psu-204875 in favor of private respondent and Trinidad. As such buyer of one of the lots to be conveyed to private respondent pursuant to the court's decree with notice that said properties are in litigation, petitioner merely stepped into the shoes of its vendors who lost in the case. Such vested right acquired by the private respondent under the final judgment in his favor may not be defeated by the subsequent issuance of another certificate of title to the heirs of Gregorio respecting

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[50] *Associated Bank v. Pronstroller,* G.R. No. 148444, July 14, 2008, 558 SCRA 113, 133, citing *Romero v. Court of Appeals,* G.R. No. 142406, May 16, 2005, 458 SCRA 483, 492.

[51] *Id.*, citing *Romero v. Court of Appeals, id.* at 492-493 and *Heirs of Eugenio Lopez, Sr. v. Enriquez,* G.R. No. 146262, January 21, 2005, 449 SCRA 173, 186.

[52] *Vicente v. Avera,* G.R. No. 169970, January 20, 2009, 576 SCRA 634, 643.

the same parcel of land. For it is well-settled that being an involuntary transaction, entry of the notice of *lis pendens* in the primary entry book of the Register of Deeds is sufficient to constitute registration and such entry is notice to all persons of such claim.[53]

"It is to be noted that the notation of the *lis pendens* on the back of the owner's duplicate is not mentioned for the purpose of constituting a constructive notice because usually such owner's duplicate certificate is presented for the purpose of the annotation later, and sometimes not at all until [it is] ordered by the court."[54] Strictly speaking, the *lis pendens* annotation is not to be referred to "as a part of the doctrine of notice; the purchaser *pendente lite* is affected, not by notice, but because the law does not allow litigating parties to give to others, pending the litigation, rights to the property in dispute so as to prejudice the opposite party. The doctrine rests upon public policy, not notice."[55] Thus we have held that one who buys land where there is a pending notice of *lis pendens* cannot invoke the right of a purchaser in good faith; neither can he have acquired better rights than those of his predecessor in interest.[56]

In view of the foregoing, we hold that the CA did not err in affirming the trial court's order dismissing petitioner's complaint for quieting of title and ordering the cancellation of its TCT No. T-8129.

[53] *Director of Lands v. Reyes, supra* note 35 at 188; *Caviles, Jr. v. Bautista*, G.R. No. 102648, November 24, 1999, 319 SCRA 24, 32, citing *Levin v. Bass, et al.*, 91 Phil. 419, 437 (1952).

[54] A. H. Noblejas and E. H. Noblejas, *REGISTRATION OF LAND TITLES AND DEEDS*, 2007 Ed., pp. 436-437.

[55] *Id.* at 437, citing 2 *Bouvier's Law Dictionary and Concise Encyclopedia*, p. 2033, SCRA Annotation on Civil Law, the Public Land Act and the Property Registration Decree, 1983 Ed., pp. 118-119 quoted in *Tirado v. Sevilla*, G.R. No. 84201, August 3, 1990, 188 SCRA 321, 326-327.

[56] *Yu v. Court of Appeals*, G.R. No. 109078, December 25, 1995, 251 SCRA 509, 513-514, citing *Constantino v. Espiritu*, No. L-23268, June 30, 1972, 45 SCRA 557, 563 and *Tanchoco v. Aquino*, No. L-30670, September 15, 1987, 154 SCRA 1, 15; see *Philippine National Bank v. Court of Appeals*, No. L-34404, June 25, 1980, 98 SCRA 207, 232.

WHEREFORE, the petition is *DENIED*. The Decision dated May 30, 2001 and Resolution dated October 23, 2001 of the Court of Appeals in CA-G.R. CV No. 60712 are *AFFIRMED*.

With costs against the petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 166838. June 15, 2011]

STA. LUCIA REALTY & DEVELOPMENT, INC., *petitioner, vs.* **CITY OF PASIG,** *respondent.*

MUNICIPALITY OF CAINTA, PROVINCE OF RIZAL, *intervenor.*

SYLLABUS

1. TAXATION; REAL PROPERTY TAXES; LOCAL GOVERNMENT UNIT IS AUTHORIZED UNDER SEVERAL LAWS TO COLLECT REAL PROPERTY TAX ON PROPERTIES FALLING UNDER ITS TERRITORIAL JURISDICTION; IMPORTANCE OF DELINEATING TERRITORIAL BOUNDARIES, EXPLAINED. — Under Presidential Decree No. 464 or the "Real Property Tax Code," the authority to collect real property taxes is vested in the locality **where the property is situated**: Sec. 5. *Appraisal of Real Property*. — All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality **where the property is situated**. x x x Sec. 57. *Collection of tax to be the responsibility of treasurers*. — The collection of the real property tax and all penalties accruing thereto, and the

enforcement of the remedies provided for in this Code or any applicable laws, shall be the responsibility of the treasurer of the province, city or municipality **where the property is situated.** This requisite was reiterated in Republic Act No. 7160, also known as the 1991 the Local Government Code, to wit: **Section 201**. ***Appraisal of Real Property.* –** All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality **where the property is situated**. The Department of Finance shall promulgate the necessary rules and regulations for the classification, appraisal, and assessment of real property pursuant to the provisions of this Code. **Section 233. *Rates of Levy.*** – A province or city or a municipality within the Metropolitan Manila Area shall fix a uniform rate of basic real property tax applicable **to their respective localities as follows**: x x x. The only import of these provisions is that, while a local government unit is authorized under several laws to collect real estate tax on properties falling under its territorial jurisdiction, **it is imperative to first show that these properties are unquestionably within its geographical boundaries**. Accentuating on the importance of delineating territorial boundaries, this Court, in *Mariano, Jr. v. Commission on Elections* said: The importance of drawing with precise strokes the territorial boundaries of a local unit of government cannot be overemphasized. The boundaries **must be clear for they define the limits of the territorial jurisdiction of a local government unit. It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are *ultra vires*.** Needless to state, any uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of governmental powers which ultimately will prejudice the people's welfare. This is the evil sought to be avoided by the Local Government Code in requiring that the land area of a local government unit must be spelled out in metes and bounds, with technical descriptions.

2. CIVIL LAW; PROPERTY; OWNERSHIP; CERTIFICATE OF TITLE; WHILE THE CERTIFICATE OF TITLE IS CONCLUSIVE AS TO ITS OWNERSHIP AND LOCATION, THIS DOES NOT PRECLUDE THE FILING OF AN ACTION FOR THE PURPOSE OF ATTACKING THE STATEMENTS THEREIN; SUSTAINED. — While we fully agree that a

certificate of title is conclusive as to its ownership and location, this does not preclude the filing of an action for the very purpose of attacking the statements therein. In *De Pedro v. Romasan Development Corporation*, we proclaimed that: We agree with the petitioners that, generally, a certificate of title shall be conclusive as to all matters contained therein and conclusive evidence of the ownership of the land referred to therein. However, it bears stressing that while certificates of title are indefeasible, unassailable and binding against the whole world, including the government itself, they do not create or vest title. *They merely confirm or record title already existing and vested. They cannot be used to protect a usurper from the true owner, nor can they be used as a shield for the commission of fraud; neither do they permit one to enrich himself at the expense of other.* In *Pioneer Insurance and Surety Corporation v. Heirs of Vicente Coronado*, we set aside the lower courts' ruling that the property subject of the case was not situated in the location stated and described in the TCT, for lack of adequate basis. Our decision was in line with the doctrine that the TCT is conclusive evidence of ownership and location. However, we refused to simply uphold the veracity of the disputed TCT, and instead, we remanded the case back to the trial court for the determination of the exact location of the property seeing that it was the issue in the complaint filed before it. In *City Government of Tagaytay v. Guerrero*, this Court reprimanded the City of Tagaytay for levying taxes on a property that was outside its territorial jurisdiction, *viz*: In this case, it is basic that before the City of Tagaytay may levy a certain property for sale due to tax delinquency, the subject property should be under its territorial jurisdiction. The city officials are expected to know such basic principle of law. **The failure of the city officials of Tagaytay to verify if the property is within its jurisdiction before levying taxes on the same constitutes gross negligence**.

3. LEGAL ETHICS; POWERS AND DUTIES OF COURTS; THE TRIAL COURT MAY CONTROL ITS OWN PROCEEDINGS ACCORDING TO ITS SOUND DISCRETION; SUSTAINED. — [T]he term "prejudicial question," as appearing in the cases involving the parties herein, had been used loosely. Its usage had been more in reference to its ordinary meaning, than to its strict legal meaning under the Rules of Court. Nevertheless,

even without the impact of the connotation derived from the term, our own Rules of Court state that a trial court may control its own proceedings according to its sound discretion: **POWERS AND DUTIES OF COURTS AND JUDICIAL OFFICERS Rule 135 SEC. 5.** ***Inherent powers of courts***. – Every court shall have power: x x x (g) To amend and control its process and orders so as to make them comformable to law and justice. Furthermore, we have acknowledged and affirmed this inherent power in our own decisions, to wit: The court in which an action is pending may, in the exercise of a sound discretion, upon proper application for a stay of that action, hold the action in abeyance to abide the outcome of another pending in another court, especially where the parties and the issues are the same, for there is power inherent in every court to control the disposition of causes (*sic*) on its dockets with economy of time and effort for itself, for counsel, and for litigants. Where the rights of parties to the second action cannot be properly determined until the questions raised in the first action are settled the second action should be stayed. The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its dockets, considering its time and effort, that of counsel and the litigants. But if proceedings must be stayed, it must be done in order to avoid multiplicity of suits and prevent vexatious litigations, conflicting judgments, confusion between litigants and courts. It bears stressing that whether or not the RTC would suspend the proceedings in the SECOND CASE is submitted to its sound discretion.

APPEARANCES OF COUNSEL

Abelardo B. Albis, Jr. for petitioner.
Carlos C. Abesamis for respondent.
Crispino T. Pablo, Jr. for intervenor.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For review is the June 30, 2004 Decision[1] and the January 27, 2005 Resolution[2] of the Court of Appeals in CA-G.R. CV No. 69603, which affirmed with modification the August 10, 1998 Decision[3] and October 9, 1998 Order[4] of the Regional Trial Court (RTC) of Pasig City, Branch 157, in Civil Case No. 65420.

Petitioner Sta. Lucia Realty & Development, Inc. (Sta. Lucia) is the registered owner of several parcels of land with Transfer Certificates of Title (TCT) Nos. 39112, 39110 and 38457, all of which indicated that the lots were located in *Barrio Tatlong Kawayan*, Municipality of Pasig[5] (**Pasig**).

The parcel of land covered by TCT No. 39112 was consolidated with that covered by TCT No. 518403, which was situated in *Barrio Tatlong Kawayan*, Municipality of Cainta, Province of Rizal (**Cainta**). The two combined lots were subsequently partitioned into three, for which TCT Nos. 532250, 598424, and 599131, now all bearing the Cainta address, were issued.

TCT No. 39110 was also divided into two lots, becoming TCT Nos. 92869 and 92870.

The lot covered by TCT No. 38457 was not segregated, but a commercial building owned by Sta. Lucia East Commercial Center, Inc., a separate corporation, was built on it.[6]

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[1] *Rollo*, pp. 39-55; penned by Associate Justice Ruben T. Reyes with Associate Justices Eliezer R. De los Santos and Arturo D. Brion (now Associate Justice of the Supreme Court), concurring.

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

[3] *Id.* at 59-70.

[4] *Id.* at 71-72.

[5] Now City of Pasig.

[6] *Rollo*, pp. 12-13.

Upon Pasig's petition to correct the location stated in TCT Nos. 532250, 598424, and 599131, the Land Registration Court, on June 9, 1995, ordered the amendment of the TCTs to read that the lots with respect to TCT No. 39112 were located in *Barrio Tatlong Kawayan*, Pasig City.[7]

On January 31, 1994, Cainta filed a petition[8] for the settlement of its land boundary dispute with Pasig before the RTC, Branch 74 of Antipolo City (Antipolo RTC). This case, docketed as Civil Case No. 94-3006, is still pending up to this date.

On November 28, 1995, Pasig filed a Complaint,[9] docketed as Civil Case No. 65420, against Sta. Lucia for the collection of real estate taxes, including penalties and interests, on the lots covered by TCT Nos. 532250, 598424, 599131, 92869, 92870 and 38457, including the improvements thereon (the subject properties).

Sta. Lucia, in its Answer, alleged that it had been religiously paying its real estate taxes to Cainta, just like what its predecessors-in-interest did, by virtue of the demands and assessments made and the Tax Declarations issued by Cainta on the claim that the subject properties were within its territorial jurisdiction. Sta. Lucia further argued that since 1913, the real estate taxes for the lots covered by the above TCTs had been paid to Cainta.[10]

Cainta was allowed to file its own Answer-in-Intervention when it moved to intervene on the ground that its interest would be greatly affected by the outcome of the case. It averred that it had been collecting the real property taxes on the subject properties even before Sta. Lucia acquired them. Cainta further asseverated that the establishment of the boundary monuments would show that the subject properties are within its metes and bounds.[11]

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[7] *Id.* at 233.

[8] CA *rollo*, pp. 155-158.

[9] *Rollo*, pp. 75-81.

[10] *Id.* at 13.

[11] *Id.* at 88.

Sta. Lucia and Cainta thereafter moved for the suspension of the proceedings, and claimed that the pending petition in the Antipolo RTC, for the settlement of boundary dispute between Cainta and Pasig, presented a "prejudicial question" to the resolution of the case.[12]

The RTC denied this in an Order dated December 4, 1996 for lack of merit. Holding that the TCTs were conclusive evidence as to its ownership and location,[13] the RTC, on August 10, 1998, rendered a Decision in favor of Pasig:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of [Pasig], ordering Sta. Lucia Realty and Development, Inc. to pay [Pasig]:
>
> 1) ₱273,349.14 representing unpaid real estate taxes and penalties as of 1996, plus interest of 2% per month until fully paid;
>
> 2) ₱50,000.00 as and by way of attorney's fees; and
>
> 3) The costs of suit.
>
> Judgment is likewise rendered against the intervenor Municipality of Cainta, Rizal, ordering it to refund to Sta. Lucia Realty and Development, Inc. the realty tax payments improperly collected and received by the former from the latter in the aggregate amount of ₱358,403.68.[14]

After Sta. Lucia and Cainta filed their Notices of Appeal, Pasig, on September 11, 1998, filed a Motion for Reconsideration of the RTC's August 10, 1998 Decision.

The RTC, on October 9, 1998, granted Pasig's motion in an Order[15] and modified its earlier decision to include the realty taxes due on the improvements on the subject lots:

> WHEREFORE, premises considered, the plaintiff's motion for reconsideration is hereby granted. Accordingly, the Decision, dated

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[12] *Id.* at 258.

[13] *Id.* at 69.

[14] *Id.* at 70.

[15] *Id.* at 71-72.

August 10, 1998 is hereby modified in that the defendant is hereby ordered to pay plaintiff the amount of ₱5,627,757.07 representing the unpaid taxes and penalties on the improvements on the subject parcels of land whereon real estate taxes are adjudged as due for the year 1996.[16]

Accordingly, Sta. Lucia filed an Amended Notice of Appeal to include the RTC's October 9, 1998 Order in its protest.

On October 16, 1998, Pasig filed a Motion for Execution Pending Appeal, to which both Sta. Lucia and Cainta filed several oppositions, on the assertion that there were no good reasons to warrant the execution pending appeal.[17]

On April 15, 1999, the RTC ordered the issuance of a Writ of Execution against Sta. Lucia.

On May 21, 1999, Sta. Lucia filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the Court of Appeals to assail the RTC's order granting the execution. Docketed as **CA-G.R. SP No. 52874**, the petition was raffled to the First Division of the Court of Appeals, which on September 22, 2000, ruled in favor of Sta. Lucia, to wit:

WHEREFORE, in view of the foregoing, the instant petition is hereby **GIVEN DUE COURSE** and **GRANTED** by this Court. The assailed Order dated April 15, 1999 in Civil Case No. 65420 granting the motion for execution pending appeal and ordering the issuance of a writ of execution pending appeal is hereby **SET ASIDE** and declared **NULL** and **VOID.**[18]

The Court of Appeals added that the boundary dispute case presented a "prejudicial question which must be decided before x x x Pasig can collect the realty taxes due over the subject properties."[19]

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[16] *Id.* at 72.

[17] *Id.* at 237.

[18] *Id.* at 93.

[19] *Id.*

Pasig sought to have this decision reversed in a Petition for *Certiorari* filed before this Court on November 29, 2000, but this was denied on June 25, 2001 for being filed out of time.[20]

Meanwhile, the appeal filed by Sta. Lucia and Cainta was raffled to the (former) Seventh Division of the Court of Appeals and docketed as **CA-G.R. CV No. 69603**. On June 30, 2004, the Court of Appeals rendered its Decision, wherein it agreed with the RTC's judgment:

> WHEREFORE, the appealed Decision is hereby **AFFIRMED** with the **MODIFICATION** that the award of ₱50,000.00 attorney's fees is **DELETED**.[21]

In affirming the RTC, the Court of Appeals declared that there was no proper legal basis to suspend the proceedings.[22] Elucidating on the legal meaning of a "prejudicial question," it held that "there can be no prejudicial question when the cases involved are both civil."[23] The Court of Appeals further held that the elements of *litis pendentia* and forum shopping, as alleged by Cainta to be present, were not met.

Sta. Lucia and Cainta filed separate Motions for Reconsideration, which the Court of Appeals denied in a Resolution dated January 27, 2005.

Undaunted, Sta. Lucia and Cainta filed separate Petitions for *Certiorari* with this Court. Cainta's petition, docketed as G.R. No. 166856 was denied on April 13, 2005 for Cainta's failure to show any reversible error. **Sta. Lucia's own petition is the one subject of this decision**.[24]

In praying for the reversal of the June 30, 2004 judgment of the Court of Appeals, Sta. Lucia assigned the following errors:

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[20] *Id.* at 95.

[21] *Id.* at 54.

[22] *Id.* at 46.

[23] *Id.* at 47.

[24] *Id.* at 102.

ASSIGNMENT OF ERRORS

I

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING [WITH MODIFICATION] THE DECISION OF THE REGIONAL TRIAL COURT IN PASIG CITY

II.

THE HONORABLE COURT OF APPEALS ERRED IN NOT SUSPENDING THE CASE IN VIEW OF THE PENDENCY OF THE BOUNDARY DISPUTE WHICH WILL FINALLY DETERMINE THE SITUS OF THE SUBJECT PROPERTIES

III.

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE PAYMENT OF REALTY TAXES THROUGH THE MUNICIPALITY OF CAINTA WAS VALID PAYMENT OF REALTY TAXES

IV.

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT IN THE MEANTIME THAT THE BOUNDARY DISPUTE CASE IN ANTIPOLO CITY REGIONAL TRIAL COURT IS BEING FINALLY RESOLVED, THE PETITIONER STA. LUCIA SHOULD BE PAYING THE REALTY TAXES ON THE SUBJECT PROPERTIES THROUGH THE INTERVENOR CAINTA TO PRESERVE THE STATUS QUO.[25]

Pasig, countering each error, claims that the lower courts correctly decided the case considering that the TCTs are clear on their faces that the subject properties are situated in its territorial jurisdiction. Pasig contends that the principles of *litis pendentia*, forum shopping, and *res judicata* are all inapplicable, due to the absence of their requisite elements. Pasig maintains that the boundary dispute case before the Antipolo RTC is independent of the complaint for collection of realty taxes which was filed before the Pasig RTC. It avers that the doctrine of "prejudicial question," which has a definite meaning in law, cannot be invoked where the two cases involved are both civil. Thus, Pasig argues, since there is no legal ground

[25] *Id.* at 17.

to preclude the simultaneous hearing of both cases, the suspension of the proceedings in the Pasig RTC is baseless.

Cainta also filed its own comment reiterating its legal authority over the subject properties, which fall within its territorial jurisdiction. Cainta claims that while it has been collecting the realty taxes over the subject properties since way back 1913, Pasig only covered the same for real property tax purposes in 1990, 1992, and 1993. Cainta also insists that there is a discrepancy between the locational entries and the technical descriptions in the TCTs, which further supports the need to await the settlement of the boundary dispute case it initiated.

The errors presented before this Court can be narrowed down into two basic issues:

1) Whether the RTC and the CA were correct in deciding Pasig's Complaint without waiting for the resolution of the boundary dispute case between Pasig and Cainta; and

2) Whether Sta. Lucia should continue paying its real property taxes to Cainta, as it alleged to have always done, or to Pasig, as the location stated in Sta. Lucia's TCTs.

We agree with the First Division of the Court of Appeals in CA-G.R. SP No. 52874 that the resolution of the boundary dispute between Pasig and Cainta would determine which local government unit is entitled to collect realty taxes from Sta. Lucia.[26]

The Local Government Unit entitled To Collect Real Property Taxes

The Former Seventh Division of the Court of Appeals held that the resolution of the complaint lodged before the Pasig RTC did not necessitate the assessment of the parties' evidence on the metes and bounds of their respective territories. It cited our ruling in *Odsigue v. Court of Appeals*[27] wherein we said

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[26] *Id.* at 93.

[27] G.R. No. 111179, July 4, 1994, 233 SCRA 626.

that a certificate of title is conclusive evidence of both its ownership and location.[28] The Court of Appeals even referred to specific provisions of the 1991 Local Government Code and Act. No. 496 to support its ruling that Pasig had the right to collect the realty taxes on the subject properties as the titles of the subject properties show on their faces that they are situated in Pasig.[29]

Under Presidential Decree No. 464 or the "Real Property Tax Code," the authority to collect real property taxes is vested in the locality **where the property is situated**:

> Sec. 5. *Appraisal of Real Property*. — All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality **where the property is situated**.
>
> x x x x x x x x x
>
> Sec. 57. *Collection of tax to be the responsibility of treasurers*. — The collection of the real property tax and all penalties accruing thereto, and the enforcement of the remedies provided for in this Code or any applicable laws, shall be the responsibility of the treasurer of the province, city or municipality **where the property is situated.** (Emphases ours.)

This requisite was reiterated in Republic Act No. 7160, also known as the 1991 the Local Government Code, to wit:

> **Section 201**. ***Appraisal of Real Property.*** **–** All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality **where the property is situated**. The Department of Finance shall promulgate the necessary rules and regulations for the classification, appraisal, and assessment of real property pursuant to the provisions of this Code.
>
> **Section 233.** ***Rates of Levy.*** – A province or city or a municipality within the Metropolitan Manila Area shall fix a uniform rate of basic real property tax applicable **to their respective localities as follows**: x x x. (Emphases ours.)

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[28] *Id.* at 631.

[29] *Rollo*, pp. 47-51.

The only import of these provisions is that, while a local government unit is authorized under several laws to collect real estate tax on properties falling under its territorial jurisdiction, **it is imperative to first show that these properties are unquestionably within its geographical boundaries**.

Accentuating on the importance of delineating territorial boundaries, this Court, in *Mariano, Jr. v. Commission on Elections*[30] said:

> The importance of drawing with precise strokes the territorial boundaries of a local unit of government cannot be overemphasized. The boundaries **must be clear for they define the limits of the territorial jurisdiction of a local government unit. It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are *ultra vires*.** Needless to state, any uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of governmental powers which ultimately will prejudice the people's welfare. This is the evil sought to be avoided by the Local Government Code in requiring that the land area of a local government unit must be spelled out in metes and bounds, with technical descriptions.[31] (Emphasis ours.)

The significance of accurately defining a local government unit's boundaries was stressed in *City of Pasig v. Commission on Elections*,[32] which involved the consolidated petitions filed by the parties herein, Pasig and Cainta, against two decisions of the Commission on Elections (COMELEC) with respect to the plebiscites scheduled by Pasig for the ratification of its creation of two new *Barangay*s. Ruling on the contradictory reliefs sought by Pasig and Cainta, this Court affirmed the COMELEC decision to hold in abeyance the plebiscite to ratify the creation of *Barangay Karangalan*; but set aside the COMELEC's other decision, and nullified the plebiscite that ratified the creation of *Barangay Napico* in Pasig, until the boundary dispute before the Antipolo RTC had been resolved. The aforementioned case held as follows:

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[30] 312 Phil. 259 (1995).

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

[32] 372 Phil. 864 (1999).

1. The Petition of the City of Pasig in G.R. No. 125646 is DISMISSED for lack of merit; while

2. The Petition of the Municipality of Cainta in G.R. No. 128663 is GRANTED. The COMELEC Order in UND No. 97-002, dated March 21, 1997, is SET ASIDE and the plebiscite held on March 15, 1997 to ratify the creation of Barangay Napico in the City of Pasig is declared null and void. Plebiscite on the same is ordered held in abeyance until after the courts settle with finality the boundary dispute between the City of Pasig and the Municipality of Cainta, in Civil Case No. 94-3006.[33]

Clearly therefore, the local government unit entitled to collect real property taxes from Sta. Lucia must undoubtedly show that the subject properties are situated within its territorial jurisdiction; otherwise, it would be acting beyond the powers vested to it by law.

Certificates of Title as Conclusive Evidence of Location

While we fully agree that a certificate of title is conclusive as to its ownership and location, this does not preclude the filing of an action for the very purpose of attacking the statements therein. In *De Pedro v. Romasan Development Corporation,*[34] we proclaimed that:

> We agree with the petitioners that, generally, a certificate of title shall be conclusive as to all matters contained therein and conclusive evidence of the ownership of the land referred to therein. However, it bears stressing that while certificates of title are indefeasible, unassailable and binding against the whole world, including the government itself, they do not create or vest title. *They merely confirm or record title already existing and vested. They cannot be used to protect a usurper from the true owner, nor can they be used as a shield for the commission of fraud; neither do they permit one to enrich himself at the expense of other.*[35]

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[33] *Id.* at 872.

[34] 492 Phil. 643 (2005).

[35] *Id.* at 655.

In *Pioneer Insurance and Surety Corporation v. Heirs of Vicente Coronado*,[36] we set aside the lower courts' ruling that the property subject of the case was not situated in the location stated and described in the TCT, for lack of adequate basis. Our decision was in line with the doctrine that the TCT is conclusive evidence of ownership and location. However, we refused to simply uphold the veracity of the disputed TCT, and instead, we remanded the case back to the trial court for the determination of the exact location of the property seeing that it was the issue in the complaint filed before it.[37]

In *City Government of Tagaytay v. Guerrero*,[38] this Court reprimanded the City of Tagaytay for levying taxes on a property that was outside its territorial jurisdiction, *viz*:

> In this case, it is basic that before the City of Tagaytay may levy a certain property for sale due to tax delinquency, the subject property should be under its territorial jurisdiction. The city officials are expected to know such basic principle of law. **The failure of the city officials of Tagaytay to verify if the property is within its jurisdiction before levying taxes on the same constitutes gross negligence**.[39] (Emphasis ours.)

Although it is true that "Pasig" is the locality stated in the TCTs of the subject properties, both Sta. Lucia and Cainta aver that the metes and bounds of the subject properties, as they are described in the TCTs, reveal that they are within Cainta's boundaries.[40] This only means that there may be a conflict between the location as stated and the location as technically described in the TCTs. Mere reliance therefore on the face of the TCTs will not suffice as they can only be conclusive evidence of the subject properties' locations if both the stated and described locations point to the same area.

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[36] G.R. No. 180357, August 4, 2009, 595 SCRA 263.

[37] *Id.* at 271-272.

[38] G.R. Nos. 140743 & 140745, September 17, 2009, 600 SCRA 33.

[39] *Id.* at 63.

[40] *Rollo*, pp. 32-33, 191-192.

The Antipolo RTC, wherein the boundary dispute case between Pasig and Cainta is pending, would be able to best determine once and for all the precise metes and bounds of both Pasig's and Cainta's respective territorial jurisdictions. The resolution of this dispute would necessarily ascertain the extent and reach of each local government's authority, a prerequisite in the proper exercise of their powers, one of which is the power of taxation. This was the conclusion reached by this Court in *City of Pasig v. Commission on Elections*,[41] and by the First Division of the Court of Appeals in CA-G.R. SP No. 52874. We do not see any reason why we cannot adhere to the same logic and reasoning in this case.

The "Prejudicial Question" Debate

It would be unfair to hold Sta. Lucia liable again for real property taxes it already paid simply because Pasig cannot wait for its boundary dispute with Cainta to be decided. Pasig has consistently argued that the boundary dispute case is not a *prejudicial question* that would entail the suspension of its collection case against Sta. Lucia. This was also its argument in *City of Pasig v. Commission on Elections*,[42] when it sought to nullify the COMELEC's ruling to hold in abeyance (until the settlement of the boundary dispute case), the plebiscite that will ratify its creation of *Barangay Karangalan*. We agreed with the COMELEC therein that the boundary dispute case presented a *prejudicial question* and explained our statement in this wise:

> To begin with, we agree with the position of the COMELEC that Civil Case No. 94-3006 involving the boundary dispute between the Municipality of Cainta and the City of Pasig presents a **prejudicial question** which must first be decided before plebiscites for the creation of the proposed *barangays* may be held.
>
> The City of Pasig argues that there is no prejudicial question since the same contemplates a civil and criminal action and does not come into play where both cases are civil, as in the instant case. **While**

[41] *Supra* note 32.

[42] *Id.*

this may be the general rule, this Court has held in *Vidad v. RTC of Negros Oriental, Br. 42,* that, in the interest of good order, we can very well suspend action on one case pending the final outcome of another case closely interrelated or linked to the first.

In the case at bar, while the City of Pasig vigorously claims that the areas covered by the proposed Barangays Karangalan and Napico are within its territory, it can not deny that portions of the same area are included in the boundary dispute case pending before the Regional Trial Court of Antipolo. Surely, whether the areas in controversy shall be decided as within the territorial jurisdiction of the Municipality of Cainta or the City of Pasig has material bearing to the creation of the proposed Barangays Karangalan and Napico. Indeed, a requisite for the creation of a *barangay* is for its territorial jurisdiction to be properly identified by metes and bounds or by more or less permanent natural boundaries. Precisely because territorial jurisdiction is an issue raised in the pending civil case, until and unless such issue is resolved with finality, to define the territorial jurisdiction of the proposed *barangays* would only be an exercise in futility. Not only that, we would be paving the way for potentially *ultra vires* acts of such *barangays*. x x x.[43] (Emphases ours.)

It is obvious from the foregoing, that the term "prejudicial question," as appearing in the cases involving the parties herein, had been used loosely. Its usage had been more in reference to its ordinary meaning, than to its strict legal meaning under the Rules of Court.[44] Nevertheless, even without the impact of the connotation derived from the term, our own Rules of Court state that a trial court may control its own proceedings according to its sound discretion:

POWERS AND DUTIES OF COURTS AND JUDICIAL OFFICERS
Rule 135

SEC. 5. ***Inherent powers of courts.*** – Every court shall have power:

x x x x x x x x x

(g) To amend and control its process and orders so as to make them comformable to law and justice.

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[43] *Id.* at 869-870.

[44] Revised Rules of Court , Rule 111, Section 5.

Furthermore, we have acknowledged and affirmed this inherent power in our own decisions, to wit:

> The court in which an action is pending may, in the exercise of a sound discretion, upon proper application for a stay of that action, hold the action in abeyance to abide the outcome of another pending in another court, especially where the parties and the issues are the same, for there is power inherent in every court to control the disposition of causes (*sic*) on its dockets with economy of time and effort for itself, for counsel, and for litigants. Where the rights of parties to the second action cannot be properly determined until the questions raised in the first action are settled the second action should be stayed.
>
> The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its dockets, considering its time and effort, that of counsel and the litigants. But if proceedings must be stayed, it must be done in order to avoid multiplicity of suits and prevent vexatious litigations, conflicting judgments, confusion between litigants and courts. It bears stressing that whether or not the RTC would suspend the proceedings in the SECOND CASE is submitted to its sound discretion.[45]

In light of the foregoing, we hold that the Pasig RTC should have held in abeyance the proceedings in Civil Case No. 65420, in view of the fact that the outcome of the boundary dispute case before the Antipolo RTC will undeniably affect both Pasig's and Cainta's rights. In fact, the only reason Pasig had to file a tax collection case against Sta. Lucia was not that Sta. Lucia refused to pay, but that Sta. Lucia had already paid, albeit to another local government unit. Evidently, had the territorial boundaries of the contending local government units herein been delineated with accuracy, then there would be no controversy at all.

In the meantime, to avoid further animosity, Sta. Lucia is directed to deposit the **succeeding** real property taxes due on

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[45] *Security Bank Corporation v. Judge Victorio*, 505 Phil. 682, 699-700 (2005).

the subject properties, in an escrow account with the Land Bank of the Philippines.

WHEREFORE, the instant petition is *GRANTED*. The June 30, 2004 Decision and the January 27, 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 69603 are *SET ASIDE*. The City of Pasig and the Municipality of Cainta are both directed to await the judgment in their boundary dispute case (Civil Case No. 94-3006), pending before Branch 74 of the Regional Trial Court in Antipolo City, to determine which local government unit is entitled to exercise its powers, including the collection of real property taxes, on the properties subject of the dispute. In the meantime, Sta. Lucia Realty and Development, Inc. is directed to deposit the succeeding real property taxes due on the lots and improvements covered by TCT Nos. 532250, 598424, 599131, 92869, 92870 and 38457 in an escrow account with the Land Bank of the Philippines.

SO ORDERED.

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

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[*] Per Special Order No. 1003 dated June 8, 2011.

[**] Additional member per Special Order No. 1000 dated June 8, 2011.

THIRD DIVISION

[G.R. No. 169985. June 15, 2011]

MODESTO LEOVERAS, *petitioner, vs.* **CASIMERO VALDEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PAROL EVIDENCE RULE, DEFINED; EXCEPTION, EXPLAINED. — The petitioner's argument calls to fore the application of the parol evidence rule, *i.e.*, when the terms of an agreement are reduced to writing, the written agreement is deemed to contain all the terms agreed upon and no evidence of these terms can be admitted other than what is contained in the written agreement. Whatever is not found in the writing is understood to have been waived and abandoned. To avoid the operation of the parol evidence rule, the Rules of Court allows a party to present evidence modifying, explaining or adding to the terms of the written agreement if he puts in issue in his pleading, as in this case, the failure of the written agreement to express the true intent and agreement of the parties. The failure of the written agreement to express the true intention of the parties is either by reason of mistake, fraud, inequitable conduct or accident, which nevertheless did not prevent a meeting of the minds of the parties.

2. CIVIL LAW; PROPERTY; OWNERSHIP; ACTION FOR RECONVEYANCE; CLARIFIED.— An action for reconveyance is a legal and equitable remedy granted to the rightful landowner, whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer or reconvey the land to him. The plaintiff in this action must allege and prove his ownership of the land in dispute and the defendant's erroneous, fraudulent or wrongful registration of the property.

3. ID.; ID.; ID.; ID.; REGISTRATION DOES NOT VEST TITLE BUT MERELY CONFIRMS OR RECORDS TITLE ALREADY EXISTING AND VESTED; APPLICATION IN CASE AT BAR. — By fraudulently causing the transfer of the registration of title over the disputed property in his name, the petitioner holds

the title to this disputed property in trust for the benefit of the respondent as the true owner; registration does not vest title but merely confirms or records title already existing and vested. The Torrens system of registration cannot be used to protect a usurper from the true owner, nor can it be used as a shield for the commission of fraud, or to permit one to enrich oneself at the expense of others. x x x While the petitioner's ownership over the land covered by TCT No. 195812 is undisputed, his ownership only gave him the *right to apply* for the proper transfer of title to the property in his name. Obviously, the petitioner, even as a rightful owner, must comply with the statutory provisions on the transfer of registered title to lands. Section 53 of Presidential Decree No. 1529 provides that the subsequent registration of title procured by the presentation of a forged deed or other instrument is null and void. Thus, the subsequent issuance of TCT No. 195812 gave the petitioner no better right than the tainted registration which was the basis for the issuance of the same title. The Court simply cannot allow the petitioner's attempt to get around the proper procedure for registering the transfer of title in his name by using spurious documents.

4. ID.; ID.; ID.; ID.; REMEDY IS AVAILABLE TO RIGHTFUL OWNER ONLY. — While the CA correctly nullified the petitioner's certificates of title, the CA erred in ordering the reconveyance of the *entire* subject property in the respondent's favor. The respondent himself admitted that the 3,020- square meter portion covered by TCT No. 195812 is the petitioner's just share in the subject property. Thus, although the petitioner obtained TCT No. 195812 using the same spurious documents, the land covered by this title should not be reconveyed in favor of the respondent since he is ***not the rightful owner*** of the property covered by this title.

5. ID.; ID.; ID.; PARTITION, DEFINED; EFFECT. — The Civil Code of the Philippines defines partition as the separation, division and assignment of a thing held in common among those to whom it may belong. Partition is the division between two or more persons of real or personal property, owned in common, by setting apart their respective interests so that they may enjoy and possess these in severalty, resulting in the partial or total extinguishment of co-ownership. One of the legal effects of

partition, whether by agreement among the co-owners or by judicial proceeding, is to terminate the co-ownership and, consequently, to make the previous co-owners the absolute and exclusive owner of the share allotted to him.

APPEARANCES OF COUNSEL

Aonan Law Office for petitioner.
Sheila Cresencia-Elasin for respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the March 31, 2005 decision[2] and the October 6, 2005 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 68549. The CA decision reversed the June 23, 2000 decision[4] of the Regional Trial Court (*RTC*), Branch 46, Urdaneta City, Pangasinan, dismissing respondent Casimero Valdez's complaint for annulment of title, reconveyance and damages against petitioner Modesto Leoveras.

FACTUAL ANTECEDENTS

Maria Sta. Maria and Dominga Manangan were the registered owners - three-fourths (¾) and one-fourth (¼) *pro-indiviso*, respectively - of a parcel of land located in Poblacion, Manaoag, Pangasinan, covered by Original Certificate of Title (*OCT*) No. 24695, with an area of 28,171 square meters.[5]

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

[2] *Rollo*, pp. 12-21; penned by Associate Justice Vicente S.E. Veloso, with the concurrence of Associate Justices Roberto A. Barrios and Amelita G. Tolentino.

[3] *Id.* at 10.

[4] *Id.* at 22-25; penned by Judge Modesto C. Juanson.

[5] Annex "Q".

In September 1932, Sta. Maria sold her three-fourths (¾) share to Benigna Llamas.[6] The sale was duly annotated at the back of OCT No. 24695. When Benigna died in 1944,[7] she willed her three-fourths (¾) share equally to her sisters Alejandra Llamas and Josefa Llamas.[8] Thus, Alejandra and Josefa each owned one-half (½) of Benigna's three-fourths (¾) share.

On June 14, 1969, Alejandra's heirs sold their predecessor's one-half (½) share (roughly equivalent to 10,564 square meters) to the respondent, as evidenced by a Deed of Absolute Sale.[9]

Also on June 14, 1969, Josefa sold her own one-half (½) share (*subject property*) to the respondent and the petitioner, as evidenced by another Deed of Absolute Sale.[10] On even date, the respondent and the petitioner executed an *Agreement*,[11] allotting their portions of the subject property.

WITNESSETH

That we [petitioner and respondent] are the absolute owners of [the subject property] which is particularly described as follows:

x x x x x x x x x

That our ownership over the said portion mentioned above is evidenced by a Deed of Absolute Sale xxx

That in said deed of sale mentioned in the immediate preceding paragraph, our respective share consist of 5, 282.13 [one-half of 10,564 square meters] square meter each.

That we hereby agreed and covenanted that our respective share shall be as follows:

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[6] Annex "Q-2".

[7] Annex "J".

[8] Annex "K", par. 5, and Annex "C", par. 3.

[9] Annex "A". The deed was registered in the Office of the Register of Deeds of Lingayen, Pangasinan on June 20, 1977, under Entry No. 456592.

[10] Annex "C". The deed was registered in the Office of the Register of Deeds of Lingayen, Pangasinan on June 20, 1977, under Entry No. 456594; Records, pp. 2-3.

[11] Annex "D".

Modesto Leoveras – 3,020 square meters residential portion on the northern part near the Municipal road of Poblacion Pugaro, Manaoag, Pangasinan;

Casimero Valdez – 7,544.27[12] square meters of the parcel of land described above.[13]

On June 8, 1977, the petitioner and the respondent executed an Affidavit of Adverse Claim over the subject property.[14] The parties took possession of their respective portions of the subject property and declared it in their name for taxation purposes.[15]

In 1996, the respondent asked the Register of Deeds of Lingayen, Pangasinan on the requirements for the transfer of title over the portion allotted to him on the subject property. To his surprise, the respondent learned that the petitioner had already obtained in his name two transfer certificates of title (*TCTs*): *one*, TCT No. 195812 - covering an area of 3,020 square meters; and *two*, TCT No. 195813 - covering an area of 1,004 square meters (or a total of 4,024 square meters).

The Register of Deeds informed the respondent that they could not find the record of OCT No. 24695; instead, the Register of Deeds furnished the respondent with the following[16] (collectively, *petitioner's documents*):

1. Two (2) deeds of absolute sale dated June 14, 1969, both executed by Sta. Maria, purportedly conveying an unspecified portion of OCT No. 24695 as follows:

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[12] The area of the subject property is 10,564 square meters. The Agreement itself states that *prior* to the allotment of the parties' respective portions, the parties own a *pro-indiviso* one-half share, that is, 5,282 square meters of the subject land. The RTC found that under the Agreement, the respondent is entitled to 7,544 sq. m.

[13] *Supra* note 11; Annex "O".

[14] The Affidavit of Adverse Claim was annotated at the back of OCT No. 24695 as Entry No. 456593, Annex "N".

[15] *Rollo*, pp. 23-24.

[16] Records, pp. 4-5.

a. 11, 568 square meters to the respondent and petitioner[17]

b. 8, 689 square meters to one Virgilia Li Meneses[18]

2. Deed of Absolute Sale (*Benigna Deed*) also dated June 14, 1969 executed by Benigna[19] which reads:

I, Benigna Llamas, Fernandez xxx do sell xxx by way of ABSOLUTE SALE unto the said Casimero Valdez, **Modesto Leoveras** and Virgilia Meneses their heirs and assigns, 7,544 sq.m.; **4,024 sq. m**. and 8,689 sq. m. more or less respectively of a parcel of land which is particularly described as follows:

"A parcel of land xxx covered by [OCT No.] 24695." (Emphases added)

3. Subdivision Plan of PSU 21864 of OCT No. 24695[20]

4. Affidavit of Confirmation of Subdivision[21] dated May 3, 1994 (*Affidavit*), which reads:

That we, Virgilia Li Meneses, xxx Dominga Manangan; Modesto Leoveras; and Casimero Valdez xxx

xxx are co-owners of a certain parcel of land with an area of 28, 171 sq. m. more or less in subdivision plan Psu 21864 xxx covered by [OCT No.] 24695 situated at Poblacion (now Pugaro), Manaoag, Pangasinan;

xxx we agree xxx to subdivide and hereby confirmed the subdivision in the following manner xxx:

Lot 2 with an area of 3, 020 sq. m. xxx to Modesto Leoveras xxx;

Lot 3 with an area of 1,004 sq. m. xxx to Modesto Leoveras xxx;

Lot 4 with an area of 7,544 sq. m. xxx to Casimero Valdez xxx;

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17 Annex "F".

18 Annex "H".

19 Annex "G".

20 Annex "S".

21 Annex "I".

> Lot 5 with an area of 8, 689 sq. m. xxx to Virgilia Meneses;
>
> Lot 6 with an area of 7,043 sq. m. xxx to Dominga Manangan (Emphasis supplied.)

On June 21, 1996, the respondent filed a complaint for Annulment of Title, Reconveyance and Damages against the petitioner, seeking the reconveyance of the 1,004-square meter portion (*disputed property*) covered by TCT No. 195813, on the ground that the petitioner is entitled only to the 3,020 square meters identified in the parties' Agreement.

The respondent sought the nullification of the petitioner's titles by contesting the authenticity of the petitioner's documents. Particularly, the respondent assailed the Benigna Deed by presenting Benigna's death certificate. The respondent argued that Benigna could not have executed a deed, which purports to convey 4,024 square meters to the petitioner, in 1969 because Benigna already died in 1944. The respondent added that neither could Sta. Maria have sold to the parties her three-fourths (¾) share in 1969 because she had already sold her share to Benigna in 1932.[22] The respondent denied his purported signature appearing in the Affidavit,[23] and prayed for:

> a) xxx the cancellation of the [petitioner's documents];
>
> b) the cancellation of TCT No. 195813 in the name of Modesto Leoveras and that it be reconveyed to the [respondent];
>
> c) the cancellation and nullification of [TCT No. 195812] covering an area of 3,020 square meters xxx;
>
> d) [the issuance of] title xxx in the name of [respondent] over an area of 17,104 square meters of OCT 24695;[24] (Underscoring supplied)

In his defense, the petitioner claimed that the parties already had (i) delineated their respective portions of the subject

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[22] TSN, September 9, 1996, p. 13.

[23] TSN, September 4, 1996, p. 6.

[24] Records, pp. 7-8.

property even before they acquired it in 1969 and (ii) agreed that upon acquisition, each would own the portion as delineated; that the area he actually possessed and subsequently acquired has a total area of 4,024 square meters, which he subdivided into two portions and caused to be covered by the two TCTs in question. The petitioner claimed that in signing the Agreement, he was led to believe, based on the parties' rough estimation, that the area he actually possessed is only 3,020 square meters contrary to the parties' real intention - *i.e.*, the extent of their ownership would be based on their actual possession.[25]

The petitioner further claimed that the respondent voluntarily participated in executing the Affidavit, which corrected the mistake in the previously executed Agreement[26] and confirmed the petitioner's ownership over the disputed property. The petitioner asked for the dismissal of the complaint and for a declaration that he is the lawful owner of the parcels of land covered by his titles.

RTC RULING

The RTC dismissed the complaint. The court ruled that the respondent failed to preponderantly prove that the Benigna Deed and the Affidavit are fabricated and, consequently, no ground exists to nullify the petitioner's titles. The court observed that the respondent did not even compare his genuine signature with the signatures appearing in these documents.

CA RULING

On appeal, the CA reversed the RTC by ruling against the authenticity of the Benigna Deed and the Affidavit. The CA gave weight to Benigna's death certificate which shows the impossibility of Benigna's execution of the deed in 1969. The CA also noted the discrepancy between the respondent's signatures as appearing in the Affidavit, on one hand, and the

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[25] *Id.* at 72-73.

[26] *Id.* at 74-75.

documents on record, on the other.[27] The CA added that the respondent's failure to compare his genuine signature from his purported signatures appearing in the petitioner's documents is not fatal, since Section 22, Rule 132 of the Rules of Court allows the court to make its own comparison. In light of its observations, the CA ruled:

> As the totality of the evidence presented sufficiently sustains [the respondent's] claim that the titles issued to [the petitioner] were based on forged and spurious documents, it behooves this Court to annul these certificates of title.
>
> WHEREFORE, the assailed Decision dated June 23, 2000 is SET ASIDE. Declaring TCT No. 195812 and TCT No. 195813 as NULL and VOID, **[**the **petitioner] is hereby directed to reconvey the subject parcels of land to [**the **respondent]**.[28] (Emphasis added.)

Unwilling to accept the CA's reversal of the RTC ruling, the petitioner filed the present appeal by *certiorari*, claiming that the CA committed "gross misappreciation of the facts"[29] by going beyond what the respondent sought in his complaint.

THE PETITION

The petitioner claims that the CA should not have ordered the reconveyance of both parcels of land covered by the TCTs in question since the respondent only seeks the reconveyance of the disputed property – *i.e.*, the parcel of land covered by TCT No. 195813.

The petitioner asserts that **after** the subject sale, the parties physically partitioned the subject property and possessed their respective portions, thereby setting the limits of their ownership.

The petitioner admits that the Benigna Deed is "fabricated" but hastens to add that it was only designed (i) to affirm the

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[27] These documents are: the Agreement, executed in 1994, the respondent's Affidavit of Adverse Claim over the portion sold to him by the heirs of Alejandra, executed in 1977, and the Verification and Certification against Non-Forum Shopping attached to the Complaint.

[28] *Rollo*, pp. 49-50.

[29] *Id.* at 30.

"true intent and agreement" of the parties on the extent of their ownership, as shown by their actual physical possession, and (ii) as a "convenient tool" to facilitate the transfer of title to his name.

THE RESPONDENT'S COMMENT

The respondent claims that since the petitioner himself admitted using a spurious document in obtaining his titles (as alleged in the complaint and as found by the CA), then the CA correctly cancelled the latter's titles.[30]

The petitioner forged the respondent's signature in the Affidavit to make it appear that he agreed to the division indicated in the document. The respondent defended the CA's reconveyance of both parcels of land, covered by the petitioner's titles, to the respondent by arguing that if the distribution in the Affidavit is followed, the "original intendment" of the parties on their shares of the subject property would be "grievously impaired."[31]

THE ISSUES

The two basic issues[32] for our resolution are:

1. Whether the CA erred in nullifying the petitioner's titles.
2. Whether the CA erred in ordering the reconveyance of the parcel of land covered by the petitioner's titles.

THE RULING

We *partially* grant the petition.

An action for reconveyance is a legal and equitable remedy granted to the rightful landowner, whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer or reconvey the land to

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[30] *Id.* at 122-123.

[31] *Id.* at 124.

[32] *Id.* at 122; the respondent's Comment.

him.[33] The plaintiff in this action must allege and prove his ownership of the land in dispute and the defendant's erroneous, fraudulent or wrongful registration of the property.

We rule that the respondent adequately proved his ownership of the disputed property by virtue of the (i) Deed of Absolute Sale executed by Josefa in favor of the parties; (ii) the parties' Affidavit of Adverse Claim; and (iii) the parties' Agreement, which cover the subject property.

The petitioner does not dispute the due execution and the authenticity of these documents,[34] particularly the Agreement. However, he claims that since the Agreement does not reflect the true intention of the parties, the Affidavit was subsequently executed in order to reflect the parties' true intention.

The petitioner's argument calls to fore the application of the parol evidence rule,[35] *i.e.*, when the terms of an agreement

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[33] *Esconde v. Barlongay*, G.R. No. 67583, July 31, 1987, 152 SCRA 603

[34] In *Permanent Savings and Loan Bank v. Velarde* (G.R. No. 140608, September 23, 2004, 439 SCRA 1), the Court ruled that the allegation that the written agreement does not express the true intention of the parties does not carry with it the specific denial of the genuineness and due execution of the written instrument.

[35] Section 9, Rule 130 of the Rules of Court reads:

SEC. 9. ***Evidence of written agreements.*** – When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills.

are reduced to writing, the written agreement is deemed to contain all the terms agreed upon and no evidence of these terms can be admitted other than what is contained in the written agreement.[36] Whatever is not found in the writing is understood to have been waived and abandoned.[37]

To avoid the operation of the parol evidence rule, the Rules of Court allows a party to present evidence modifying, explaining or adding to the terms of the written agreement if he puts in issue in his pleading, as in this case, the failure of the written agreement to express the true intent and agreement of the parties. The failure of the written agreement to express the true intention of the parties is either by reason of mistake, fraud, inequitable conduct or accident, which nevertheless did not prevent a meeting of the minds of the parties.[38]

At the trial, the petitioner attempted to prove, by parol evidence, the alleged true intention of the parties by presenting the Affidavit, which allegedly corrected the mistake in the previously executed Agreement and confirmed his ownership of the parcels of land covered by his titles. It was the petitioner's staunch assertion that the respondent co-executed this Affidavit supposedly to reflect the parties' true intention.

In the present petition, however, the petitioner made a damaging admission that the **Benigna Deed** is fabricated, thereby

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[36] *Ortañez v. Court of Appeals*, G.R. No. 107372, January 23, 1997, 266 SCRA 561.

[37] *Heirs of Carmen Cruz-Zamora v. Multiwood International, Inc.*, G.R. No. 146428, January 19, 2009, 576 SCRA 137.

[38] Article 1359 of the Civil Code of the Philippines reads:

When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.

If mistake, fraud, inequitable conduct, or accident has prevented a meeting of the minds of the parties, the proper remedy is not reformation of the instrument but annulment of the contract.

completely bolstering the respondent's cause of action for reconveyance of the disputed property on the ground of fraudulent registration of title. Since the Affidavit merely reflects what is embodied in the Benigna Deed, the petitioner's admission, coupled with the respondent's denial of his purported signature in the Affidavit, placed in serious doubt the reliability of this document, supposedly the bedrock of the petitioner's defense.

Curiously, if the parties truly intended to include in the petitioner's share the disputed property, the petitioner obviously need not go at length of fabricating a deed of sale to support his application for the transfer of title of his rightful portion of the subject property. Notably, there is nothing in the Affidavit (that supposedly corrected the mistake in the earlier Agreement) that supports the petitioner's claim that the partition of the subject property is based on the parties' actual possession.

Note that the RTC dismissed the complaint based on the respondent's alleged failure to prove the spuriousness of the documents submitted by the petitioner to the Register of Deeds. However, by admitting the presentation of a false deed in securing his title, the petitioner rendered moot the issue of authenticity of the Benigna Deed and relieved the respondent of the burden of proving its falsity as a ground to nullify the petitioner's titles.

By fraudulently causing the transfer of the registration of title over the disputed property in his name, the petitioner holds the title to this disputed property in trust for the benefit of the respondent as the true owner;[39] registration does not vest title but merely confirms or records title already existing and vested. The Torrens system of registration cannot be used to protect a usurper from the true owner, nor can it be used as a shield for the commission of fraud, or to permit one to enrich oneself at the expense of others.[40] Hence, the CA correctly ordered

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[39] Article 1456 of the Civil Code reads:

If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

[40] *Lopez v. Lopez*, G.R. No. 161925, November 25, 2009, 605 SCRA 358.

the reconveyance of the disputed property, covered by TCT No. 195813, to the respondent.

The parties' Agreement effectively partitioned the subject property

The petitioner also relies on his alleged actual possession of the disputed property to support his claim of ownership. Notably, both parties make conflicting assertions of possession of the disputed property.[41] The petitioner testified on his possession as follows:

Q: How many square meters did you get from the land and how many square meters was the share of [respondent]?
A: 4[0]20 square meters and my brother-in-law 6,000 plus square meters.

x x x x x x x x x

Q: Was there a boundary between the 4,020 square meters and the rest of the property which (sic) designated by your brother-in-law?
A: There is sir, and the boundary is the fence.

Q: When did you put up that fence which is the boundary?
A: After the deed of sale was made.

Q: And that boundary fence which you put according to you since the execution of the Deed of Absolute Sale in 1969 up to the present does it still exist?
A: Yes, sir.

Q: Since the time you purchased the property according to you you already divided the property, is that correct?
A: Yes, sir.

Q: And that as of today who is in possession of that 4,020 square meters?
A: I, sir.[42]

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[41] The respondent testified that he has been in possession of "the land in litigation" since 1969. (TSN, September 9, 1996, p. 2.) On the other hand, the petitioner testified that he has been in possession of the "4,020 square meters." (TSN, June 19, 1997, pp. 3-4.)

[42] TSN, June 19, 1997, pp. 3-4.

The petitioner and the respondent were originally co-owners of the subject property when they jointly bought it from the same vendor in 1969. However, the parties immediately terminated this state of indivision by executing an *Agreement*, which is in the nature of a partition agreement.

The Civil Code of the Philippines defines partition as the separation, division and assignment of a thing held in common among those to whom it may belong.[43] Partition is the division between two or more persons of real or personal property, owned in common, by setting apart their respective interests so that they may enjoy and possess these in severalty,[44] resulting in the partial or total extinguishment of co-ownership.[45]

In the present case, the parties agreed to divide the subject property by giving the petitioner the 3,020 square meters "residential portion on the northern part near the Municipal road."[46] There is no dispute that this 3,020- square meter portion is the same parcel of land identified as Lot No. 2 (which is **not** the subject of the respondent's action *for reconveyance*) in the Affidavit and the Subdivision Plan presented by the petitioner before the Register of Deeds. The fact that the Agreement lacks technical description of the parties' respective portions or that the subject property was then still embraced by a single certificate of title could not legally prevent a partition, where the different portions allotted to each were determined and became separately identifiable, as in this case.[47]

What is strikingly significant is that even the petitioner's own testimony merely attempted to confirm his actual possession

[43] Article 1079.

[44] Arturo M. Tolentino, *2 Commentaries and Jurisprudence on the Civil Code of the Philippines*, p. 210.

[45] Article 494 of the Civil Code reads:

No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

[46] *Supra* note 11; Annex "O".

[47] *De la Cruz v. Cruz*, No. L-27759, April 17, 1970, 32 SCRA 307.

of the disputed property, without, however, supporting his claim – contrary to the written Agreement – that the parties' ownership of the subject property would be co-extensive with their possession. This is the core of the petitioner's defense. At any rate, just as non-possession does not negate ownership, neither does possession automatically prove ownership,[48] especially in the face of an unambiguous document executed by the parties themselves.

Contrary to the petitioner's claim that his actual possession determines the extent of his ownership, it is the parties' *Agreement* that defines the extent of their ownership in the subject property. One of the legal effects of partition, whether by agreement among the co-owners or by judicial proceeding, is to terminate the co-ownership and, consequently, to make the previous co-owners the absolute and exclusive owner of the share allotted to him.[49]

Parenthetically, the respondent declared for taxation purposes the portion he claims in December 1987.[50] The total area (7,544 square meters) of the properties declared is equivalent to the area allotted to the respondent under the Agreement. On the other hand, the petitioner declared the 1,004-square meter portion only in September 1994, under Tax Declaration No. 9393,[51] despite his claim of exclusive and adverse possession since 1969.

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[48] *Medina v. Greenfield Development Corporation*, G.R. No. 140228, November 19, 2004, 443 SCRA 150.

[49] Eduardo P. Caguioa, *2 Comments and Cases on Civil Law*, 1966 ed., p. 151, citing Article 1091 of the Civil Code which reads:

A partition legally made confers upon each heir the exclusive ownership of the property adjudicated to him.

[50] In the respondent's Tax Declaration No. 3131 (Marked as Annex "E"), he declared the following with their corresponding area: Residential – 750 [square meters]; Unirrig. Rice land - 4,794.27 [square meters]; Pasture Land – 2000 [square meters].

[51] Records, Annex "6".

Nullification of the petitioner's title over the 3,020 square meter portion

While the petitioner admitted using a spurious document in securing his titles, nonetheless, he questions the CA's nullification of TCT No. 195812 on the ground that, *per* the respondent's own admission and the parties' Agreement, he is the rightful owner of the land covered by this title.

We disagree.

The petitioner's argument confuses registration of title with ownership.[52] While the petitioner's ownership over the land covered by TCT No. 195812 is undisputed, his ownership only gave him the *right to apply* for the proper transfer of title to the property in his name. Obviously, the petitioner, even as a rightful owner, must comply with the statutory provisions on the transfer of registered title to lands.[53] Section 53 of Presidential

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[52] Ownership of a piece of land is one thing, and registration under the Torrens system of that ownership is quite another (*Grande v. Court of Appeals*, No. L-17652, June 30, 1962, 5 SCRA 524).

[53] Section 51 of Presidential Decree No. (P.D.) 1529 reads:

Conveyance and other dealings by registered owner. An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. xxx

Section 53 of P.D. 1529 reads:

Presentation of owner's duplicate upon entry of new certificate. No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

x x x x x x x x x

Section 57 of P.D. 1529 reads:

Procedure in registration of conveyances. An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of

Decree No. 1529 provides that the subsequent registration of title procured by the presentation of a forged deed or other instrument is null and void. Thus, the subsequent issuance of TCT No. 195812 gave the petitioner no better right than the tainted registration which was the basis for the issuance of the same title. The Court simply cannot allow the petitioner's attempt to get around the proper procedure for registering the transfer of title in his name by using spurious documents.

Reconveyance is the remedy of the rightful owner only

While the CA correctly nullified the petitioner's certificates of title, the CA erred in ordering the reconveyance of the *entire* subject property in the respondent's favor. The respondent himself admitted that the 3,020- square meter portion covered by TCT No. 195812 is the petitioner's just share in the subject property.[54] Thus, although the petitioner obtained TCT No. 195812 using the same spurious documents, the land covered by this title should not be reconveyed in favor of the respondent since he is ***not the rightful owner*** of the property covered by this title.[55]

WHEREFORE, the petition is partially *GRANTED*. The assailed decision and resolution of the Court of Appeals are *MODIFIED*. Accordingly, the petitioner is directed to *RECONVEY* to the respondent the parcel of land covered by TCT No. 195813. Costs against petitioner.

SO ORDERED.

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

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transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "canceled". The deed of conveyance shall be filled and indorsed with the number and the place of registration of the certificate of title of the land conveyed.

[54] TSN, September 9, 1996, p. 15.

[55] *Esconde v. Barlongay*, No. 67583, July 31, 1987, 152 SCRA 603.

SECOND DIVISION

[G.R. No. 171742. June 15, 2011]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **MIRANT (PHILIPPINES) OPERATIONS, CORPORATION,** *respondent.*

[G.R. No. 176165. June 15, 2011]

MIRANT (PHILIPPINES) OPERATIONS CORPORATION (formerly: Southern Energy Asia-Pacific Operations (Phils.), Inc.), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (PRESIDENTIAL DECREE NO. 1158, AS AMENDED); FINAL ADJUSTMENT RETURN; IRREVOCABILITY RULE; ONCE THE CORPORATION EXERCISES THE OPTION TO CARRY-OVER AND APPLY THE EXCESS QUARTERLY INCOME TAX AGAINST THE TAX DUE FOR THE TAXABLE QUARTERS OF THE SUCCEEDING TAXABLE YEARS, SUCH OPTION IS IRREVOCABLE FOR THAT TAXABLE PERIOD; APPLICATION IN CASE AT BAR. — Section 76 of the National Internal Revenue Code (Presidential Decree No. 1158, as amended) provides: **SEC. 76. -** ***Final Adjustment Return.*** - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either: (A) Pay the balance of tax still due; or (B) Carry-over the excess credit; or (C) Be credited or refunded with the excess amount paid, as the case may be. In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the

taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.** The last sentence of Section 76 is clear in its mandate. Once a corporation exercises the option to carry-over and apply the excess quarterly income tax against the tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable period. Having chosen to carry-over the excess quarterly income tax, the corporation cannot thereafter choose to apply for a cash refund or for the issuance of a tax credit certificate for the amount representing such overpayment. x x x Applying the irrevocability rule in Section 76, Mirant having opted to carry over its tax overpayment for the fiscal year ending July 30, 1999 and for the interim period ending December 31, 1999, it is now barred from applying for the refund of the said amount or for the issuance of a tax credit certificate therefor, and for the unutilized tax credits carried over from the fiscal year ended June 30, 1998.

2. REMEDIAL LAW; APPEALS; FINDINGS AND CONCLUSIONS OF THE COURT OF TAX APPEALS ARE ACCORDED THE HIGHEST RESPECT AND WILL NOT BE LIGHTLY SET ASIDE; SUSTAINED. — It is apt to restate here the time-honored doctrine that the findings and conclusions of the CTA are accorded the highest respect and will not be lightly set aside. The CTA, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject unless there has been an abusive or improvident exercise of authority. Citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, this Court in *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, explicitly pronounced – Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. In *Sea-Land Service Inc. v. Court of Appeals* [G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446], this Court recognizes that the Court of Tax Appeals, which by the very nature of its function

is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.

3. TAXATION; INCOME TAX; CREDITABLE WITHHOLDING TAX; REQUISITES FOR CLAIMING TAX CREDIT OR TAX REFUND. — In *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, the Court enumerated the requisites for claiming a tax credit or a refund of creditable withholding tax: 1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax; 2) It must be shown on the return that the income received was declared as part of the gross income; and 3) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.

APPEARANCES OF COUNSEL

The Solicitor General for Commissioner of Internal Revenue.

Jose R. Matibag for Mirant (Phils.) Operations, Corp.

D E C I S I O N

MENDOZA, *J.*:

These are two consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court.

In G.R. No. 171742, petitioner Commissioner of Internal Revenue *(CIR)* seeks the reversal of the January 17, 2006

Decision[1] and March 9, 2006 Resolution[2] of the Court of Tax Appeals *(CTA) En Banc* in CTA E.B. Case No. 123.

In G.R. No. 176165, petitioner Mirant (Philippines) Operations, Corporation *(Mirant)* seeks the reversal of the October 26, 2006 Decision[3] and January 5, 2007 Resolution[4] of the CTA *En Banc* in CTA E.B. Case No. 125.

THE FACTS

Petitioner is empowered to perform the lawful duties of his office including, among others, the duty to act on and approve claims for refund or tax credit as provided by law.

Respondent Mirant is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Bo. Ibabang Pulo, Pagbilao Grande Island, Pagbilao, Quezon.[5]

Mirant also operated under the names Southern Energy Asia-Pacific Operations (Phils.), Inc., CEPA Operations (Philippines) Corporation; CEPA Tileman Project Management Corporation; and Hopewell Tileman Project Management Corporation.[6]

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[1] *Rollo* (G.R. No. 171742), pp. 48-67. Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Caesar A. Casanova, concurring.

[2] *Id.* (G.R. No. 171742), pp. 69-70. Signed by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez.

[3] *Id.* (G.R. No. 176165), pp. 29-44. Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring.

[4] *Id.* (G.R. No. 176165), pp. 45-48. Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista (on leave), Caesar A. Casanova, and Olga Palanca-Enriquez, concurring.

[5] *Id.* (G.R. No. 171742), p. 50.

[6] *Id.*

Mirant, duly licensed to do business in the Philippines, is primarily engaged in the design, construction, assembly, commissioning, operation, maintenance, rehabilitation and management of gas turbine and other power generating plants and related facilities using coal, distillate, and other fuel provided by and under contract with the Government of the Republic of the Philippines or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporations or other entities engaged in the development, supply or distribution of energy.[7]

Mirant entered into Operating and Management Agreements with Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.) and Mirant Sual Corporation (formerly Southern Energy Pangasinan, Inc.) to provide these companies with maintenance and management services in connection with the operation, construction and commissioning of coal-fired power stations situated in Pagbilao, Quezon, and Sual, Pangasinan respectively.[8]

On October 15, 1999, Mirant filed with the Bureau of Internal Revenue (*BIR*) its income tax return for the fiscal year ending June 30, 1999, declaring a net loss of ₱235,291,064.00 and unutilized tax credits of 32,263,388.00:

Gross Income	₱ (64,438,434.00)
Less: Deductions	170,852,630.00
Net Loss	₱ (235,291,064.00)
Income Tax Due	₱ —
Less:	
Prior Year's Excess Credits	4,714,516.00
Creditable Tax Withheld	
First Three Quarters	21,702,771.00
Fourth Quarter	5,846,101.00
Tax Overpayment	₱ 32,263,388.00[9]

[7] *Id.* (G.R. No. 171742), p. 51.

[8] *Id.* (G.R. No. 171742), pp. 51-52.

[9] *Id.* (G.R. No. 171742), p. 52.

On April 17, 2000, Mirant filed with the BIR an amended income tax return *(ITR)* for the fiscal year ending June 30, 1999, reporting an increased net loss amount of ₱379,324,340.00 but reporting the same unutilized tax credits of ₱32,263,388.00, which it opted to carry over as a tax credit to the succeeding taxable year, thus:

Gross Income	₱(113,113,036.00)
Less: Deductions	248,211,204.00
Net Loss	₱(379,324,240.00)
Income Tax Due	₱ —
Less:	
Prior Year's Excess Credits	4,714,516.00
Creditable Tax Withheld	
First Three Quarters	21,702,771.00
Fourth Quarter	5,846,101.00
Tax Overpayment	₱ 32,263,388.00[10]

To synchronize its accounting period with those of its affiliates, Mirant allegedly secured the approval of the BIR to change its accounting period from fiscal year (*FY*) to calendar year (*CY*) effective December 31, 1999. Thus, on April 17, 2000, Mirant filed its income tax return for the interim period July 1, 1999 to December 31, 1999, declaring a net loss in the amount of ₱381,874,076.00 and unutilized tax credits of ₱48,626,793.00:

Gross Income	₱(320,895,462.00)
Less: Deductions	60,978,614.00
Net Loss	₱(381,874,076.00)
Income Tax Due	₱ —
Less:	
Prior Year's Excess Credits	32,263,388.00
Creditable Tax Withheld	
First Three Quarters	16,363,405.00
Fourth Quarter	—
Tax Overpayment	₱ 48,626,793.00[11]

[10] *Id.* (G.R. No. 171742), pp. 52-53.

[11] *Id.* (G.R. No. 171742), p. 53.

Mirant indicated the excess amount of ₱48,626,793.00 as "To be carried over as tax credit next year/quarter."[12]

On April 10, 2001, it filed with the BIR its income tax return for the calendar year ending December 31, 2000, reflecting a net loss of ₱56,901,850.00 and unutilized tax credits of ₱87,345,116.00, computed as follows:

Gross Income	₱(4,080,541.00)
Less: Deductions	52,821,309.00
Net Loss	₱(56,901,850.00)
Income Tax Due	₱ —
Less:	
Prior Year's Excess Credits	48,626,793.00
Creditable Tax Withheld	
First Three Quarters	25,336,971.00
Fourth Quarter	13,381,352.00
Tax Overpayment	₱87,345,116.00[13]

On September 20, 2001, Mirant wrote the BIR a letter claiming a refund of ₱87,345,116.00 representing overpaid income tax for the FY ending June 30, 1999, the interim period covering July 1, 1999 to December 31, 1999, and CY ending December 31, 2000.[14]

As the two-year prescriptive period for the filing of a judicial claim under Section 229 of the National Internal Revenue Code (NIRC) of 1997 was about to lapse without action on the part of the BIR, Mirant elevated its case to the CTA by way of Petition for Review on October 12, 2001. The case was docketed as CTA Case No. 6340.[15]

The CTA First Division rendered judgment partially granting Mirant's claim for refund in the reduced amount of ₱38,620,427.00, representing its duly substantiated unutilized

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[12] *Id.* (G.R. No. 171742), p. 54.

[13] *Id.*

[14] *Id.*

[15] *Id.* (G.R. No. 171742), p. 55.

creditable withholding taxes for taxable year 2000 out of the total claim of ₱38,718,323.00 therefor.[16] It appears that the total claim was reduced by ₱97,896.00 for the following reasons: the amount of ₱92,996.00 was deducted because the CTA First Division found that it was not covered by the withholding tax certificate issued by Southern Energy Quezon, Inc. for the period October 1, 2000 to December 31, 2000. Moreover the additional amount of ₱4,900.00 was also deducted because based on the reconciliation schedule for the creditable taxes of ₱745,290.00 withheld by Southern Energy Quezon, Inc. for the period October 1, 2000 to December 31, 2000 on Mirant's Philippine peso billings under Invoice No. 0015, the corresponding creditable taxes claimed by Mirant in its 2000 income tax return amounted to ₱750,190.00 which was higher by ₱4,900.00 than that reflected in the certificate.[17]

Additionally, Mirant's claim for the refund of its unutilized tax credits for the taxable year 1999 in the total amount of ₱48,626,793.00, was denied as it exercised the carry-over option with regard to the said unutilized tax credits, which is irrevocable pursuant to the provisions of Section 76 of the 1997 NIRC.[18]

The dispositive portion of the assailed May 18, 2005 Decision[19] of the CTA First Division reads:

> IN VIEW OF ALL THE FOREGOING, the instant Petition for Review is hereby **GRANTED** but in a reduced amount of ₱38,620,427.00. Accordingly, respondent is **ORDERED TO REFUND**, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of ₱38,620,427.00 representing unutilized creditable withholding taxes for taxable year 2000.

Both parties filed their respective motions for partial reconsideration of the above decision, but these were both

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[16] *Id.* (G.R. No. 171742), p. 151.

[17] *Id.* (G.R. No. 176165), pp. 35-36.

[18] *Id.* (G.R. No. 176165), p. 36.

[19] *Id.* (G.R. No. 171742), pp. 137-152.

denied for lack of merit in a Resolution[20] dated September 22, 2005.

Both parties sought redress before the CTA *En Banc* in two separate petitions for review docketed as CTA EB Case No. 123 and CTA EB Case No. 125, respectively.

According to the CTA, although arising from the same case, CTA Case No. 6340, these two cases were not consolidated because CTA EB Case No. 125 was initially dismissed due to procedural infirmities.

In a Resolution dated April 28, 2006, however, acting on Mirant's motion for reconsideration, the CTA *En Banc* recalled its earlier resolution and reinstated the case.[21] Eventually, the CTA *En Banc* in separate decisions, denied due course and dismissed the two cases. The CIR and Mirant filed their respective motions for reconsideration but both were denied. Thus, the CIR and Mirant filed their respective petitions for review with this Court, docketed as G.R. No. 171742 and G.R. No. 176165, respectively.

ISSUES

In G.R. No. 171742, the CIR raises the following issue:

WHETHER OR NOT THE COURT OF TAX APPEALS ERRED ON A QUESTION OF LAW IN HOLDING RESPONDENT ENTITLED TO A REFUND OR TAX CREDIT IN THE AMOUNT OF ₱38,620,427.00.

In G.R. No. 176165, Mirant raises the following issue:

WHETHER OR NOT PETITIONER IS ENTITLED TO A CLAIM FOR ADDITIONAL REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF ₱48,626,793.00 REPRESENTING EXCESS CREDITABLE WITHHOLDING TAXES FOR THE FISCAL YEAR ENDED JUNE 30, 1999 AND THE INTERIM PERIOD FROM JULY 1, 1999 TO DECEMBER 31, 1999.

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[20] *Id.* (G.R. No. 171742), p. 151.

[21] *Id.* (G.R. No. 176165), p. 31.

In essence, the issue is whether Mirant is entitled to a tax refund or to the issuance of a tax credit certificate and, if it is, then what is the amount to which it is entitled.

RULING OF THE COURT

The Court finds the assailed decisions and resolutions of the CTA *En Banc* in CTA E.B. Case Nos. 123 and 125 to be consistent with law and jurisprudence.

Once exercised, the option to carry over is irrevocable.

Section 76 of the National Internal Revenue Code (Presidential Decree No. 1158, as amended) provides:

> **SEC. 76. - *Final Adjustment Return*.** - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
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> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
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> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.** (Underscoring and emphasis supplied.)

The last sentence of Section 76 is clear in its mandate. Once a corporation exercises the option to carry-over and apply the excess quarterly income tax against the tax due for the taxable

quarters of the succeeding taxable years, such option is irrevocable for that taxable period. Having chosen to carry-over the excess quarterly income tax, the corporation cannot thereafter choose to apply for a cash refund or for the issuance of a tax credit certificate for the amount representing such overpayment.

In the recent case of *Commissioner of Internal Revenue v. PL Management International Philippines, Inc.*,[22] the Court discussed the irrevocability rule of Section 76 in this wise:

> The predecessor provision of Section 76 of the NIRC of 1997 is Section 79 of the NIRC of 1985, which provides:
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> > Section 79. *Final Adjustment Return*. – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:
> >
> > (a) Pay the excess tax still due; or
> >
> > (b) Be refunded the excess amount paid, as the case may be.
> >
> > In case the corporation is entitled to a refund of the excess estimated quarterly income taxes-paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.
>
> As can be seen, Congress added a sentence to Section 76 of the NIRC of 1997 in order to lay down the irrevocability rule, to wit:
>
> > xxx Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.

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[22] G.R. No. 160949, April 4, 2011.

In *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*,[23] the Court expounds on the two alternative options of a corporate taxpayer whose total quarterly income tax payments exceed its tax liability, and on how the choice of one option precludes the other, *viz*:

> The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.
>
> The second option works by applying the refundable amount, as shown on the FAR of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.
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> **These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in *Philippine Bank of Communications v. Commissioner of Internal Revenue*,[24] the Court ruled that a corporation must signify its intention – whether to request a tax refund or claim a tax credit – by marking the corresponding option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection**.
>
> **One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid**. xxx

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,[25] the Court, citing the aforequoted pronouncement in *Philam Asset Management, Inc.*, points out that Section 76 of the NIRC of 1997 is clear and unequivocal in providing that the carry-over option, once actually or constructively chosen by a corporate taxpayer, becomes *irrevocable*. The Court explains:

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[23] 514 Phil. 147, 157 (2005), cited in *Commissioner of Internal Revenue v. PL Management International Philippines, Inc.*, G.R. No. 160949, April 4, 2011. See also *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue*, G.R. No. 171766, July 29, 2010, 626 SCRA 172; and *Commissioner of Internal Revenue v. McGeorge Food Industries, Inc.*, G.R. No. 174157, October 20, 2010.

[24] 361 Phil. 916 (1999).

[25] G.R. No. 178490, July 7, 2009, 592 SCRA 219, 231.

Hence, the controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor."

The last sentence of Section 76 of the NIRC of 1997 reads: "Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor." The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit.

The Court of Appeals mistakenly understood the phrase "for that taxable period" as a prescriptive period for the irrevocability rule. This would mean that since the tax credit in this case was acquired in 1998, and BPI opted to carry it over to 1999, then the irrevocability of the option to carry over expired by the end of 1999, leaving BPI free to again take another option as regards its 1998 excess income tax credit. This construal effectively renders nugatory the irrevocability rule. The evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit. The interpretation of the Court of Appeals only delays the flip-flopping to the end of each succeeding taxable period.

The Court similarly disagrees in the declaration of the Court of Appeals that to deny the claim for refund of BPI, because

> of the irrevocability rule, would be tantamount to unjust enrichment on the part of the government. The Court addressed the very same argument in *Philam*, where it elucidated that there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because there would be no forfeiture of any amount in favor of the government. **The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years, as provided in Section 76 of the NIRC of 1997. It is worthy to note that unlike the option for refund of excess income tax, which prescribes after two years from the filing of the FAR, there is no prescriptive period for the carrying over of the same. Therefore, the excess income tax credit of BPI, which it acquired in 1998 and opted to carry over, may be repeatedly carried over to succeeding taxable years, *i.e.*, to 1999, 2000, 2001, and so on and so forth, until actually applied or credited to a tax liability of BPI.**
>
> Inasmuch as the respondent already opted to carry over its unutilized creditable withholding tax of ₱1,200,000.00 to taxable year 1998, the carry-over could no longer be converted into a claim for tax refund because of the irrevocability rule provided in Section 76 of the NIRC of 1997. Thereby, the respondent became barred from claiming the refund. [Underscoring supplied][26]

In this case, in its amended ITR for the year ended July 30, 1999[27] and for the interim period ended December 31, 1999,[28] Mirant clearly ticked the box signifying that the overpayment was "To be carried over as tax credit next year/quarter." Item 31 of the Annual Income Tax Return Form (BIR Form No. 1702) also clearly indicated "If overpayment, mark one box only. (once the choice is made, the same is irrevocable)."

Applying the irrevocability rule in Section 76, Mirant having opted to carry over its tax overpayment for the fiscal year ending July 30, 1999 and for the interim period ending December

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[26] *Commissioner of Internal Revenue v. PL Management International Philippines, Inc.*, G.R. No. 160949, April 4, 2011.

[27] *Rollo* (G.R. No. 171742), p. 84.

[28] *Id.* (G.R. No. 171742), p. 87.

31, 1999, it is now barred from applying for the refund of the said amount or for the issuance of a tax credit certificate therefor, and for the unutilized tax credits carried over from the fiscal year ended June 30, 1998.

Mirant is entitled to the refund of its unutilized creditable withholding taxes for the taxable year 2000.

It is apt to restate here the time-honored doctrine that the findings and conclusions of the CTA are accorded the highest respect and will not be lightly set aside. The CTA, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject unless there has been an abusive or improvident exercise of authority.[29] Citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*,[30] this Court in *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*,[31] explicitly pronounced –

> Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. In *Sea-Land Service Inc. v. Court of Appeals* [G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446], Court recognizes that the Court of Tax Appeals, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary,

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[29] *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010, 614 SCRA 526, 561, citing *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625, 640 (2005).

[30] G.R. No. 150764, August 7, 2006, 498 SCRA 126, 135-136.

[31] *Supra* note 29.

this Court must presume that the CTA rendered a decision which is valid in every respect.[32]

In this case, having studied the applicable law and jurisprudence, the Court agrees with the conclusion of the CTA that Mirant complied with all the requirements for the refund of its unutilized creditable withholding taxes for taxable year 2000.

In *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*,[33] the Court enumerated the requisites for claiming a tax credit or a refund of creditable withholding tax:

1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;

2) It must be shown on the return that the income received was declared as part of the gross income; and

3) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.[34]

First, Mirant clearly complied with the two-year period. This requirement is based on Section 229 of the NIRC of 1997 which provides:

SEC. 229. ***Recovery of Tax Erroneously or Illegally Collected.*** **–** No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained,

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[32] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, *supra* note 30, cited in *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010, 614 SCRA 526, 561.

[33] G.R. No. 173854, March 15, 2010, 615 SCRA 417.

[34] *Id.* at 424.

whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. [Underscoring supplied]

Mirant filed its income tax return for the taxable year ending December 31, 2000 on April 10, 2001. Thus, from such date of filing, petitioner had until April 10, 2003 within which to file its claim for refund or for the issuance of a tax credit certificate in its favor.[35]

Mirant filed its administrative claim with the BIR on September 20, 2001. It thereafter filed its Petition for Review with the CTA on October 12, 2001,[36] or clearly within the prescribed two-year period.

Second, Mirant was also able to establish that the income, upon which the creditable withholding taxes were paid, was declared as part of its gross income in its ITR. As the CTA *En Banc* concluded:

As regards petitioner CIR's contention that respondent Mirant was not able to establish that the income upon which the creditable withholding taxes were paid was included in respondent's Income

[35] See *ACCRA Investments Corporation v. Court of Appeals*, G.R. No. 96322, December 20, 1991, 204 SCRA 957, where the Court ruled that the two-year prescriptive period commences to run on the date when the final adjustment return is filed, as that is the date when ACCRAIN could ascertain whether it made a profit or incurred losses in its business operation. The Court therein stated that, "there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue."

[36] *Rollo* (G.R. No. 171742), p. 55.

Tax Returns, a perusal of the records reveals otherwise. The reported creditable taxes withheld of ₱38,718,323.00 were withheld from the services fees of ₱871,127,253.00 received by respondent from its affiliates, the Southern Energy Quezon, Inc. and the Southern Energy Pangasinan, Inc., pursuant to the Operating and Maintenance Service Agreements entered into by respondent Mirant with said entities (*Exhibits "HH", "K", and "K-1"*). The gross income figure of ₱871,127,253.00 is the very same amount declared by respondent in its income tax return for taxable year 2000 (*Exhibits "O-11" & "O-12"*).[37]

The CIR disagrees but merely alleges without any clear argument or basis that Mirant failed to prove that the income from which its creditable taxes were withheld were duly declared as part of its income in its annual ITR.

Thus, there being no cogent reason presented to reverse the findings and conclusions of the CTA, the Court affirms its finding that the income received was declared as part of the gross income, as shown in Mirant's tax return.

Finally, Mirant was also able to establish the fact of withholding of the creditable withholding tax.

The CIR is of the opinion that Mirant's non-presentation of the various payors or withholding agents to verify the Certificates of Creditable Tax Withheld at Source (*CWT's*), the registered books of accounts and the audited financial statements for the various periods covered to corroborate its other allegations, and its failure to offer other evidence to prove and corroborate the propriety of its claim for refund and failure to establish the fact of remittance of the alleged withheld taxes by various payors to the BIR, are all fatal to its claim.[38]

Citing the CTA First Division, Mirant argues that since the CWT's were duly signed and prepared under pain of perjury, the figures appearing therein are presumed to be true and correct.[39] The CWT's were presented and duly identified by

[37] *Id.* (G.R. No. 171742), p. 61.

[38] *Id.* (G.R. No. 171742), p. 279.

[39] *Id.* (G.R. No. 171742), p. 300.

its witness, Magdalena Marquez, and further verified by the duly commissioned independent CPA, Ruben R. Rubio, on separate hearing dates, before the CTA First Division.[40] Moreover, these certificates were found by the duly commissioned independent CPA to be faithful reproductions of the originals, as stated in his supplementary report dated March 24, 2003.[41]

The Court agrees with the conclusion of the CTA *En Banc*:

> Contrary to petitioner CIR's contention, the fact of withholding was likewise established through respondent's presentation of the Certificates of Creditable Tax Withheld At Source, duly issued to it by Southern Energy Pangasinan, Inc. and Southern Energy Quezon, Inc., for the year 2000 (*Exhibits "Y", "Z", "AA" to "FF"*). These certificates were found by the duly commissioned independent CPA to be faithful reproductions of the original copies, as per his Supplementary Report dated March 24, 2003 (*Exhibit "RR"*).
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> As to petitioner CIR's contention that the Report of the independent CPA dated February 21, 2003 shows several discrepancies, We sustain the findings of the First Division. On direct examination, Mr. Ruben Rubio, the duly commissioned independent CPA, testified and explained that the discrepancy was merely brought about by: (1) the difference in foreign exchange (forex) rates at the time the certificates were recorded by respondent Mirant and the forex rates used at the time the certificates were issued by its customers; and (2) the timing difference between the point when respondent Mirant recognized or accrued its income and the time when the corresponding creditable tax was withheld by its customers. x x x
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> As extensively discussed by the First Division:
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> "The creditable withholding taxes of ₱40,600,971.79 reflected in the certificates were higher by ₱1,882,648.79 when compared with the creditable withholding taxes of ₱38,718,323.00 reported by petitioner in its income tax return for taxable year 2000 (Exhibit O-7). As stated by SGV & Co. in its report dated February 21,

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[40] *Id.* (G.R. No. 171742), pp. 299-300.

[41] *Id.* (G.R. No. 171742), p. 300.

2003 (Exhibit NN), tax credits were claimed by petitioner in its income tax return for taxable year 2000 prior to its receipt of the certificates from the withholding agents. At the time it recognized and accrued its income, petitioner also reported the related creditable withholding taxes, which was prior to the receipt of the certificates from the withholding agents. Hence, the discrepancy of ₱1,882,648.79 in creditable withholding taxes was mainly brought about by the difference between the foreign exchange (forex) rates used at the time when petitioner recorded its income and the related tax credits and the forex rates used by the withholding agents at the time when income payments were made to petitioner in reporting its tax credits, the same do not have a bearing on petitioner's total claim because the resulting increase in the amounts of creditable withholding taxes reflected in the certificates were not declared by the petitioner in its income tax return for the said year. However, for the creditable taxes withheld by Southern Energy Quezon, Inc. for the period October 1, 2000 to December 31, 2000 totalling ₱7,670,746.00 (which formed part of the creditable withholding taxes of ₱8,834,280.11 shown in the certificate marked as Exhibit EE), the same were based on forex rates which were lower than those used by petitioner in recognizing the tax credits of ₱7,763,742.00 for the same transactions. In other words, petitioner's claimed unutilized tax credits of ₱92,996.00 (₱7,763,742.00 less ₱7,670,746.00) were not covered by the withholding tax certificate issued by Southern Energy, Quezon Inc. for the period October 1, 2000 to December 31, 2000 and should therefore be deducted from the total claim of ₱38,718,323.00 Below is the breakdown of the amount of ₱92,996.00:

Exhibits	Period Covered	Withholding Agent	Creditable Withholding Taxes Per Certificate (a)	Per ITR (b)	Overclaimed Tax Credits (b) – (a)
EE, QQ	10/01/00 – 12/31/0	Southern Energy Quezon, Inc	₱4,298,892.00	₱4,350,327.00	₱51,435.00
			3,371,854.00	3,413,415.00	41,561.00
			₱7,670,746.00	₱7,763,742.00	₱92,996.00

> The reconciliation schedule also shows that for the creditable taxes of ₱745,290.00 withheld by Southern Energy Quezon Inc. for the period October 1, 2000 to December 31, 2000 on petitioner's Philippine peso billings under Invoice No. 0015, the corresponding creditable taxes claimed by petitioner in its 2000 income tax return amounted to ₱750,190.00 which were higher by ₱4,900.00 than those reflected in the certificate. Accordingly, the amount of ₱4,900.00 shall be deducted from petitioner's total claim.
>
> In fine, this Court finds that of the total unutilized credits of ₱38,718, 323.00 declared by petitioner in its 2000 income tax return, only the amount of ₱38,620,427.00 (₱38,718,323.00 less ₱92,996.00) was duly substantiated by withholding tax certificates."

Therefore, as the CTA ruled, Mirant complied with all the legal requirements and it is entitled, as it opted, to a refund of its excess creditable withholding tax for the taxable year 2000 in the amount of ₱38,620,427.00.

The Court finds no abusive or improvident exercise of authority on the part of the CTA. Since there is no showing of gross error or abuse on the part of the CTA, and its findings are supported by substantial evidence, there is no cogent reason to disturb its findings and conclusions.

WHEREFORE, the petitions in G.R. No. 171742 and G.R. No. 176165 are *DENIED*.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Peralta,* and *Abad, JJ.,* concur.

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[*] Designated as acting member of the Second Division per Special Order No. 1006 dated June 10, 2011.

FIRST DIVISION

[G.R. No. 175021. June 15, 2011]

REPUBLIC OF THE PHILIPPINES, represented by the CHIEF OF THE PHILIPPINE NATIONAL POLICE, *petitioner, vs.* **THI THU THUY T. DE GUZMAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; IN A PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT, ONLY QUESTIONS OF LAW MAY BE RAISED BY THE PARTIES AND PASSED UPON BY THE SUPREME COURT; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. — It is a well-settled rule that in a petition for review under Rule 45, only questions of law may be raised by the parties and passed upon by this Court. This Court has, on many occasions, distinguished between a question of law and a question of fact. We held that when there is doubt as to what the law is on a certain state of facts, then it is a question of law; but when the doubt arises as to the truth or falsity of the alleged facts, then it is a question of fact. "Simply put, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct, is a question of law." To elucidate further, this Court, in *Hko Ah Pao v. Ting* said: One test to determine if there exists a question of fact or law in a given case is whether the Court can resolve the issue that was raised without having to review or evaluate the evidence, in which case, it is a question of law; otherwise, it will be a question of fact. Thus, **the petition must not involve the calibration of the probative value of the evidence presented**. In addition, **the facts of the case must be undisputed**, and the only issue that should be left for the Court to decide is whether or not the conclusion drawn by the CA from a certain set of facts was appropriate.

2. ID.; ID.; FINDINGS OF FACT OF THE COURT OF APPEALS ARE FINAL AND CONCLUSIVE; EXCEPTIONS. — As a rule, the findings of fact of the Court of Appeals are final and

conclusive and this Court will only review them under the following recognized exceptions: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is a grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on 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 of the Court of Appeals 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 Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

3. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE, DEFINED; GUIDELINES IN DETERMINATION THEREOF, PRESENTED. — Section 1, Rule 133 of the Revised Rules of Court provides the guidelines in determining preponderance of evidence: **SECTION 1.** *Preponderance of evidence, how determined.*— In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. Expounding on the concept of preponderance of evidence, this Court in *Encinas v. National Bookstore, Inc.*, held: "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight

of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

4. ID.; ID.; ADMISSIONS; JUDICIAL ADMISSION; CONSTRUED; PRESENT IN CASE AT BAR. — Petitioner's statements on the other hand, were deliberate, clear, and unequivocal and were made in the course of judicial proceedings; thus, they qualify as judicial admissions. In *Alfelor v. Halasan*, this Court held that: A party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded. The petitioner admitted to the existence and validity of the Contract of Agreement executed between the PNP and MGM, as represented by the respondent, on December 11, 1995. It likewise admitted that respondent delivered the construction materials subject of the Contract, not once, but several times during the course of the proceedings. The only matter petitioner assailed was respondent's allegation that she had not yet been paid. x x x Section 4, Rule 129 of the Rules of Court states: **SECTION 4.** *Judicial Admissions*.–An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. Petitioner's admissions were proven to have been made in various stages of the proceedings, and since the petitioner has not shown us that they were made through palpable mistake, they are conclusive as to the petitioner. Hence, the only question to be resolved is whether the respondent was paid under the December 1995 Contract of Agreement.

5. CIVIL LAW; OBLIGATIONS; EXTINGUISHMENT; PAYMENT TO BE EFFECTIVE IN EXTINGUISHING OBLIGATION MUST BE MADE TO THE PROPER PARTY; ELUCIDATED; APPLICATION IN CASE AT BAR. — In order for petitioner's payment to be effective in extinguishing its obligation, it must be made to the proper person. Article 1240 of the Civil Code states: **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. In *Cembrano v. City of Butuan*, this Court elucidated on how payment will effectively extinguish an obligation, to wit: Payment made by the debtor to the person of the creditor or to one authorized by him or by the law to receive it extinguishes the obligation. When payment is made to the wrong party, however, the obligation is not extinguished as to the creditor who is without fault or negligence even if the debtor acted in utmost good faith and by mistake as to the person of the creditor or through error induced by fraud of a third person. In general, a payment in order to be effective to discharge an obligation, must be made to the proper person. Thus, payment must be made to the obligee himself or to an agent having authority, express or implied, to receive the particular payment. Payment made to one having apparent authority to receive the money will, as a rule, be treated as though actual authority had been given for its receipt. Likewise, if payment is made to one who by law is authorized to act for the creditor, it will work a discharge. The receipt of money due on a judgment by an officer authorized by law to accept it will, therefore, satisfy the debt. The respondent was able to establish that the LBP check was not received by her or by her authorized personnel. The PNP's own records show that it was claimed and signed for by Cruz, who is openly known as being connected to Highland Enterprises, another contractor. Hence, absent any showing that the respondent agreed to the payment of the contract price to another person, or that she authorized Cruz to claim the check on her behalf, the payment, to be effective must be made to her.

6. ID.; DAMAGES; FOR THE PAYMENT OF A SUM OF MONEY, THE LEGAL INTEREST TO BE IMPOSED IS 6%. — Since the obligation herein is for the payment of a sum of money, the legal interest rate to be imposed, under Article 2209 of the

Civil Code is six percent (6%) *per annum*: **Art. 2209.** If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent *per annum*. Following the guidelines above, the legal interest of 6% *per annum* is to be imposed from November 16, 1997, the date of the last demand, and 12% in lieu of 6% from the date this decision becomes final until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Grajo T. Albano for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari*[1] filed by Republic of the Philippines, as represented by the Chief of the Philippine National Police (PNP), of the September 27, 2006 Decision[2] of the Court of Appeals in CA-G.R. CV No. 80623, which affirmed with modification the September 8, 2003 Decision[3] of the Regional Trial Court (RTC), Branch 222, of Quezon City in Civil Case No. Q99-37717.

Respondent is the proprietress of Montaguz General Merchandise (MGM),[4] a contractor accredited by the PNP for the supply of office and construction materials and equipment, and for the delivery of various services such as printing and

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

[2] *Rollo*, pp. 9-21; penned by Associate Justice Amelita G. Tolentino with Associate Justices Portia Aliño-Hormachuelos and Arcangelita Romilla-Lontok, concurring.

[3] CA *rollo*, pp. 34-37.

[4] *Id.* at 43.

rental, repair of various equipment, and renovation of buildings, facilities, vehicles, tires, and spare parts.[5]

On December 8, 1995, the PNP Engineering Services (PNPES), released a Requisition and Issue Voucher[6] for the acquisition of various building materials amounting to Two Million Two Hundred Eighty-Eight Thousand Five Hundred Sixty-Two Pesos and Sixty Centavos (₱2,288,562.60) for the construction of a four-storey condominium building with roof deck at Camp Crame, Quezon City.[7]

Respondent averred that on December 11, 1995, MGM and petitioner, represented by the PNP, through its chief, executed a Contract of Agreement[8] (the Contract) wherein MGM, for the price of ₱2,288,562.60, undertook to procure and deliver to the PNP the construction materials itemized in the purchase order[9] attached to the Contract. Respondent claimed that after the PNP Chief approved the Contract and purchase order,[10] MGM, on March 1, 1996, proceeded with the delivery of the construction materials, as evidenced by Delivery Receipt Nos. 151-153,[11] Sales Invoice Nos. 038 and 041,[12] and the "Report of Public Property Purchase"[13] issued by the PNP's Receiving and Accounting Officers to their Internal Auditor Chief. Respondent asseverated that following the PNP's inspection of the delivered materials on March 4, 1996,[14] the PNP issued two Disbursement Vouchers; one in the amount of ₱2,226,147.26

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[5] Records, p. 10.

[6] *Id.* at 11-13.

[7] *Id.* at 14.

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

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

[10] *Id.* at 18.

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

[12] *Id.* at 22-23.

[13] *Id.* at 23A-24.

[14] *Id.* at 25.

in favor of MGM,[15] and the other, [16] in the amount of ₱62,415.34, representing the three percent (3%) withholding tax, in favor of the Bureau of Internal Revenue (BIR).[17]

On November 5, 1997, the respondent, through counsel, sent a letter dated October 20, 1997[18] to the PNP, demanding the payment of ₱2,288,562.60 for the construction materials MGM procured for the PNP under their December 1995 Contract.

On November 17, 1997, the PNP, through its Officer-in-Charge, replied[19] to respondent's counsel, informing her of the payment made to MGM *via* Land Bank of the Philippines (LBP) Check No. 0000530631, [20] as evidenced by Receipt No. 001, [21] issued by the respondent to the PNP on April 23, 1996.[22]

On November 26, 1997, respondent, through counsel, responded by reiterating her demand[23] and denying having ever received the LBP check, personally or through an authorized person. She also claimed that Receipt No. 001, a copy of which was attached to the PNP's November 17, 1997 letter, could not support the PNP's claim of payment as the aforesaid receipt belonged to Montaguz Builders, her other company, which was also doing business with the PNP, and not to MGM, with which the contract was made.

On May 5, 1999, respondent filed a Complaint for Sum of Money against the petitioner, represented by the Chief of the

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[15] *Id.* at 26

[16] *Id.* at 27.

[17] *Id.*

[18] *Id.* at 29.

[19] *Id.* at 263.

[20] *Id.* at 28.

[21] *Id.* at 44.

[22] *Id.*

[23] *Id.* at 266-267.

PNP, before the RTC, Branch 222 of Quezon City.[24] This was docketed as Civil Case No. Q99-37717.

The petitioner filed a Motion to Dismiss[25] on July 5, 1999, on the ground that the claim or demand set forth in respondent's complaint had already been paid or extinguished,[26] as evidenced by LBP Check No. 0000530631 dated April 18, 1996, issued by the PNP to MGM, and Receipt No. 001, which the respondent correspondingly issued to the PNP. The petitioner also argued that aside from the fact that the respondent, in her October 20, 1997 letter, demanded the incorrect amount since it included the withholding tax paid to the BIR, her delay in making such demand "[did] not speak well of the worthiness of the cause she espouse[d]."[27]

Respondent opposed petitioner's motion to dismiss in her July 12, 1999 Opposition[28]and September 10, 1999 Supplemental Opposition to Motion to Dismiss.[29] Respondent posited that Receipt No. 001, which the petitioner claimed was issued by MGM upon respondent's receipt of the LBP check, was, first, under the business name "Montaguz Builders," an entity separate from MGM. Next, petitioner's allegation that she received the LBP check on April 19, 1996 was belied by the fact that Receipt No. 001, which was supposedly issued for the check, was dated four days later, or April 23, 1996. Moreover, respondent averred, the PNP's own Checking Account Section Logbook or the Warrant Register, showed that it was one Edgardo Cruz (Cruz) who signed for the check due to MGM,[30] contrary to her usual practice of personally receiving and signing for checks payable to her companies.

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[24] *Id.* at 2-7.

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

[26] *Id.* at 40.

[27] *Id.* at 42.

[28] *Id.* at 46-48.

[29] *Id.* at 51-53.

[30] *Id.* at 54.

After conducting hearings on the Motion to Dismiss, the RTC issued an Order[31] on May 4, 2001, denying the petitioner's motion for lack of merit. The petitioner thereafter filed its Answer,[32] wherein it restated the same allegations in its Motion to Dismiss.

Trial on the merits followed the pre-trial conference, which was terminated on June 25, 2002 when the parties failed to arrive at an amicable settlement.[33]

On September 3, 2002, shortly after respondent was sworn in as a witness, and after her counsel formally offered her testimony in evidence, Atty. Norman Bueno, petitioner's counsel at that time, made the following stipulations in open court:

Atty. Bueno	(To Court)
	Your Honor, in order to expedite the trial, we will admit that this witness was contracted to deliver the construction supplies or materials. **We will admit that she complied, that she actually delivered the materials.** We will admit that Land Bank Corporation check was issued although we will not admit that the check was not released to her, as [a] matter of fact, we have the copy of the check. We will admit that Warrant Register indicated that the check was released although we will not admit that the check was not received by the [respondent].
Court	(To Atty. Albano)
	So, the issues here are whether or not the [respondent] received the check for the payment of the construction materials or supplies and who received the same. That is all.
Atty. Albano	(To Court)
	Yes, your Honor.

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

[32] *Id.* at 167-175.

[33] *Id.* at 201-202.

Court (To Atty. Albano)

I think we have an abbreviated testimony here. Proceed.[34] (Emphasis ours.)

The stipulations made by the petitioner through Atty. Bueno were in consonance with the admissions it had previously made, also through Atty. Bueno, in its Answer,[35] and pre-trial brief:[36]

Answer:

IX

It **ADMITS** the allegation in paragraph 9 of the Complaint ***that [respondent] delivered to the PNP Engineering Service the construction materials.*** It also ADMITS the existence of Receipt Nos. 151, 152 and 153 alleged in the same paragraph, copies of which are attached to the Complaint as Annexes "G," "G-1" and "G-2."[37] (Emphasis ours.)

Pre-trial Brief:

III

ADMISSIONS

3.1. **Facts and/or documents admitted**

For brevity, [petitioner] admit[s] only the allegations in [respondent's] Complaint and the annexes thereto **that were admitted in the Answer.**[38] (Emphases ours.)

With the issue then confined to whether respondent was paid or not, the RTC proceeded with the trial.

Respondent, in her testimony, narrated that on April 18, 1996, she went to the PNP Finance Center to claim a check due to one of her companies, Montaguz Builders. As the PNP required the issuance of an official receipt upon claiming its checks,

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[34] TSN, September 3, 2002, pp. 8-9.

[35] Records, pp. 167-176.

[36] *Id.* at 184-190.

[37] *Id.* at 170.

[38] *Id.* at 186.

respondent, in preparation for the PNP check she expected, already signed Montaguz Builders Official Receipt No. 001, albeit the details were still blank. However, upon arriving at the PNP Finance Center, respondent was told that the check was still with the LBP, which could not yet release it. Respondent then left for the Engineering Services Office to see Captain Rama, along with Receipt No. 001, which she had not yet issued.[39] Respondent claimed that after some time, she left her belongings, including her receipt booklet, at a bench in Captain Rama's office when she went around the Engineering Office to talk to some other people.[40] She reasoned that since she was already familiar and comfortable with the people in the PNPES Office, she felt no need to ask anyone to look after her belongings, as it was her "normal practice"[41] to leave her belongings in one of the offices there. The next day, respondent alleged that when she returned for the check due to Montaguz Builders that she was not able to claim the day before, she discovered for the first time that Receipt No. 001, which was meant for that check, was missing. Since she would not be able to claim her check without issuing a receipt, she just informed the releaser of the missing receipt and issued Receipt No. 002 in its place.[42] After a few months, respondent inquired with the PNP Finance Center about the payment due to MGM under the Contract of December 1995 and was surprised to find out that the check payable to MGM had already been released. Upon making some inquiries, respondent learned that the check, payable to MGM, in the amount of ₱2,226,147.26, was received by Cruz, who signed the PNP's Warrant Register. Respondent admitted to knowing Cruz, as he was connected with Highland Enterprises, a fellow PNP-accredited contractor. However, she denied ever having authorized Cruz or Highland Enterprises to receive or claim any of the checks due to MGM or Montaguz Builders.[43] When

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[39] TSN, September 3, 2002, pp. 25-27.

[40] TSN, December 3, 2002, pp. 15-18.

[41] *Id.* at 18.

[42] TSN, September 3, 2002, p. 31.

[43] *Id.* at 10-16.

asked why she had not filed a case against Cruz or Herminio Reyes, the owner of Highland Enterprises, considering the admitted fact that Cruz claimed the check due to her, respondent declared that there was no reason for her to confront them as it was the PNP's fault that the check was released to the wrong person. Thus, it was the PNP's problem to find out where the money had gone, while her course of action was to go after the PNP, as the party involved in the Contract.[44]

On April 29, 2003, petitioner presented Ms. Jesusa Magtira, who was then the "check releaser"[45] of the PNP, to prove that the respondent received the LBP check due to MGM, and that respondent herself gave the check to Cruz.[46] Ms. Magtira testified that on April 23, 1996, she released the LBP check payable to the order of MGM, in the amount of ₱2,226,147.26, to the respondent herein, whom she identified in open court. She claimed that when she released the check to respondent, she also handed her a voucher, and a logbook also known as the Warrant Register, for signing.[47] When asked why Cruz was allowed to sign for the check, Ms. Magtira explained that this was allowed since the respondent already gave her the official receipt for the check, and it was respondent herself who gave the logbook to Cruz for signing.[48]

The petitioner next presented Edgardo Cruz for the purpose of proving that the payment respondent was claiming rightfully belonged to Highland Enterprises. Cruz testified that Highland Enterprises had been an accredited contractor of the PNP since 1975. In 1995, Cruz claimed that the PNPES was tasked to construct "by administration" a condominium building. This meant that the PNPES had to do all the work, from the canvassing of the materials to the construction of the building. The PNPES allegedly lacked the funds to do this and so asked for Highland

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[44] TSN, December 3, 2002, pp. 37-40.

[45] TSN, April 29, 2003, p. 6.

[46] *Id.* at 14.

[47] *Id.* at 8-11.

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

Enterprises's help.[49] In a meeting with its accredited contractors, the PNPES asked if the other contractors would agree to the use of their business name[50] for a two percent (2%) commission of the purchase order price to avoid the impression that Highland Enterprises was monopolizing the supply of labor and materials to the PNP.[51] Cruz alleged that on April 23, 1996, he and the respondent went to the PNP Finance Center to claim the LBP check due to MGM. Cruz said that the respondent handed him the already signed Receipt No. 001, which he filled up. He claimed that the respondent knew that the LBP check was really meant for Highland Enterprises as she had already been paid her 2% commission for the use of her business name in the concerned transaction.[52]

On September 8, 2003, the RTC rendered its Decision, the dispositive of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of [respondent] and against [petitioner] ordering the latter to pay [respondent] the following sums:
>
> (1) ₱2,226,147.26 representing the principal sum plus interest at 14% per annum from April 18, 1996 until the same shall have been fully paid;
>
> (2) 20% of the sum to be collected as attorney's fees; and,
>
> (3) Costs of suit.[53]

The RTC declared that while Cruz's testimony seemed to offer a plausible explanation on how and why the LBP check ended up with him, the petitioner, already admitted in its Answer, and Pre-trial Brief, that MGM, did in fact deliver the construction materials worth ₱2,288,562.60 to the PNP. The RTC also pointed out the fact that the petitioner made the same admissions in

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[49] *Id.* at 42-45.

[50] *Id.* at 84.

[51] *Id.* at 74-78.

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

[53] CA *rollo*, p. 37.

open court to expedite the trial, leaving only one issue to be resolved: whether the respondent had been paid or not. Since this was the only issue, the RTC said that it had no choice but to go back to the documents and the "documentary evidence clearly indicates that the check subject of this case was never received by [respondent]."[54] In addition, the PNP's own Warrant Register showed that it was Edgardo Cruz who received the LBP check, and Receipt No. 001 submitted by the petitioner to support its claim was not issued by MGM, but by Montaguz Builders, a different entity. Finally, the RTC held that Cruz's testimony, which appeared to be an afterthought to cover up the PNP's blunder, were irreconcilable with the petitioner's earlier declarations and admissions, hence, not credit-worthy.

The petitioner appealed this decision to the Court of Appeals, which affirmed with modification the RTC's ruling on September 27, 2006:

> WHEREFORE, the decision appealed from is **AFFIRMED** with the **MODIFICATION** that the 14% interest per annum imposed on the principal amount is ordered reduced to 12%, computed from November 16, 1997 until fully paid. The order for the payment of attorney's fees and costs of the suit is **DELETED**.[55]

The Court of Appeals, in deciding against the petitioner, held that the petitioner's admissions and declarations, made in various stages of the proceedings are express admissions, which cannot be overcome by allegations of respondent's implied admissions. Moreover, petitioner cannot controvert its own admissions and it is estopped from denying that it had a contract with MGM, which MGM duly complied with. The Court of Appeals agreed with the RTC that the real issue for determination was whether the petitioner was able to discharge its contractual obligation with the respondent. The Court of Appeals held that while the PNP's own Warrant Register disclosed that the payment due to MGM was received by Cruz, on behalf of Highland Enterprises, the PNP's contract was clearly with MGM, and not with Highland

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[54] *Id.* at 36.

[55] *Rollo*, p. 20.

Enterprises. Thus, in order to extinguish its obligation, the petitioner should have directed its payment to MGM unless MGM authorized a third person to accept payment on its behalf.

The petitioner is now before this Court, praying for the reversal of the lower courts' decisions on the ground that "the Court of Appeals committed a serious error in law by affirming the decision of the trial court."[56]

THE COURT'S RULING:

This case stemmed from a contract executed between the respondent and the petitioner. While the petitioner, in proclaiming that the respondent's claim had already been extinguished, initially insisted on having fulfilled its contractual obligation, it now contends that the contract it executed with the respondent is actually a fictitious contract to conceal the fact that only one contractor will be supplying all the materials and labor for the PNP condominium project.

Both the RTC and the Court of Appeals upheld the validity of the contract between the petitioner and the respondent on the strength of the documentary evidence presented and offered in Court and on petitioner's own stipulations and admissions during various stages of the proceedings.

It is worthy to note that while this petition was filed under Rule 45 of the Rules of Court, the assertions and arguments advanced herein are those that will necessarily require this Court to re-evaluate the evidence on record.

It is a well-settled rule that in a petition for review under Rule 45, only questions of law may be raised by the parties and passed upon by this Court.[57]

This Court has, on many occasions, distinguished between a question of law and a question of fact. We held that when there is doubt as to what the law is on a certain state of facts, then it is a question of law; but when the doubt arises as to the

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[56] *Id.* at 30.

[57] *Jarantilla, Jr. v. Jarantilla*, G.R. No. 154486, December 1, 2010.

truth or falsity of the alleged facts, then it is a question of fact.[58] "Simply put, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct, is a question of law."[59] To elucidate further, this Court, in *Hko Ah Pao v. Ting*[60] said:

> One test to determine if there exists a question of fact or law in a given case is whether the Court can resolve the issue that was raised without having to review or evaluate the evidence, in which case, it is a question of law; otherwise, it will be a question of fact. Thus, **the petition must not involve the calibration of the probative value of the evidence presented**. In addition, **the facts of the case must be undisputed**, and the only issue that should be left for the Court to decide is whether or not the conclusion drawn by the CA from a certain set of facts was appropriate.[61] (Emphases ours.)

In this case, the circumstances surrounding the controversial LBP check are central to the issue before us, the resolution of which, will require a perusal of the entire records of the case including the transcribed testimonies of the witnesses. Since this is an appeal *via certiorari*, questions of fact are not reviewable. As a rule, the findings of fact of the Court of Appeals are final and conclusive[62] and this Court will only review them under the following recognized exceptions: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is a grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on 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

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[58] *Suarez v. Judge Villarama, Jr.*, G.R. No. 124512, June 27, 2006, 493 SCRA 74, 80.

[59] *Cucueco v. Court of Appeals*, 484 Phil. 254, 264 (2004).

[60] G.R. No. 153476, September 27, 2006, 503 SCRA 551.

[61] *Id.* at 559.

[62] *Microsoft Corporation v. Maxicorp, Inc.*, G.R. No. 140946, September 13, 2004, 438 SCRA 224, 230.

the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals 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 Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[63]

Although petitioner's sole ground to support this petition was stated in such a manner as to impress upon this Court that the Court of Appeals committed an error in law, what the petitioner actually wants us to do is to review and re-examine the factual findings of both the RTC and the Court of Appeals.

Since the petitioner has not shown this Court that this case falls under any of the enumerated exceptions to the rule, we are constrained to uphold the facts as established by both the RTC and the Court of Appeals, and, consequently, the conclusions reached in the appealed decision.

Nonetheless, even if we were to exercise utmost liberality and veer away from the rule, the records will show that the petitioner had failed to establish its case by a preponderance of evidence.[64] Section 1, Rule 133 of the Revised Rules of Court provides the guidelines in determining preponderance of evidence:

SECTION 1. *Preponderance of evidence, how determined.*— In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately

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[63] *Go v. Court of Appeals*, 403 Phil. 883, 890 (2001).

[64] *Hko Ah Pao v. Ting*, *supra* note 60 at 560.

appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Expounding on the concept of preponderance of evidence, this Court in *Encinas v. National Bookstore, Inc.*,[65] held:

"Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[66]

The petitioner avers that the Court of Appeals should not have relied "heavily, if not solely"[67] on the admissions made by petitioner's former counsel, thereby losing sight of the "secret agreement" between the respondent and Highland Enterprises, which explains why all the documentary evidence were in respondent's name.[68]

The petitioner relies mainly on Cruz's testimony to support its allegations. Not only did it not present any other witness to corroborate Cruz, but it also failed to present any documentation to confirm its story. It is doubtful that the petitioner or the contractors would enter into any "secret agreement" involving millions of pesos based purely on verbal affirmations. Meanwhile, the respondent not only presented all the documentary evidence to prove her claims, even the petitioner repeatedly admitted that respondent had fully complied with her contractual obligations.

The petitioner argued that the Court of Appeals should have appreciated the clear and adequate testimony of Cruz, and should have given it utmost weight and credit especially since his testimony

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[65] G.R. No. 162704, November 19, 2004, 443 SCRA 293.

[66] *Id.* at 302.

[67] *Rollo*, p. 33.

[68] *Id.*

was a "judicial admission against interest – a primary evidence which should have been accorded full evidentiary value."[69]

The trial court's appreciation of the witnesses' testimonies is entitled to the highest respect since it was in a better position to assess their credibility.[70] The RTC held Cruz's testimony to be "not credit worthy"[71] for being irreconcilable with petitioner's earlier admissions. Contrary to petitioner's contentions, Cruz's testimony cannot be considered as a judicial admission against his interest as he is neither a party to the case nor was his admission against his own interest, but actually against either the petitioner's or the respondent's interest. Petitioner's statements on the other hand, were deliberate, clear, and unequivocal and were made in the course of judicial proceedings; thus, they qualify as judicial admissions.[72] In *Alfelor v. Halasan*,[73] this Court held that:

> A party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.[74]

The petitioner admitted to the existence and validity of the Contract of Agreement executed between the PNP and MGM, as represented by the respondent, on December 11, 1995. It

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[69] *Id.*

[70] *People v. Gasacao*, 511 Phil. 435, 445 (2005).

[71] CA *rollo*, p. 37.

[72] *Alfelor v. Halasan*, G.R. No. 165987, March 31, 2006, 486 SCRA 451, 459.

[73] *Id.*

[74] *Id.* at 459-460.

likewise admitted that respondent delivered the construction materials subject of the Contract, not once, but several times during the course of the proceedings. The only matter petitioner assailed was respondent's allegation that she had not yet been paid. If Cruz's testimony were true, the petitioner should have put respondent in her place the moment she sent a letter to the PNP, demanding payment for the construction materials she had allegedly delivered. Instead, the petitioner replied that it had already paid respondent as evidenced by the LBP check and the receipt she supposedly issued. This line of defense continued on, with the petitioner assailing only the respondent's claim of nonpayment, and not the rest of respondent's claims, in its motion to dismiss, its answer, its pre-trial brief, and even in open court during the respondent's testimony. Section 4, Rule 129 of the Rules of Court states:

SECTION 4. *Judicial Admissions.*–An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

Petitioner's admissions were proven to have been made in various stages of the proceedings, and since the petitioner has not shown us that they were made through palpable mistake, they are conclusive as to the petitioner. Hence, the only question to be resolved is whether the respondent was paid under the December 1995 Contract of Agreement.

The RTC and the Court of Appeals correctly ruled that the petitioner's obligation has not been extinguished. The petitioner's obligation consists of payment of a sum of money. In order for petitioner's payment to be effective in extinguishing its obligation, it must be made to the proper person. Article 1240 of the Civil Code states:

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.

In *Cembrano v. City of Butuan*,[75] this Court elucidated on how payment will effectively extinguish an obligation, to wit:

> Payment made by the debtor to the person of the creditor or to one authorized by him or by the law to receive it extinguishes the obligation. When payment is made to the wrong party, however, the obligation is not extinguished as to the creditor who is without fault or negligence even if the debtor acted in utmost good faith and by mistake as to the person of the creditor or through error induced by fraud of a third person.
>
> In general, a payment in order to be effective to discharge an obligation, must be made to the proper person. Thus, payment must be made to the obligee himself or to an agent having authority, express or implied, to receive the particular payment. Payment made to one having apparent authority to receive the money will, as a rule, be treated as though actual authority had been given for its receipt. Likewise, if payment is made to one who by law is authorized to act for the creditor, it will work a discharge. The receipt of money due on a judgment by an officer authorized by law to accept it will, therefore, satisfy the debt.[76]

The respondent was able to establish that the LBP check was not received by her or by her authorized personnel. The PNP's own records show that it was claimed and signed for by Cruz, who is openly known as being connected to Highland Enterprises, another contractor. Hence, absent any showing that the respondent agreed to the payment of the contract price to another person, or that she authorized Cruz to claim the check on her behalf, the payment, to be effective must be made to her.[77]

The petitioner also challenged the RTC's findings, on the ground that it "overlooked material fact and circumstance of significant weight and substance."[78] Invoking the doctrine of adoptive admission, the petitioner pointed out that the respondent's

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[75] G.R. No. 163605, September 20, 2006, 502 SCRA 494.

[76] *Id.* at 511-512.

[77] *Montecillo v. Reynes*, 434 Phil. 456, 464-465 (2002).

[78] *Rollo*, p. 34.

inaction towards Cruz, whom she has known to have claimed her check as early as 1996, should be taken against her. Finally, the petitioner contends that Cruz's testimony should be taken against respondent as well, under Rule 130, Sec. 32 of the Revised Rules on Evidence, since she has not presented any "controverting evidence x x x notwithstanding that she personally heard it."[79]

The respondent has explained her inaction towards Cruz and Highland Enterprises. Both the RTC and the Court of Appeals have found her explanation sufficient and this Court finds no cogent reason to overturn the assessment by the trial court and the Court of Appeals of the respondent's testimony. It may be recalled that the respondent argued that since it was the PNP who owed her money, her actions should be directed towards the PNP and not Cruz or Highland Enterprises, against whom she has no adequate proof.[80] Respondent has also adequately explained her delay in filing an action against the petitioner, particularly that she did not want to prejudice her other pending transactions with the PNP.[81]

The petitioner claims that the RTC "overlooked material fact and circumstance of significant weight and substance,"[82] but it ignores all the documentary evidence, and even its own admissions, which are evidence of the greater weight and substance, that support the conclusions reached by both the RTC and the Court of Appeals.

We agree with the Court of Appeals that the RTC erred in the interest rate and other monetary sums awarded to respondent as baseless. However, we must further modify the interest rate imposed by the Court of Appeals pursuant to the rule laid down in *Eastern Shipping Lines, Inc. v. Court of Appeals*:[83]

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[79] *Id.*

[80] TSN, December 3, 2002, pp. 35-40.

[81] TSN, September 3, 2002, pp. 45-47.

[82] *Rollo*, p. 34.

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

I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[84]

Since the obligation herein is for the payment of a sum of money, the legal interest rate to be imposed, under Article 2209 of the Civil Code is six percent (6%) *per annum*:

[84] *Id.* at 95-97.

Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent *per annum*.

Following the guidelines above, the legal interest of 6% *per annum* is to be imposed from November 16, 1997, the date of the last demand, and 12% in lieu of 6% from the date this decision becomes final until fully paid.

Petitioner's allegations of sham dealings involving our own government agencies are potentially disturbing and alarming. If Cruz's testimony were true, this should be a lesson to the PNP not to dabble in spurious transactions. Obviously, if it can afford to give a 2% commission to other contractors for the mere use of their business names, then the petitioner is disbursing more money than it normally would in a legitimate transaction. It is recommended that the proper agency investigate this matter and hold the involved personnel accountable to avoid any similar occurrence in the future.

WHEREFORE, the Petition is hereby *DENIED* and the Decision of the Court of Appeals in C.A. G.R. CV No. 80623 dated September 27, 2006 is *AFFIRMED with the MODIFICATION* that the legal interest to be paid is SIX PERCENT (6%) *per annum* on the amount of ₱2,226,147.26, computed from the date of the last demand or on November 16, 1997. A TWELVE PERCENT (12%) *per annum* interest in lieu of SIX PERCENT (6%) shall be imposed on such amount upon finality of this decision until the payment thereof.

SO ORDERED.

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

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[*] Per Special Order No. 1003 dated June 8, 2011.

[**] Additional member per Special Order No. 1000 dated June 8, 2011.

THIRD DIVISION

[G.R. No. 177995. June 15, 2011]

HEIRS OF AGAPITO T. OLARTE and ANGELA A. OLARTE, NAMELY NORMA OLARTE-DINEROS, ARMANDO A. OLARTE, YOLANDA OLARTE-MONTECER and RENATO A. OLARTE, *petitioners, vs.* **OFFICE OF THE PRESIDENT OF THE PHILIPPINES, NATIONAL HOUSING AUTHORITY (NHA), MARIANO M. PINEDA, AS GENERAL MANAGER, THE MANAGER, DISTRICT I, NCR, EDUARDO TIMBANG and DEMETRIO OCAMPO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE RIGHT TO APPEAL, AS A STATUTORY PRIVILEGE; THE PERIOD WITHIN WHICH THE APPEAL SHOULD BE FILED MUST BE COMPLIED WITH; EXCEPTION IN CASE AT BAR. — Time and again, it has been held that the right to appeal is not a natural right or a part of due process, but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the rules, failing in which the right to appeal is lost. In the instant case, the proximate cause of petitioners' failure to comply with the rules, specifically that pertaining to the period within which to appeal, is the pronouncement in the appealed resolution itself that they have thirty (30) days contrary to what is prescribed in Section 2 of P.D. No. 1344, the applicable law in the case. We agree with petitioners that they cannot be blamed for honestly believing that they indeed had thirty (30) days considering it was the NHA itself which said so. Being the agency tasked to implement P.D. No. 1344, it is but plausible for petitioners to assume that what the NHA pronounced is the correct period within which they can file their appeal.

2. POLITICAL LAW; STATE POLICY; NATIONAL HOUSING AUTHORITY; ZONAL IMPROVEMENT PROJECT (ZIP);

THE PRIMORDIAL REQUISITE IS THAT THE INTENDED BENEFICIARY MUST BE THE OCCUPANT OF THE TAGGED STRUCTURE AT THE TIME OF THE OFFICIAL ZIP CENSUS OR AT THE CLOSURE THEREOF; APPLICATION IN CASE AT BAR. — The Zonal Improvement Project or ZIP was adopted to strengthen further the efforts of the government to uplift the living conditions in the slums and blighted areas in line with the spirit of the constitutional provision guaranteeing housing and a decent quality of life for every Filipino. The ownership of land by the landless is the primary objective of the ZIP. The Code of Policies embodied in NHA Circular No. 13 governed the implementation of the ZIP as to the classification and treatment of existing structures, the selection and qualification of intended beneficiaries, the disposition and award of fully developed lots in all ZIP zones within Metro Manila, and other related activities. In the Declaration of Policy, it provides that the tagging of structures and the census of occupants shall be the primary basis for determining beneficiaries within ZIP Project sites. Paragraph V, on the other hand, lays down the rules on beneficiary selection and lot allocation. x x x The declaration of policy in the Code of Policies stated that an absentee or uncensused structure owner was disqualified from owning a lot within the ZIP zones. The Code of Policies shows the following persons to be automatically disqualified as beneficiaries of the project, namely: (1) Absentee censused household – censused household that vacates a duly tagged structure or dwelling unit and leaves the project area for a continuous period for at least six months without written notice to the NHA and the local government unit; (2) Uncensused household – household that is not registered in the official ZIP census; (3) **Absentee structure owner – any individual who owns a structure or dwelling unit in a ZIP project area and who has not occupied it prior to the official closure of the Census; and** (4) Uncensused structure owner – any person who owns a structure or dwelling unit not registered in the official ZIP census. Thus, in the award of the ZIP lot allocation, the primary bases for determining the potential program beneficiaries and structures or dwelling units in the project area were the official ZIP census and tagging conducted. **It was, therefore, the primordial requisite that the intended beneficiary must be the occupant of the tagged structure at the time of the official ZIP**

census or at the closure thereof. Otherwise, the person was considered an absentee structure owner for being absent from his usual residence or domicile. x x x Evidently, all petitioners cannot qualify as beneficiaries because they were not the occupants of the subject property at the time of the census. They were living elsewhere at that crucial time. Undeniably, they were primarily using the subject property as a source of income by renting it out to third persons and not as their abode. Petitioners thus are not homeless persons which the ZIP intended to benefit. That petitioners were the descendants of the persons who built the residential house does not mean that the lot on which it stood would automatically be awarded to them. Petitioners cannot anchor their rights on the Certificate of Priority awarded to their parents. As correctly argued by the OSG, petitioners are deemed to have abandoned whatever right they may have over the property by virtue of the Certificate of Priority, when they chose not to reside on the subject property and found by NHA as not census residents within the project area.

3. REMEDIAL LAW; APPEALS; FINDINGS OF ADMINISTRATIVE AGENCIES AND QUASI-JUDICIAL BODIES; GENERALLY ACCORDED NOT ONLY RESPECT BUT FINALITY WHEN AFFIRMED BY THE COURT OF APPEALS. — It is settled that the Court is not a trier of facts and accords great weight to the factual findings of lower courts or agencies whose function is to resolve factual matters. It is not for the Court to weigh evidence all over again. Moreover, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the CA, as in the case at bar.

4. ID.; SPECIAL CIVIL ACTIONS; EJECTMENT CASE; THE ONLY ISSUE FOR RESOLUTION IS THE PHYSICAL OR MATERIAL POSSESSION OF THE PROPERTY INVOLVED INDEPENDENT OF ANY CLAIM OF OWNERSHIP BY ANY OF THE PARTY LITIGANTS. — The only issue for resolution in an ejectment case is physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. An ejectment case is designed to

restore, through summary proceedings, the physical possession of any land or building to one who has been illegally deprived of such possession, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings. Any ruling on the question of ownership is only provisional and made for the sole purpose of determining who is entitled to possession *de facto*. Certainly, a judgment in an ejectment case could only resolve the question as to who has a better right to possess the subject property but definitely, it could not conclusively determine whether petitioners are entitled to the award under the ZIP or ascertain if respondents are disqualified beneficiaries.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DEPRIVATION OF DUE PROCESS; NOT PRESENT WHEN THE PETITIONERS WERE NOT NOTIFIED OF THE CENSUS TAGGING OPERATIONS CONDUCTED BY THE NATIONAL HOUSING AUTHORITY; CASE AT BAR. — We likewise disagree with petitioners' argument that they were deprived due process since they were not notified of the census tagging operations in their area. It cannot be said that the census was conducted for one day only that petitioners could have just missed their opportunity to be considered as censused occupants. If in fact they actually live on the subject property and are really occupants thereof, there is no way that they will not be aware of the census tagging operations since all residents in the area were subjected to it. The fact that they allegedly knew nothing of the census tagging operations all the more bolsters the NHA's finding that petitioners are mere absentee structure owners and not occupants of the subject property. Similarly without merit is petitioners' contention that they were deprived of due process of law. If petitioners were not able to present evidence to substantiate their claim, they only have themselves to blame and not the NHA or the Office of the President whom they believed to have ignored their claims and contentions. Nothing in the records show that petitioners invoked the jurisdiction of the Awards and Arbitration Committee (AAC) that was set up in their area to determine lot allocation amongst qualified beneficiaries, arbitrate in matters of claims and disputes, and safeguard the rights of all residents in the ZIP project area. If at the first instance, they already went to the AAC, they could have easily proven their claims since it includes members

from the *barangay* and the community who know them and could attest that they are indeed actual residents of the subject property. Petitioners, however, failed to avail of this remedy.

APPEARANCES OF COUNSEL

Frederick G. Dedace for petitioners.
The Solicitor General for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* seeking to set aside the February 23, 2007 Decision[1] and May 22, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP. No. 79163 which dismissed petitioners' petition for *certiorari*.

Subject of the instant case is a parcel of land denominated as Lot 12, Block 2 of the Tramo-Singalong Zonal Improvement Project (ZIP) located at 2131 F. Muñoz St., San Andres, Malate, Manila. The property used to be owned by the Philippine National Railways (PNR), but was later turned over to the National Housing Authority (NHA).

Petitioners, siblings Armando Olarte, Norma Olarte-Dineros, Yolanda Olarte-Montecer and Renato A. Olarte, claim that their parents, the late Agapito and Angela Olarte, started occupying the subject property in 1943 by virtue of a lease contract with the PNR and constructed thereon a two-storey residential house. Petitioners further allege that they were born and raised during their parents' occupancy of the subject property.

On November 3, 1965, the Board of Liquidators under the Office of the President (OP) awarded a Certificate of Priority to Agapito Olarte, to wit:

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[1] *Rollo*, pp. 67-77. Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal, concurring.

[2] *Id.* at 79.

Certificate of Priority

TO WHOM IT MAY CONCERN:

This is to certify that Agapito Olarte, Filipino, of legal age, single/married to Angela A. Olarte, has since 1945 continuously occupied a portion of Lot No. Parcel -7 situated in the City/Municipality of Singg., Malate, Province of Manila, and is therefore entitled to priority in the acquisition of said portion, subject to such rules and regulations as may hereafter be promulgated.

The right acquired hereunder is non-transferable and any transfer thereof shall be null and void.

Given under my hand at Manila, on this 3rd day of November, in the year of our Lord, one thousand nine hundred sixty(-)five.

DIOSDADO MACAPAGAL
PRESIDENT OF THE PHILIPPINES

BY AUTHORITY OF THE PRESIDENT:

(Sgd.)
RODOLFO P. HIZON
CHAIRMAN-GENERAL MANAGER[3]

Agapito and Angela thereafter passed away in 1981 and 1984, respectively. Petitioner Norma Olarte-Dineros was then designated as administratrix of the residential house and the subject parcel of land.

In 1985, the two-storey residential house was declared in the name of Agapito for taxation purposes.[4] In the same year, petitioners leased out a portion of the residential house to respondents Eduardo Timbang and Demetrio Ocampo.

Thereafter, Yolanda left for Saudi Arabia to work while Norma lived with her husband in Pangarap Village, Caloocan City.[5]

In 1987, the NHA conducted a Census Tagging Operation in the area where the subject property is located.

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[3] *Id.* at 93.

[4] *Id.* at 88-89.

[5] *Id.* at 116.

In 1988, Ocampo was judicially ejected from the premises by petitioners for nonpayment of rentals. On October 15, 1990, this Court in G.R. No. 95206 denied Ocampo's petition for review of the CA decision which sustained the trial court's judgment ejecting Ocampo from the leased premises. On December 14, 1990, this Court's decision became final and executory.[6]

What transpired thereafter is not extant from the records, but it appears that on April 30, 1997, the NHA issued a Resolution resolving a conflict of claims between petitioners and respondents Timbang and Ocampo over the subject property. The full text of the April 30, 1997 NHA Resolution reads:

Sirs/Mesdames:

This has reference to your conflict of claims over Lot 12, Block 2, Tramo-Singalong Zip Project, Manila.

Records show that:

1. Structure with Tag No. 497 was censused as owned by **Norma Olarte[-]Dineros, an absentee structure owner**. **Said structure was rented out to the following**:

a. A certain Mr. Ilagan who has left the premises with no forwarding address.

b. Eduardo Timbang who is still residing in the said structure.

c. Demetrio Ocampo who was judicially ejected and left the rented unit in 1993.

2. The present occupants of the structure are:

a. Norma Olarte who is the censused absentee structure owner.

b. Eduardo Timbang who is a censused renter.

c. Armando Olarte – brother of Norma Olarte who occupied the portion vacated by Mr. Ilagan in 1988 one year after the official closure of the census tagging operation [of] the project.

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[6] See *Heirs of Agapito T. Olarte v. Office of the President of the Philippines*, G.R. No. 165821, June 21, 2005, 460 SCRA 561, 564.

d. Yolanda Olarte Montecer, sister of Norma Olarte who occupied in 1994 [a] portion vacated by Demetrio Ocampo.

3. In 1988, Norma Olarte[-]Dineros filed an ejectment case against Demetrio Ocampo who finally left the premises in 1993 by virtue of a court order.

4. The District Office recommended that the subject lot be awarded in favor of Armando Olarte and Eduardo Timbang per area of actual occupancy and that Demetrio Ocampo be qualified to apply for a generated lot or buy a structure within the project site.

After judicious review and evaluation of the records of the case, we found that:

1. Eduardo Timbang and Demetrio Ocampo are the only qualified beneficiaries of the subject lot for having been censused as renters therein. Norma Olarte[-]Dineros, Armando Olarte, and Yolanda Olarte Montecer, are all disqualified for not being census residents within the project site.

2. The decision of the court with regards to the ejectment case filed against Demetrio Ocampo treated only the possessory rights over the structure but not the determination of who is the rightful awardee/beneficiary of the lot.

3. The Court of Appeals as affirmed by the Supreme Court declared:

   "until they (Olartes) are refunded the necessary and useful expenses for the residential house, they have a right to retain possession of it."

In other words, the Olartes can only be entitled to reimbursement of their lawful expenses for the construction of the existing structure built on the controverted lot.

4. The departure of Demetrio Ocampo from the contested structure was not voluntary. He has no intention of leaving the premises were it not to the adverse decision of the court in which case he has no other recourse but to reside even outside the project area. In short, he cannot be punished for his involuntary act of looking shelter outside the project area.

In view of the foregoing, you are advised that:

1. Eduardo Timbang and Demetrio Ocampo are to negotiate with Norma Olarte-Dineros for the voluntary sale of the structure of Ms. Dineros or voluntarily dismantle the same, in case of failure of negotiations within sixty (60) days upon receipt hereof; otherwise, this Authority shall cause the dismantling of the said structure.

2. Mr. Armando Olarte is not qualified for lot award as he was not included in the census or is not a bonafide resident as defined in the code of policies as he occupied the structure one year after the official closure of tagging operation in the project site.

3. Lot 12, Block 2, Tramo-Singalong ZIP Project is hereby awarded to Eduardo Timbang and Demetrio Ocampo in equal share.

4. This resolution is FINAL. **Should the aggrieved parties opt to appeal, they have thirty (30) days from receipt hereof within which to file an appeal with the Office of the President, pursuant to Administrative Order No. 18, series of 1987.**

Very Truly yours,

(Sgd)
MARCIANO M. PINEDA
General Manager[7]

(Emphasis supplied.)

The April 30, 1997 Resolution was received by petitioners on June 25, 1997.

Twenty-six (26) days later, or on July 21, 1997, petitioners filed an Appeal and Memorandum on Appeal with the OP anchored on the following grounds:

I.

THE GENERAL MANAGER OF THE NATIONAL HOUSING AUTHORITY (NHA) COMMITTED A SERIOUS AND REVERSIBLE ERROR AND GRAVE ABUSE OF AUTHORITY IN RESOLVING

[7] *Rollo*, pp. 108-110.

THAT EDUARDO TIMBANG AND DEMETRIO OCAMPO ARE THE ONLY QUALIFIED BENEFICIARIES OF THE SUBJECT LOT FOR HAVING BEEN CENSUSED AS RENTERS OF THE LOT; AND IN AWARDING TO THEM LOT 12, BLOCK 2, TRAMO-SINGALONG ZIP PROJECT IN EQUAL SHARE.

II.

THE GENERAL MANAGER OF THE NATIONAL HOUSING AUTHORITY (NHA), THE HONORABLE MARCIANO M. PINEDA, COMMITTED A SERIOUS [AND] REVERSIBLE ERROR IN RESOLVING FURTHER THAT NORMA OLARTE[-]DINEROS, ARMANDO OLARTE AND YOLANDA OLARTE MONTECER ARE ALL DISQUALIFIED FOR NOT BEING CENSUS RESIDENTS WITHIN THE PROJECT SITE AND THAT THE OLARTES CAN ONLY BE ENTITLED TO REIMBURSEMENT OF THEIR LAWFUL EXPENSES FOR THE CONSTRUCTION OF THE EXISTING STRUCTURE BUILT ON THE LOT.

III.

THAT THERE WAS A SERIOUS IRREGULARITY AND CORRUPTION IN THE CENSUS TAGGING OPERATIONS DELIBERATELY DESIGNED TO FAVOR THE RENTERS EDUARDO TIMBANG AND DEMETRIO OCAMPO AND TO DISQUALIFY THE PETITIONERS DESPITE THE FACT THAT THEY AND THEIR PREDECESSORS-IN-INTEREST HAVE BEEN IN CONTINUOUS, OPEN AND UNINTERRUPTED POSSESSION AND OCCUPANCY OF THE SAID LOT 12, BLOCK 2, TRAMO-SINGALONG ZIP PROJECT SINCE 1943 AND WERE EARLIER GIVEN PRIORITY RIGHTS TO ACQUIRE THE SAID PROPERTY.

IV.

THAT THE PETITIONERS WERE DENIED DUE PROCESS OF LAW AND THEY ARE ABOUT TO LOSE THE RESIDENTIAL HOUSE WHICH IS THE ONLY PIECE OF PROPERTY AND THE RIGHTS TO LOT 12, BLOCK 2, TRAMO-SINGALONG ZIP PROJECT WHERE ALL OF THEM WERE BORN AND HAVE GROWN UP, WHICH THE PETITIONERS INHERITED FROM THEIR PARENTS, HENCE, SAID RESOLUTION IS NULL AND VOID.[8]

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[8] OP records, pp. 106-107.

On November 29, 2002, the OP, thru Deputy Executive Secretary Arthur P. Autea, issued a Resolution[9] dismissing petitioners' appeal for being filed out of time and for lack of merit.

The OP cited Section 2[10] of Presidential Decree (P.D.) No. 1344[11] which provides that an appeal from the decision of the NHA should be made within fifteen (15) days from receipt of the decision and that if an appeal was made and said decision is not reversed and/or amended within a period of thirty (30) days, the decision is deemed affirmed. The OP held that since more than thirty (30) days had lapsed since the appeal became ripe for decision and there was no reversal or amendment of the appealed ruling, the questioned award of the NHA is deemed affirmed. The OP further ruled that the appeal was filed out of time, noting that it took petitioners twenty-six (26) days to file it.

The OP further ruled that findings of fact of administrative bodies will not be interfered with, in the absence of a grave abuse of discretion or unless the findings are not supported by substantial evidence. It held that petitioners failed to prove grave abuse of discretion on the part of the NHA and that the records show that the assailed ruling is supported by substantial evidence.

Petitioners moved to reconsider the November 29, 2002 Resolution of the OP arguing that petitioners rightly relied on the statement of the NHA regarding the period for filing the appeal because the NHA was the entity specifically charged

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[9] *Id.* at 151-153.

[10] Section 2. – The decision of the National Housing Authority shall become final and executory after the lapse of fifteen (15) days from the date of its receipt. It is appealable only to the President of the Philippines and in the event the appeal is filed and the decision is not reversed and/or amended within a period of thirty (30) days, the decision is deemed affirmed. Proof of the appeal of the decision must be furnished the National Housing Authority.

[11] EMPOWERING THE NATIONAL HOUSING AUTHORITY TO ISSUE WRIT OF EXECUTION IN THE ENFORCEMENT OF ITS DECISION UNDER PRESIDENTIAL DECREE NO. 957 dated April 2, 1978.

with deciding the parties' rights and obligations to the subject land. They contend that there was no bad faith or any intention on their part to delay the disposition of the case; hence, the OP should have relaxed the rules on the matter of perfection of appeals. They likewise claim that the delay is not unreasonable since it was precipitated by a mistake of the NHA itself. Petitioners add that there was grave abuse of discretion on the NHA's part for completely disregarding the facts as laid down by petitioners, and for relying on its census tagging to favor respondents Timbang and Ocampo.

By Resolution[12] dated June 27, 2003, however, the OP denied petitioners' motion for reconsideration.

Thus, on September 15, 2003, petitioners filed a petition for *certiorari* with the CA assailing the OP's rulings.

In a Resolution[13] dated September 19, 2003, the CA dismissed the petition for *certiorari* outright on the grounds that the certification of non-forum shopping was signed by only two of the four petitioners and that they erroneously availed of the remedy of *certiorari* under Rule 65 instead of an appeal under Rule 43 of the 1997 Rules of Civil Procedure, as amended. Petitioners moved to reconsider the dismissal of their petition, but the same was denied by the CA in a Resolution[14] dated August 3, 2004.

The case was thereafter elevated to this Court via a petition for review on *certiorari*, docketed as G.R. No. 165821.

On June 21, 2005, this Court rendered a Decision[15] reversing and setting aside the September 19, 2003 and August 19, 2004 CA Resolutions and remanding the case to the CA for further proceedings. The Court ruled that the ends of justice would be better served if substantial issues are squarely addressed,

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[12] OP records, pp. 185-186.

[13] *Id.* at 286.

[14] CA *rollo*, p. 161.

[15] *Id.* at 289-296; *Heirs of Agapito T. Olarte v. Office of the President of the Philippines*, *supra* note 6.

especially since either side stands to lose a family home. However, since the issues involved are factual in nature, this Court ruled that such issues are best addressed to the CA, which has the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings.

Upon remand, however, the CA again dismissed the petition sustaining the OP's ruling.

Thus, petitioners again brought this case before this Court, raising the following arguments:

I. THE SUPREME COURT HAS ALREADY SETTLED THE ISSUE OF WHO IS THE LAWFUL POSSESSOR OF THE DISPUTED LAND.

THE CERTIFICATE OF PRIORITY IS [A] RECOGNITION BY THE STATE OF PETITIONER[S'] POSSESSION OF THE DISPUTED PROPERTY.

PRIVATE RESPONDENTS ARE MERE LESSEES OF PETITIONERS.

II. PETITIONERS WERE DEPRIVED OF DUE PROCESS OF LAW.

III. THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE OFFICE OF THE PRESIDENT WHICH EARLIER DISMISSED THE APPEAL OF THE PETITIONERS FOR HAVING BEEN FILED OUT OF TIME.

THE HONORABLE COURT HAS ALREADY RULED THAT A LIBERAL INTERPRETATION OF THE RULES MUST BE ACCORDED THE PETITIONERS SINCE IT IS THEIR FAMILY HOME THAT IS AT STAKE.[16]

Petitioners argue that the issue of prior possession has already been passed upon and settled by this Court in its Decision dated October 15, 1990 in G.R. No. 95206. Thus, it is erroneous for the NHA to award the subject land to respondents on the ground

[16] *Rollo*, pp. 48-58.

that petitioners are not censused owners since petitioners by and through their predecessors in interest have been in actual, continuous, uninterrupted, open, public and adverse possession since 1943. They further contend that the Certificate of Priority awarded to their parents Agapito and Angela operated to grant them the right to purchase the said property as soon as it became open for acquisition by private individuals. Thus, the blind reliance of the OP on the NHA resolution on the tagging census operation effectively deprived petitioners of their lawful rights to the property without due process of law and invalidated altogether the Certificate of Priority earlier issued to their parents.

Petitioners likewise argue that they were deprived due process of law as the tagging operations were conducted without prior notice to the owners or lawful occupants of the area. At the time of the tagging operations, petitioners Armando and Renato were in possession thereof. This, however, was conveniently ignored by the NHA when it concluded that Armando is not qualified for a lot award and is not a bona fide resident. Worse, petitioners contend that they were never informed nor given the opportunity to present or adduce evidence of their continued occupancy of the subject property by themselves and through their predecessors in interest. The NHA simply relied on the tagging operations.

Petitioners also submit that the CA, in affirming the OP's decision, effectively denied them the opportunity to present completely their meritorious case on appeal. They point out that it is the NHA resolution itself which provided for a thirty (30)-day appeal period and petitioners, in their honest belief that they were granted said amount of time within which to file their appeal, cannot be faulted for having filed the appeal beyond the reglementary period mandated in P.D. No. 1344. They argue that while the government is usually not estopped by the mistake or error of its officials or agents, the rule does not afford a blanket or absolute immunity.

Petitioners further contend that this Court has already ruled that a liberal interpretation of the rules must be accorded them since it is their family home that is at stake.

The Office of the Solicitor General (OSG), for the NHA, on the other hand argues that though petitioners blame the NHA for their belated filing of the appeal when its resolution granted them a period of thirty (30) days within which to appeal to the OP, such does not change the fact that their appeal was filed beyond the reglementary period. The OSG submits that the OP aptly held that the error of the NHA, which did not take into account Section 2 of P.D. No. 1344 providing for the fifteen (15)-day period to appeal, cannot be invoked as a ground for estoppel. Also, petitioners have no one to blame but themselves for the belated filing of their appeal as ignorance of the law excuses no one from compliance therewith.

The OSG likewise argues that a perusal of the records of the case would show that petitioners need not present evidence to establish their possession because although they allege to be owners, they are nonetheless disqualified from being beneficiaries of the land. As to Armando, even though he actually occupied the property, he did so one year after the official closure of the census tagging operation. As to Norma and Yolanda, they are disqualified for not being census residents.

The OSG also contends that the Certificate of Priority cannot be considered title to the property. In fact, petitioners could be deemed to have abandoned whatever right they may have over the property by virtue of the Certificate of Priority when they stopped residing on the property as they were found by NHA as not census residents within the project area. Clearly therefore, there was basis for the NHA for holding Timbang and Ocampo as eligible beneficiaries.

Essentially, the issues to be resolved in the instant case are: (1) Should petitioners be blamed for filing their appeal late because they relied on the erroneous pronouncement in the NHA resolution that they have thirty (30) days to file it instead of fifteen (15) days as mandated by law? and (2) Are petitioners disqualified to be awardees for Lot 12, Block 2, Tramo-Singalong ZIP, Manila?

As to the first issue, we answer in the negative.

Time and again, it has been held that the right to appeal is not a natural right or a part of due process, but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the rules, failing in which the right to appeal is lost.[17]

In the instant case, the proximate cause of petitioners' failure to comply with the rules, specifically that pertaining to the period within which to appeal, is the pronouncement in the appealed resolution itself that they have thirty (30) days contrary to what is prescribed in Section 2 of P.D. No. 1344, the applicable law in the case. We agree with petitioners that they cannot be blamed for honestly believing that they indeed had thirty (30) days considering it was the NHA itself which said so. Being the agency tasked to implement P.D. No. 1344, it is but plausible for petitioners to assume that what the NHA pronounced is the correct period within which they can file their appeal.

However, as to the second issue, we rule in the affirmative.

The Zonal Improvement Project or ZIP was adopted to strengthen further the efforts of the government to uplift the living conditions in the slums and blighted areas[18] in line with the spirit of the constitutional provision guaranteeing housing and a decent quality of life for every Filipino.[19] The ownership of land by the landless is the primary objective of the ZIP.[20]

The Code of Policies embodied in NHA Circular No. 13 governed the implementation of the ZIP as to the classification and treatment of existing structures, the selection and qualification of intended beneficiaries, the disposition and award of fully developed lots in all ZIP zones within Metro Manila, and other related activities.[21] In the Declaration of Policy, it provides

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[17] *Producers Bank of the Philippines v. Court of Appeals*, G.R. No. 126620, April 17, 2002, 381 SCRA 185, 197.

[18] Paragraph I, NHA Circular No. 13 dated February 19, 1982.

[19] Paragraph III (1), *id.*

[20] Paragraph III (4), *id.*

[21] Paragraph II, *id.*

that the tagging of structures and the census of occupants shall be the primary basis for determining beneficiaries within ZIP Project sites.[22] Paragraph V, on the other hand, lays down the rules on beneficiary selection and lot allocation:

V. BENEFICIARY SELECTION AND LOT ALLOCATION

1. The official ZIP census and tagging shall be the primary basis for determining potential program beneficiaries and structures or dwelling units in the project area.
2. Issuance of ZIP tag number in no way constitutes a guarantee for ZIP lot allocation.
3. Absentee censused households and all uncensused households are automatically disqualified from lot allocation.
4. Only those households included in the ZIP census and who, in addition, qualify under the provisions of the Code of Policies, are the beneficiaries of the Zonal Improvement Program.
5. A qualified censused-household is entitled to only one residential lot within the ZIP project areas of Metro Manila.
6. Documentation supporting lot allocation shall be made in the name of the qualified household head.
7. An Awards and Arbitration Committee (AAC) shall be set up in each ZIP project area to be composed of representative each from the Authority, the local government, the *barangay* and the community. The AAC shall determine lot allocation amongst qualified beneficiaries, arbitrate in matters of claims and disputes, and safeguard the rights of all residents in ZIP project areas by any legal means it may consider appropriate. All decisions of the AAC shall be subject to review and approval of the General Manager of the Authority, the local Mayors, and finally the Governor of the Metropolitan Manila Commission.[23]

The declaration of policy in the Code of Policies stated that an absentee or uncensused structure owner was disqualified

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[22] Paragraph III (3), *id.*

[23] Paragraph V, *id.*

from owning a lot within the ZIP zones.[24] The Code of Policies shows the following persons to be automatically disqualified as beneficiaries of the project, namely:

(1) Absentee censused household – censused household that vacates a duly tagged structure or dwelling unit and leaves the project area for a continuous period for at least six months without written notice to the NHA and the local government unit;

(2) Uncensused household – household that is not registered in the official ZIP census;

(3) **Absentee structure owner – any individual who owns a structure or dwelling unit in a ZIP project area and who has not occupied it prior to the official closure of the Census; and**

(4) Uncensused structure owner – any person who owns a structure or dwelling unit not registered in the official ZIP census.[25] (Emphasis supplied.)

Thus, in the award of the ZIP lot allocation, the primary bases for determining the potential program beneficiaries and structures or dwelling units in the project area were the official ZIP census and tagging conducted. **It was, therefore, the primordial requisite that the intended beneficiary must be the occupant of the tagged structure at the time of the official ZIP census or at the closure thereof. Otherwise, the person was considered an absentee structure owner for being absent from his usual residence or domicile.**[26]

Here, at the time of the official ZIP census, the NHA found that Norma was an absentee structure owner and it was not petitioners but respondents Timbang and Ocampo and a certain Mr. Ilagan who were occupying the subject property. Armando on the other hand occupied the portion vacated by Mr. Ilagan

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[24] Paragraph III (5), *id*.

[25] *Blas v. Galapon*, G.R. No. 159710, September 30, 2009, 601 SCRA 369, 379-380.

[26] *Id.* at 381.

in 1988 one year after the official closure of the census tagging operation while Yolanda occupied a portion vacated by Demetrio Ocampo in 1994 after the latter was judicially evicted in 1993. Though there was no mention as to Renato, petitioners in their pleadings admit that he was working in Novaliches and would only go to the subject property during weekends. Petitioners however dispute the NHA and census findings and allege that Armando and Renato never left the subject property, but we find no cogent reason to disturb the findings of the NHA.

It is settled that the Court is not a trier of facts and accords great weight to the factual findings of lower courts or agencies whose function is to resolve factual matters. It is not for the Court to weigh evidence all over again. Moreover, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the CA,[27] as in the case at bar.

Evidently, all petitioners cannot qualify as beneficiaries because they were not the occupants of the subject property at the time of the census. They were living elsewhere at that crucial time. Undeniably, they were primarily using the subject property as a source of income by renting it out to third persons and not as their abode. Petitioners thus are not homeless persons which the ZIP intended to benefit. That petitioners were the descendants of the persons who built the residential house does not mean that the lot on which it stood would automatically be awarded to them.

Petitioners cannot anchor their rights on the Certificate of Priority awarded to their parents. As correctly argued by the OSG, petitioners are deemed to have abandoned whatever right they may have over the property by virtue of the Certificate of Priority, when they chose not to reside on the subject property and found by NHA as not census residents within the project area.

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[27] *Ortega v. Social Security Commission*, G.R. No. 176150, June 25, 2008, 555 SCRA 353, 363-364.

Neither can petitioners rely on this Court's final judgment sustaining Ocampo's ejectment from the subject property. The only issue for resolution in an ejectment case is physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. An ejectment case is designed to restore, through summary proceedings, the physical possession of any land or building to one who has been illegally deprived of such possession, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings. Any ruling on the question of ownership is only provisional and made for the sole purpose of determining who is entitled to possession *de facto*.[28] Certainly, a judgment in an ejectment case could only resolve the question as to who has a better right to possess the subject property but definitely, it could not conclusively determine whether petitioners are entitled to the award under the ZIP or ascertain if respondents are disqualified beneficiaries.[29]

We likewise disagree with petitioners' argument that they were deprived due process since they were not notified of the census tagging operations in their area. It cannot be said that the census was conducted for one day only that petitioners could have just missed their opportunity to be considered as censused occupants. If in fact they actually live on the subject property and are really occupants thereof, there is no way that they will not be aware of the census tagging operations since all residents in the area were subjected to it. The fact that they allegedly knew nothing of the census tagging operations all the more bolsters the NHA's finding that petitioners are mere absentee structure owners and not occupants of the subject property.

Similarly without merit is petitioners' contention that they were deprived of due process of law. If petitioners were not able to present evidence to substantiate their claim, they only have themselves to blame and not the NHA or the Office of

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[28] *Keppel Bank Philippines, Inc. v. Adao*, G.R. No. 158227, October 19, 2005, 473 SCRA 372, 378-379.

[29] See *Blas v. Galapon, supra* note 25 at 383.

the President whom they believed to have ignored their claims and contentions. Nothing in the records show that petitioners invoked the jurisdiction of the Awards and Arbitration Committee (AAC) that was set up in their area to determine lot allocation amongst qualified beneficiaries, arbitrate in matters of claims and disputes, and safeguard the rights of all residents in the ZIP project area.[30] If at the first instance, they already went to the AAC, they could have easily proven their claims since it includes members from the *barangay* and the community who know them and could attest that they are indeed actual residents of the subject property. Petitioners, however, failed to avail of this remedy.

In sum, while this Court finds that petitioners' appeal to the OP should be considered timely filed, we find the same to be without merit.

WHEREFORE, the petition for review on *certiorari* is *DENIED*.

With costs against the petitioners.

SO ORDERED.

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

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[30] Paragraph V (7), NHA Circular No. 13 dated February 19, 1982.

THIRD DIVISION

[G.R. No. 178110. June 15, 2011]

AYALA LAND, INC. and CAPITOL CITIFARMS, INC., *petitioners, vs.* **SIMEONA CASTILLO, LORENZO PERLAS, JESSIELYN CASTILLO, LUIS MAESA, ROLANDO BATIQUIN, and BUKLURAN MAGSASAKA NG TIBIG, as represented by their attorney-in-fact, SIMEONA CASTILLO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ISSUES RAISED FOR THE FIRST TIME ON APPEAL AND NOT RAISED IN THE PROCEEDINGS IN THE LOWER COURT ARE BARRED BY ESTOPPEL; RATIONALE. — It is well established that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process. More important, if these matters had been raised earlier, they could have been seriously examined by the administrative agency concerned.

2. POLITICAL LAW; EXECUTIVE DEPARTMENT; DEPARTMENT OF AGRARIAN REFORM (DAR); DAR A.O. 12-94 IS ONLY A GUIDING PRINCIPLE AND NOT AN ABSOLUTE PROSCRIPTION ON THE CONVERSION OF LAND USE; CONVERSION IS ALLOWED WHEN THE LAND WILL HAVE GREATER ECONOMIC VALUE FOR RESIDENTIAL, COMMERCIAL OR INDUSTRIAL PURPOSES AS CERTIFIED BY THE LOCAL GOVERNMENT UNIT; SUSTAINED. — The provision invoked in AO 12-94, paragraph E, disallows applications for conversion of lands for which the DAR has issued a notice of acquisition. But paragraph E falls under heading VI, ***"Policies and Guiding Principles."*** **By no stretch of the imagination can a mere "principle" be interpreted as**

an absolute proscription on conversion. Secretary Garilao thus acted within his authority in issuing the Conversion Order, precisely because the law grants him the sole power to make this policy judgment, *despite* the "guiding principle" regarding the notice of acquisition. The CA committed grave error by favoring a principle over the DAR's own factual determination of the propriety of conversion. The CA agreed with the OP that land use conversion may be allowed when it is by reason of changes in the predominant use brought about by urban development, but the appellate court invalidated the OP Decision anyway for the following reason: The argument is valid if the agricultural land is still not subjected to compulsory acquisition under CARP. But as we saw, there has already been a *notice of coverage and notice of acquisition* issued for the property...Verily, no less than the cited DAR Administrative Order No. 12 enjoins conversions of lands already under a notice of acquisition. The objectives and ends of economic progress must always be sought after within the framework of the law, not against it, or in spite of it. However, under the same heading VI, on Guiding Principles, is paragraph B (3), which reads: If at the time of the application, the land still falls within the agricultural zone, conversion shall be allowed only on the following instances: (a) When the land has ceased to be economically feasible and sound for agricultural purposes, as certified by the Regional Director of the Department of Agriculture (DA) or (b) When the locality has become highly urbanized and the land will have a greater economic value for residential, commercial and industrial purposes, as certified by the local government unit. The thrust of this provision, which DAR Secretary Garilao rightly took into account in issuing the Conversion Order, is that even if the land has not yet been reclassified, if its use has changed towards the modernization of the community, conversion is still allowed. As DAR Secretary, Garilao had full authority to balance the guiding principle in paragraph E against that in paragraph B (3) and to find for conversion. Note that the same guiding principle which includes the general proscription against conversion was scrapped from the new rules on conversion, DAR A.O. 1, Series of 2002, or the "Comprehensive Rules on Land Use Conversion." It must be emphasized that the policy allowing conversion, on the other hand, was retained. This is a complex case in which there can be no simplistic or mechanical solution. The

Comprehensive Agrarian Reform Law is not intractable, nor does it condemn a piece of land to a single use forever. With the same conviction that the state promotes rural development, it also "recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments." x x x Again, paragraph B (3), Part VI of DAR AO 12-94, cited above, allows conversion when the land will have greater economic value for residential, commercial or industrial purposes **"as certified by the Local Government Unit."** It is clear that the thrust of the community and the local government is the conversion of the lands. To this end, the two Resolutions, one issued by the Sangguniang Bayan of Silang, the other by the Sangguniang Panlalawigan of Cavite, while not strictly for purposes of reclassification, are sufficient compliance with the requirement of the Conversion Order. Paragraph E and paragraph B (3) were thus set merely as guidelines in issues of conversion. CARL is to be solely implemented by the DAR, taking into account *current* land use as governed by the needs and political will of the local government and its people. The palpable intent of the Administrative Order is to make the DAR the principal agency in deciding questions on conversion. A.O. 12-94 clearly states: A. The Department of Agrarian Reform is mandated to "approve or disapprove applications for conversion, restructuring, or readjustment of agricultural lands into non-agricultural uses," pursuant to Section 4 (j) of Executive Order No. 129-A, Series of 1987." B. Section 5 (1) of E.O. No. 129-A, Series of 1987, ***vests in the DAR, exclusive authority to approve or disapprove applications for conversion*** of agricultural lands for residential, commercial, industrial, and other land uses.

3. ID.; ID.; OFFICE OF THE PRESIDENT; CONVERSION ORDER; THE RULE APPLICABLE IN DETERMINING THE TIMELINESS OF A PETITION FOR CANCELLATION OR WITHDRAWAL OF CONVERSION ORDER IS THE RULE PREVAILING AT THE TIME OF FILING; APPLICATION IN CASE AT BAR. — A.O. 01-99 was promulgated on 30 March 1999 and published in *Malaya* and *Manila Standard* on the following day, 31 March 1999. Thus, A.O. 01-99 was the rule governing the filing of a "petition for cancellation or withdrawal of the conversion order" at the time the farmers filed their petition. x x x The rule applicable in determining the timeliness

of a petition for cancellation or withdrawal of a conversion order is the rule prevailing at the time of the filing of that petition, and not at the time of the issuance of the Conversion Order. It is axiomatic that laws have prospective effect, as the Administrative Code provides. While A.O. 01-99 was not yet promulgated at the time of the issuance of the Conversion Order, it was already published and in effect when the Petition for Revocation was filed on 19 May 2000.

4. ID.; ID.; ID.; ID.; WHEN FINAL AND EXECUTORY; PRESENT IN CASE AT BAR. — Regarding the question on when the one-year prescription period should be reckoned, it must still be resolved in conformity with the prospective character of laws and rules. In this case, the one-year period should be reckoned from the date of effectivity of A.O. 1-99, which is 31 March 1999. Therefore, no petition for cancellation or withdrawal of conversion of lands already converted as of 30 March 1999 may be filed after 31 March 2000. The Conversion Order is final and executory. The Court ruled in *Villorente v. Aplaya Laiya Corporation:* Indubitably, the Conversion Order of the DAR was a final order, because it resolved the issue of whether the subject property may be converted to non-agricultural use. The finality of such Conversion Order is not dependent upon the subsequent determination, either by agreement of the parties or by the DAR, of the compensation due to the tenants/ occupants of the property caused by its conversion to non-agricultural use. Once final and executory, the Conversion Order can no longer be questioned. A conversion order is a final judgment and cannot be repeatedly assailed by respondents in perpetuity, after they have received compensation and exhausted other means. In *Villorente*, the Court had occasion to rebuke the would-be beneficiaries who, after accepting the compensation stipulated in the conversion Order – thereby impliedly acknowledging the validity of the order – turned around and suddenly assailed it. The Court held: We are convinced that the petition for review filed by the petitioners with the CA was merely an afterthought… It must be stressed that the petitioners agreed to negotiate with the respondent for the disturbance compensation which they claimed was due them, conformably with the said Conversion Order. Hence, they cannot now assail the said order without running afoul to *(sic)* the doctrine of estoppel. The petitioners cannot approbate and

disapprobate at the same time. It must be borne in mind that there can be no vested right to judicial relief, as ruled by the Court in *United Paracale Mining v. Dela Rosa*: There can be no vested right in a judicial relief for this is a mere statutory privilege and not a property right…the right to judicial relief is not a right which may constitute vested right because to be vested, a right must have become a title, legal or equitable, to the present or future enjoyment of property, or to the present or future enforcement of a demand or legal exemption from a demand made by another.

5. ID.; ID.; ID.; ID.; EXEMPTION OF LAND FROM THE COMPREHENSIVE AGRARIAN REFORM LAW (CARL); SUSTAINED. — It was the OP's first Decision, together with the Supreme Court Resolution, that ultimately paved the way for ALI to acquire title to the subject lands as a third party buyer. When the dispute over the subject land reached the OP for the second time – when the validity of the conversion order was in dispute – the OP of course found no merit in the allegation of concealment. There is therefore absolutely no basis for the imputation of bad faith upon ALI simply on account of the alleged delay in the registration of the sale from CCFI to it. It must be emphasized that the OP's ground for supporting conversion finds its moorings in DAR Memorandum Circular 11-79 governing the conversion of private agricultural lands into other uses. The Circular states that conversion may be allowed when it is by reason of the changes in the predominant land use, brought about by urban development. The OP Decision pointed to the fact that the close proximity of Cavite to Manila opened Cavite to the effects of modernization and urbanization. While the CA characterized this ground as "novel," it still agreed that land use conversion may be allowed, if caused by changes in predominant land use due to urban development. The DAR found merit in the thrust of the local government to "disperse urban growth towards neighboring regions of Metro Manila"; to encourage the movement of residential development in the area; and to support the housing needs not just of the neighboring Santa Rosa Technopark, but also of other commercial centers. It is helpful to remember that it is the local government, in this case, that of Silang, Cavite, that occupies the primary policy role of allowing the development of real estate to generate real property taxes and other local revenues.

6. REMEDIAL LAW; APPEALS; THE COURTS WILL NOT RESOLVE A CONTROVERSY INVOLVING A QUESTION THAT IS WITHIN THE JURISDICTION OF AN ADMINISTRATIVE TRIBUNAL PRIOR TO ITS RESOLUTION OF THAT QUESTION; APPLICATION IN CASE AT BAR. — CCFI and ALI were deprived of any opportunity to controvert the fact of the Notice of Acquisition and its legal effect, because they were never alerted that the existence of such Notice would in any way endanger their legal position. They had the right to expect that only issues properly raised before the administrative tribunals needed to be addressed. Even assuming that the Notice of Acquisition did exist, considering that CCFI and ALI had no chance to controvert the CA finding of its legal bar to conversion, this Court is unable to ascertain the details of the Notice of Acquisition at this belated stage, or rule on its legal effect on the Conversion Order duly issued by the DAR, without undermining the technical expertise of the DAR itself. To do so would run counter to another basic rule that courts will not resolve a controversy involving a question that is within the jurisdiction of the administrative tribunal prior to its resolution of that question. CARL cannot be used to stultify modernization. It is not the role of the Supreme Court to apply the missing notice of acquisition in perpetuity.

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

1. POLITICAL LAW; DEPARTMENT OF AGRARIAN REFORM (DAR); CONVERSION ORDER; SEC. 34 OF AO NO. 1 PROVIDES A ONE-YEAR PERIOD FROM THE ISSUANCE OF THE ORDER WITHIN WHICH TO FILE A PETITION FOR CANCELLATION OR WITHDRAWAL THEREOF; EXCEPTION, ELUCIDATED; APPLICATION IN CASE AT BAR. — As provided in Section 34, Article VII of DAR AO No. 1, a petition for cancellation/withdrawal of conversion order may be filed within the period of development provided in the order of conversion if the ground refers to any of those mentioned in Section 35 (b), (e) and (f): Petitioners are bound by the above express condition in the conversion order issued to it such that even if DAR AO No. 1 is applicable, the respondents raised as among the grounds for the revocation or cancellation of the conversion order the non-compliance with

the condition of developing the area within five years, the illegal sale transaction made by CCFI to evade coverage under CARL, and CCFI's gross misrepresentation before the DAR that the land subject of conversion had already been reclassified to non-agricultural uses when in fact the Municipality of Silang does not have an approved town plan/zoning ordinance as of October 24, 1997 and what was passed was a mere resolution and not an ordinance, and pressure exerted on the tenant-farmers left them with no alternative but to accept partial payments and sign waivers. Such alleged misrepresentation of facts and *violation of the rules and regulations on land conversion* were legally sufficient for the filing of a petition to revoke or cancel the October 31, 1997 order, and to exempt the same from the one-year prescriptive period laid down in DAR AO No. 1. The situation clearly falls under the first exception under Section 34 in relation to Section 35 (f) of AO No. 1 such that the petition may be filed within five years – the period of development stated in the order of conversion. Since the order of conversion was issued on October 31, 1997, respondents have until October 31, 2002 within which to seek its revocation. Respondents' act of filing the petition for revocation on May 19, 2000 was therefore well within the prescriptive period set by DAR AO No. 1. x x x In the case at bar, the Court is confronted with a different factual milieu which involves not an appeal from a conversion order but a petition to cancel or revoke the same. A petition for cancellation or withdrawal of the conversion order is a remedy provided under DAR AO No. 01, Series of 1999 (Revised Rules and Regulations on the Conversion of Agricultural Lands to Non-Agricultural Uses), already in force when respondents filed their petition before the DAR. The finality of the 1997 Conversion Order issued to CCFI notwithstanding, Sec. 34 of AO No. 01 provides a one-year period from the issuance of the order within which to file the petition. By way of an exception, a petition for cancellation may still be filed even beyond said period if the grounds for cancellation are those enumerated in Sec. 35 (b), (e) and (f), but not beyond the period for development stipulated in the order of conversion. Since the respondents raised as grounds for cancellation of the conversion order the 1995 non-compliance with the conditions of the conversion order, the 1995 sale between CCFI and ALI of the subject agricultural lands, and gross misrepresentation on the requisite reclassification pursuant

to local *sanggunian* ordinance – grounds which fall under Sec. 35 (b) and (f) — the period for filing the petition was five years. Hence, the petition was timely filed in May 2000.

2. ID.; ID.; ID.; REVOCATION OF THE CONVERSION ORDER WAS PROPER AS THE LANDS WERE ALREADY PLACED UNDER THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP); SUSTAINED. — Executive Order No. 129-A, Series of 1987 vests on the DAR "exclusive authority to approve or disapprove [applications for] conversion of agricultural lands for residential, commercial, industrial, and other land uses as may be provided for by law." Pursuant to its mandate, DAR promulgated AO No. 12 on October 24, 1994, which was in force at the time CCFI filed the application for conversion and its approval by the DAR. Paragraph VI, subparagraph E of AO No. 12, Series of 1994 provides: E. **No application for conversion shall be given due course if 1) the DAR has issued a Notice of Acquisition under the Compulsory Acquisition (CA) process**; 2) Voluntary Offer to Sell (VOS), or an application for stock distribution covering the subject property has been received by DAR; or 3) there is already a perfected agreement between the landowner and the beneficiaries under Voluntary Land Transfer (VLT). Since a Notice of Acquisition was already issued over the subject property, DAR clearly erred in giving due course to and granting CCFI's application for conversion.

3. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; ADMISSION AGAINST INTEREST; DEFINED; PRESENT IN CASE AT BAR. — CCFI's **May 1996 request for the lifting of Notice of Acquisition** constitutes an admission against interest of the fact that such notice have been issued following the earlier issuance of Notice of Coverage over its landholdings. Admissions against interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party, and are admissible whether or not the declarant is available as a witness. An admission against interest is the best evidence that affords the greatest certainty of the facts in dispute, based on the presumption that no man would declare anything against himself unless such declaration is true. As the successor-in-interest of CCFI, ALI is bound by the admission under the aforesaid request to lift Notice of Acquisition made by CCFI and may not be allowed in this case to dispute its existence

and issuance. Besides, the fact that the DAR was already in the process of distributing the lands under the Compulsory Acquisition *at the time of the sale and application for conversion*, was never disputed by the petitioners until the respondents mentioned it in their appeal memorandum filed with the OP.

4. ID.; APPEALS; ISSUES NOT RAISED DURING TRIAL CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; ONE EXCEPTION IS WHEN THE ISSUE RAISED IS LACK OF JURISDICTION; PRESENT IN CASE AT BAR. — While it is true that an issue which was neither alleged in the complaint nor raised during the trial cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice, and due process, the same is not without exception. The CA under Section 3, Rule 43 of the 1997 Rules of Civil Procedure, as amended, can, in the interest of justice, entertain and resolve factual issues. In concluding that the conversion order was improperly granted because there have been issued a notice of coverage and notice of acquisition covering the subject landholdings, the CA is deemed to have duly considered all relevant evidence on record inasmuch as it painstakingly analyzed the orders, not only of the OP but also those rendered by the three DAR Secretaries. It is of course well-settled that points of law, theories, issues and arguments not brought to the attention of the lower court need not be — and ordinarily will not be — considered by a reviewing court, as they cannot be raised for the first time at that late stage. There are, however, exceptions to the general rule. Though not raised below, the following issues may be considered by the reviewing court: lack of jurisdiction over the subject matter, as this issue may be raised at any stage; plain error; jurisprudential developments affecting the issues; or the raising of a matter of public policy.

5. CIVIL LAW; PROPERTY; OWNERSHIP; LAND REGISTRATION; ISSUANCE OF DAR (DEPARTMENT OF AGRARIAN REFORM) CLEARANCE IS AN ESSENTIAL REQUISITE IN ORDER THAT THE TRANSFER OR SALE OF AGRICULTURAL LAND TO ANOTHER MAY BE CONSIDERED A VALID TRANSFER; VIOLATION IN CASE AT BAR. — Any sale by CCFI at the time the land was still agricultural would be an illegal transfer under Sec. 73 of R.A. No. 6657 for which DAR clearance could not have been issued. Section 6 of the same Act allows only the retention limit of

the landowner up to five (5) hectares. This means that the landowner is only allowed to dispose of his property within his retention limit and the excess of five (5) hectares shall be covered by CARP for distribution to qualified farmers and beneficiaries. CCFI then could not have obtained the requisite DAR clearance for it to sell **more than 200 hectares** of land to ALI. Under DAR rules then already in force, in all transactions involving the transfer or sale of agricultural land to another, the issuance of a DAR clearance is an essential requisite in order that it may be considered a valid transfer. This is in view of DAR's policy to protect the rights of tenants and other farmworkers who may be displaced therein.

6. POLITICAL LAW; R.A. NO. 7160 (THE LOCAL GOVERNMENT CODE OF 1991); POWER OF THE LOCAL GOVERNMENT UNITS TO RECLASSIFY AGRICULTURAL LANDS IS SUBJECT TO THE REQUIREMENTS OF THE LAND USE CONVERSION PROCEDURE. — Memorandum Circular No. 54 "Prescribing the Guidelines Governing Section 20 of RA 7160 Otherwise Known as the Local Government Code of 1991 Authorizing Cities and Municipalities to Reclassify Agricultural Lands Into Non-Agricultural Uses" issued by President Fidel V. Ramos on June 8, 1993 specified the scope and limitations on the power of the cities and municipalities to reclassify agricultural lands into other uses. The power of the LGUs to reclassify agricultural lands is not absolute and the reclassification of agricultural lands by LGUs shall be subject to the requirements of land use conversion procedure. The exclusion of agricultural lands already covered by CARP from the operation of Section 20 of R.A. No. 7160 was reiterated in the statement of policies and governing principles of DAR AO No. 12, Series of 1994 which expressly directs the DAR not to give due course to applications for conversion of lands already issued a Notice of Acquisition. Clearly, the cancellation by Secretary Morales of the 1997 Order of conversion issued by Secretary Garilao, for violation of existing DAR rules and regulations, was proper and justified.

7. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (CARL) (R.A. NO. 6657); THE CORRECT PERSPECTIVE OF THE LAW SHOULD BE THAT THE RULES ON EXEMPTIONS, EXCLUSIONS AND/OR CONVERSIONS MUST BE INTERPRETED

RESTRICTIVELY AND ANY DOUBT AS TO THE APPLICABILITY OF THE LAW SHOULD BE RESOLVED IN FAVOR OF INCLUSION; APPLICATION IN CASE AT BAR. — As far as the DAR is concerned, the correct perspective has been expressed in its declaration that "[S]ince RA. No. 6657 is a social welfare legislation, the rules on exemptions, exclusions and/or conversions must be *interpreted restrictively* and *any doubt* as to the applicability of the law should be resolved in favor of inclusion." In reality, the buy-out arrangement did not involve such "public interests" balancing, but one which clearly favored the landowner CCFI. The sale by CCFI, in contravention of DAR rules and regulations, enabled it to evade CARP coverage while paying off its huge debts to the already financially distressed MBC, at the expense of its tenants and farm workers who would have rightfully benefitted from the distribution of the vast agricultural landholding *had the compulsory acquisition process not been scuttled by the combined efforts of MBC, CCFI and ALI since the lands were placed under CARP coverage in 1989.* x x x Section 2 of R.A. No. 6657 declares in no uncertain terms that the welfare of the landless farmers and farmworkers will receive the highest consideration to promote *social justice* and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-sized farms as the basis of Philippine agriculture. It is this fundamental goal that breathes spirit into the strict regulation of conversions and exemptions at the instance of landowners. **Landowners such as CCFI may not stall the acquisition proceedings started as early as 1989, dragging it for several years – in this case ten years – and later claim that the land had already ceased to be economically feasible for agricultural purposes.**

APPEARANCES OF COUNSEL

Zamora Poblador Vasquez & Bretaña for Ayala Land, Inc.
Henry B. So for respondents.

D E C I S I O N

SERENO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure questioning the Decision[1] dated 31 January 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 86321, which reversed the Decision[2] of the Office of the President (OP) dated 28 January 2004. The OP Decision upheld Conversion Order No. 4-97-1029-051 issued by then Secretary of the Department of Agrarian Reform (DAR) Ernesto Garilao, as well as the Orders issued by Secretary Hernani Braganza and Secretary Roberto Pagdanganan both affirming the conversion.

The CA found merit in the OP's rationale for maintaining the Conversion Order, yet invalidated the same on the basis that a Notice of Coverage and a Notice of Acquisition had already been issued over the lands – hence, they could no longer be subject to conversion. Thus, landowner Capitol Citifarms, Inc. (CCFI) and its successor-in-interest Ayala Land, Inc. (ALI) filed the present petition imputing error on the appellate court for the following reasons: 1) the CA resolved an issue – that the alleged Notice of Acquisition prevents the land from being converted – raised for the first time on appeal, 2) the CA's finding has no factual basis, 3) the DAR itself found that the subject property has long been converted to non-agricultural uses, and 4) a Certificate of Finality of the Braganza Order has already been issued.

We grant *certiorari* on the following procedural and substantial grounds:

I. For the first time on appeal, respondents raised a new issue that had never been passed upon by the DAR or by

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[1] SC *rollo* at 58-66. Penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Portia Aliño-Hormachuelos and Japar B. Dimaampao.

[2] *Id.* at 202-208.

the Office of the President; hence, the CA is barred from entertaining the claim.

II. The rule that a prior Notice of Acquisition bars the issuance of a Conversion Order is only a *guiding principle;* upon applicant's compliance with the application requirements, the DAR is rightly authorized to determine the propriety of conversion.

III. Respondents are barred from appealing the Conversion Order long after it has attained finality.

IV. The conversion and/ or reclassification of the said lands has become an operative fact.

V. The OP has long resolved that the lands that are the subject of this case are exempted from the Comprehensive Agrarian Reform Law (CARL) partly to maintain the stability of the country's banking system.

The uncontroverted factual antecedents, as culled from the records, are as follows:

CCFI owned two parcels of land with a total area of 221.3048 hectares located at Barangay Tibig in Silang, Cavite – hereon referred to as the subject land. The subject land was mortgaged in favor of one of CCFI's creditors, MBC. Pursuant to Resolution No. 505 of the Monetary Board of the Bangko Sentral ng Pilipinas (BSP), MBC was placed under receivership on 22 May 1987, in accordance with Section 29 of the Central Bank Act (Republic Act 265). Pursuant to this law, the assets of MBC were placed in the hands of its receiver under *custodia legis*.[3] On 29 September 1989, the DAR issued a Notice of Coverage placing the property under compulsory acquisition under the Comprehensive Agrarian Reform Law of 1988.[4]

In the meantime, CCFI was unable to comply with its mortgage obligations to MBC. The latter foreclosed on the lien, and the

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[3] OP Decision in OP Case No. 6231, at 1, DAR records; Folder 3 of 3, at 1481.

[4] SC *rollo* at 316.

land was awarded to it in an auction sale held on 4 January 1991. The sale was duly annotated on the titles as Entry No. 5324-44. Subsequently, the Supreme Court in G.R. No. 85960 ordered MBC's partial liquidation and allowed the receiver-designate of the BSP to sell the bank's assets, including the subject landholding, "at their fair market value, under the best terms and condition and for the highest price under current real estate appraisals..."[5] In a Deed of Partial Redemption,[6] CCFI was authorized to partially redeem the two parcels of land and sell them to a third party, pending full payment of the redemption price. Under the Deed, the downpayment, which was 30% of the purchase price, would be payable to the bank only upon approval of the exemption of the two parcels of land from the coverage of CARL or upon their conversion to non-agricultural use.

On the same date as the execution of the Deed of Partial Redemption, 29 December 1995, the property was sold to petitioner ALI in a Deed of Sale over the properties covered by TCT Nos. 128672 and 144245. The sale was not absolute but conditional, *i.e.* subject to terms and conditions other than the payment of the price and the delivery of the titles. The Deed stated that MBC was to continue to have custody of the corresponding titles for as long as any obligation remained due it.

Prompted by the numerous proceedings for compulsory acquisition initiated by the DAR against MBC, Governor Reyes requested then DAR Secretary Ernesto Garilao to issue an order exempting the landholdings of MBC from CARL and to declare a moratorium on the compulsory acquisition of MBC's landholdings. On 14 February 1995, Secretary Garilao denied the request. On 1 August 1995, MBC and Governor Reyes filed with the OP a Petition for Review of Secretary Garilao's Decision. The OP issued a Stay Order of the appealed Decision.

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[5] On 29 August 1995, the Supreme Court issued a Resolution in G.R. No. 85960, DAR Records; Folder 3 of 3 at 1443-1444.

[6] Dated 29 December 1995.

Thereafter, MBC filed with the OP a motion for the issuance of an order granting the former a period of five years within which to seek the conversion of its landholdings to non-agricultural use.

Instead of ruling on the motion alone, however, the OP, through Executive Secretary Ruben D. Torres, decided to rule on the merits of the petition, as "what is involved in this case is the susceptibility of a bank to undergo rehabilitation which will be jeopardized by the distribution of its assets…"[7] Secretary Torres remanded the case to the DAR and ordered the agency to determine which parcels of land were exempt from the coverage of the CARL. He stated that the ends of justice would be better served if BSP were given the fullest opportunity to monetize the bank's assets that were outside the coverage of CARL or could be converted into non-agricultural uses. He then ordered the DAR to respect the BSP's temporary custody of the landholdings, as well as to cease and desist from subjecting MBC's properties to the CARL or from otherwise distributing to farmer-beneficiaries those parcels of land already covered.[8]

Secretary Torres denied the Motion for Reconsideration filed by the DAR. He reiterated the need to balance the goal of the agrarian reform program *vis-à-vis* the interest of the bank (under receivership by the BSP), and the bank's creditors (85% of whose credit, or a total of ₱8,771,893,000, was payable to BSP).[9]

Secretary Garilao issued a Resolution dated 3 October 1997, granting MBC's "Request for Clearance to Sell," with the sale to be undertaken by CCFI. He applied Section 73-A of Republic Act No. (R.A.) 6657, as amended by R.A. 7881, that allows the sale of agricultural land where such sale or transfer is necessitated by a bank's foreclosure of a mortgage. DAR Memorandum Circular No. 05, Series of 1996 further clarified the above provision, stating that foreclosed assets are subject

[7] *Supra* note 3, at 3.

[8] OP Decision promulgated 11 October 1996, at 9.

[9] OP Decision promulgated 14 March 1997, at 2.

to existing laws on their compulsory transfer under Section 16 of the General Banking Act. CCFI thereafter filed an application for conversion and/or exemption pursuant to its prerogative as a landowner under Part IV of DAR A.O. 12-94 and the procedure outlined therein.

On 31 October 1997, Secretary Garilao issued Conversion Order No. 4-97-1029-051, approving the conversion and/or exemption of the 221-hectare property in Silang, based on the findings of the DAR's Center for Land Use Policy, Planning and Implementation (CLUPPI) and of the Municipal Agrarian Reform Officer (MARO). These agencies found that the property was exempt from agrarian reform coverage, as it was beyond eighteen (18) degrees in slope. They recommended conversion, subject to the submission of several documentary requirements. On 1 December 1997, CCFI complied by submitting the following groups of documents:

1. A Certification and a copy of Resolution No. 295-S-96 by the Sangguniang Panlalawigan of Cavite, adopted in its 4th Special Session, approving the conversion/ reclassification of the said parcels of land from agricultural to residential, commercial, and industrial uses;

2. A copy of Resolution No. ML-08-S-96 adopted by the Sangguniang Bayan of Silang, recommending conversion based on the favorable findings by the Committee on Housing and Land Use;[10]

3. Statement of Justification of economic/social benefits of the proposed subdivision project; development plan, work and financial plan and proof of financial and organizational capability;

4. Proof of settlement of claims: a table of the list of tenant-petitioners, the area tilled and the amount of

[10] Excerpts from the Minutes of the regular session of the *Sangguniang Bayan* of Silang, held on 9 February 1996; DAR records, Folder 1 of 3, at 170.

compensation received by each tenant, the *Kasunduan,*[11] and a compilation of the agreements signed by the one hundred and eighteen (118) tenants waiving all claims over the property.[12]

The Morales Order Revoking the Grant of Conversion

On 19 May 2000, **almost three years after the Conversion Order had been in force and effect**, the farmers tilling the subject land (hereinafter known as farmers) filed a Petition for Revocation of Conversion Order No. 4-97-1029-051. They alleged (1) that the sale in 1995 by CCFI to ALI was invalid; and (2) that CCFI and ALI were guilty of misrepresentation in claiming that the property had been reclassified through a mere Resolution, when the law required an ordinance of the Sanggunian.[13] **The issue of the alleged Notice of Acquisition was never raised. Neither was there any mention of the issuance of a Notice of Coverage.**

CCFI and ALI, on the other hand, argued that the claim of the farmers had prescribed, as mandated by Section 34 of Administrative Order No. (A.O.) 1, Series of 1999, which laid down a one-year prescriptive period for the filing of a petition to cancel or withdraw conversion. They stated further that the farmers had already received their disturbance compensation as evidenced in a *Kasunduan,* in compliance with the Conversion Order.

On 18 December 2000, DAR Secretary Horacio Morales, Jr. issued an Order declaring that the action to revoke the conversion had not yet prescribed. According to him, Section 34 of A.O. 1-99 imposing the one-year prescription period did not apply, because administrative rules should be applied prospectively. Thus, the rule to be followed was that prevailing at the time of the issuance of the Conversion Order – DAR A.O. 12-94 – not A.O. 1-99, which was the rule prevailing when the Petition for Revocation was filed.

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[11] DAR records, Folder 3 of 3, Exhibit 12, at 1546.

[12] DAR records, Folder 3 of 3, at 1547-1945.

[13] Petition, CA *rollo* at 528-532.

As for the two issues raised by the farmer-beneficiaries, these were resolved by Secretary Morales in favor of CCFI and ALI. *First*, he found that CCFI did not violate the order of conversion when it sold the land to ALI, because the prohibition to sell is not a condition for the conversion. In fact, the sale preceded the issuance of the Conversion Order. *Second*, he ruled that there was no misrepresentation by CCFI and ALI regarding the lands' reclassification. However, he found a new issue for withdrawing the grant of conversion, that was not previously raised by petitioner-farmers. Apparently unaware of the earlier history of the land as property in *custodia legis*, he ruled that the delayed registration of the sale was evidence of respondents' intention to evade coverage of the landholding under agrarian reform. Because the sale was concealed from the Register of Deeds, and the land was still agricultural at that time, Secretary Morales opined that ALI and CCFI violated the CARL. It must be remembered however, that contrary to Morales' findings, it was the Supreme Court itself that ordered the sale of the lands through its Resolution in G.R. No 85960. Thus there could be no finding by any government body that the sale was illegal.

Secretary Morales never passed upon or even mentioned any matter related to the Notice of Acquisition. The gist of both the Petition for Revocation and the Morales Decision revolved exclusively around the illicit intent behind the sale of the land to ALI:

> The *gravamen* of respondents' acts lies not upon the sale by respondent Capitol of the land to ALI, and upon ALI having bought the land from Capitol. It lies somewhere deeper: that the sale was done as early as 1995 prior to the land's conversion, and was concealed in the application until it was registered in 1999.
>
> … … …
>
> At the time of the registration of the deed on 29 September 1999, the subject land had ceased to be an agricultural land since it has already been converted to other uses by virtue of an approved conversion application. As such, the requirement of reporting by the Register of Deeds of any transaction involving agricultural

lands beyond five (5) hectares, was not made as it is no longer necessary.[14]

It is important to note, however, that Secretary Morales declared that CCFI and ALI had completed the payment of disturbance compensation to the farmers, as shown by the *Kasunduan,* which was a waiver of all the farmers' rights over the landholding, and by the *Katunayan ng Pagbabayad,* which expressly acknowledged the amounts paid as the full and final settlement of their claims against CCFI and ALI.

The Braganza Order Reversing the Revocation

On 26 September 2002, acting on the Motion for Reconsideration filed by ALI, DAR Secretary Hernani Braganza reversed[15] the Revocation of Conversion Order 4-97-1029-051. He resolved three issues to arrive at his Decision, namely: 1) whether the Petition for Revocation had prescribed; 2) whether ALI was the owner of the subject landholding at the time of the application; and 3) whether there was complete payment of the disturbance compensation. Again, **Secretary Braganza was not afforded an opportunity to discuss any evidence related to the existence or effect of any Notice of Acquisition**, as the joinder of issues was limited to those already summarized above.

Secretary Braganza found that the Deed of Partial Redemption was conditional, and that there was no transfer of ownership to CCFI or its successor-in-interest, ALI. Hence, there could be no violation of the CARL arising from an unauthorized transfer of the land to ALI. In fact, the obligation of ALI to pay the purchase price did not arise until the DAR's issuance of an order of exemption or conversion. In Secretary Braganza's words:

> Was ownership included in the bundle of rights that was transferred from CCFI to ALI? This Office answers in the negative.
>
> For CCFI to convey ownership to ALI, MBC must have first transferred this right to CCFI under the DEED OF PARTIAL

[14] Morales Order, SC *rollo* at 336-352.

[15] Braganza Order, CA *rollo* at 84-95.

REDEMPTION for the reason that CCFI can only convey its present rights and obligations to ALI.

… … …

The fact that MBC is holding on to the Transfer Certificates of Title pending full payment of the purchase price is indicative of the reservation of ownership in MBC.

… … …

Thus, it is only upon the full payment of consideration shall the title to the subject landholding be issued to CCFI or its successor-in-interest, ALI.[16]

On 14 January 2003, Secretary Braganza granted ALI's Motion for Extension to develop the land for another five (5) years.

The Pagdanganan Order Declaring FINALITY

In response to Secretary Braganza's grant of the Motion for Reconsideration filed by ALI, the farmers, through their counsel, Atty. Henry So, filed their own Motion for Reconsideration of the Braganza Order. The farmers questioned the jurisdiction of the DAR to determine the ownership of the lands and to determine whether or not the sale was conditional, as these issues are within the ambit of the civil courts. Atty. So found fault with Secretary Braganza's attention to "the intricate history of the property,"[17] when substantial evidence was all that was required in agrarian cases. He also claimed that the farmers' previous counsel, Atty. Dolor, was misleading the farmers into accepting payment in exchange for their tenancy rights.[18]

Secretary Roberto Pagdanganan issued an Order on 13 August 2003, denying the farmers' Motion for Reconsideration and affirming the finality of the Braganza Order. He stated therein that the revocation of the conversion, which came almost three years after the conversion, had not passed through the CLUPPI-1 Deliberation Committee. In addition, he found that Atty. So

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[16] *Id.* at 89.

[17] Motion for Reconsideration, Annex 2, at 2.

[18] *Id.* at 3.

had no *locus standi* to represent the farmers. Secretary Pagdanganan upheld the *Kasunduan* the farmers signed as waiver of their claims and deemed the Braganza Order "final and executory":

> WHEREFORE, premises considered, Order is hereby issued DENYING both the Motion for Reconsideration dated 4 November 2002 and the Urgent Motion for Issuance of Cease and Desist Order dated 7 May 2003, filed by Atty. Henry So.
>
> **FURTHERMORE, the Bureau of Agrarian Legal Assistance is hereby DIRECTED to issue a Certificate of Finality of the 26 September 2002 order. ACCORDINGLY, this case is deemed close as far as this office is concern *(sic)*.**[19]

Petitioners' Appeal before the Office of the President

The farmers then went to the OP and raised only two issues:

The Secretary of Agrarian Reform erred in declaring herein counsel to have no more *locus standi* to represent the farmer-petitioners.

The Secretary of Agrarian Reform erred in affirming the Order of 26 September 2002 issued by then Secretary Hernani Braganza.[20]

The Appeal Memorandum pointed out that DAR's grant of conversion was issued under "suspicious circumstances." They attached to the Appeal Memorandum an uncertified photocopy of a Notice of Coverage as "Annex B."[21] The photocopy of the **Notice of Coverage** was mentioned in passing when the farmers cited paragraph VI-E of Administrative Order No. 12, Series of 1994. Additionally, farmer-beneficiaries alleged that a Notice of Acquisition was also in existence. No such document, however, could be found in the memorandum or in any prior or subsequent pleadings filed by farmer-beneficiaries. **They**

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[19] Pagdanganan Order, SC *rollo* at 163.

[20] Respondent farmers' Appeal Memorandum to the OP, SC *rollo* at 317.

[21] *Id.*

never stated that the issue of the Notice of Acquisition prevents the conversion of the land.

On 23 January 2004, the Office of the President dismissed the appeal[22] and affirmed the Pagdanganan Order. The OP found the subject property to have been legally converted into non-agricultural land, citing the findings of the local agencies of Silang that the property was beyond eighteen (18) degrees in slope, remained undeveloped, was not irrigated, and was without any other source of irrigation in the area. The OP stated: *"Upon our examination of the voluminous motions, memoranda, evidence submitted by appellants, but not a single document sufficiently controverts the factual finding of the DAR that the subject property had long been converted to non-agricultural uses."*[23] Farmer-beneficiaries then elevated the case to the CA. The CA reversed the findings of the OP and the DAR, prompting ALI and CCFI to file the instant Petition.

I. Respondents raised a new issue for the first time on appeal.

The CA found the Conversion Order valid on all points, with the sole exception of the effect of the alleged issuance of a Notice of Acquisition. In its eight-page Decision, the CA merely asserted in two lines: "no less than the cited DAR Administrative Order No. 12 enjoins the conversion of lands directly under a notice of acquisition."[24]

After perusing the records of the DAR and the OP, however, we find no admissible proof presented to support this claim. What was attached to the Petition for Review[25] to the CA was not a Notice of Acquisition, but a mere photocopy of the Notice of Coverage. A Notice of Acquisition was never

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[22] OP Decision, SC *rollo* at 202.

[23] *Id.* at 207.

[24] CA Decision, SC *rollo* at 65.

[25] SC *rollo* at 211.

offered in evidence before the DAR and never became part of the records even at the trial court level. Thus, its existence is not a fully established fact for the purpose of serving as the sole basis the entire history of the policy decisions made by the DAR and the OP were to be overturned. The CA committed reversible error when it gave credence to a mere assertion by the tenant-farmers, rather than to the policy evaluation made by the OP.

Assuming *arguendo* however, that the farmers had submitted the proper document to the appellate court, the latter could not have reversed the OP Decision on nothing more than this submission, as the issue of the Notice of Acquisition had never been raised before the administrative agency concerned. **In fact, the records show that this issue was not raised in the original Petition for Revocation in the second Motion for Reconsideration filed by the farmers before the DAR, and that no Notice of Acquisition was attached to their Appeal Memorandum to the OP.** As a consequence, the OP, Secretary Pagdanganan, Secretary Braganza, and Secretary Morales did not have any opportunity to dwell on this issue in their Orders and Decision. Instead, what respondents persistently allege is the concealment of the sale by CCFI and ALI. The three DAR Secretaries, including Secretary Garilao who issued the Conversion Order, correctly found this allegation bereft of merit.

We cannot uphold respondents' proposition for us to disregard basic rules, particularly the rule that *new issues cannot be raised for the first time on appeal.* Aside from their failure to raise the non-issuance of a notice of acquisition before the OP and DAR, they also failed to question the lack of approved town plan at the DAR level, prompting the OP to correctly rule on the latter, thus:

…Appellants' lapses in not raising the issues before the DAR which has the expertise to resolve the same and in a position to conduct due hearings and reception of evidence from contending parties pertaining to the issue, puts the appellants in estoppel to

question the same for the first time on appeal. Jurisprudence dictates the following:

> …**The petitioner for the first time, to allow him to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the court – which is supposed to review administrative determinations – would not review, but determine and decide for the first time, a question not raised at the administrative forum.** This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior authority to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal. (*Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue & Court of Tax Appeals*, 112 SCRA 136)[26]

It is well established that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process.[27] More important, if these matters had been raised earlier, they could have been seriously examined by the administrative agency concerned.[28]

Courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with

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[26] *Supra* note 24, at 206.

[27] *Madrid v. Mapoy*, G.R. No. 150887, 14 August 2009, 596 SCRA 14, 28.

[28] *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*, G.R. No. L-26911, 27 January 1981, 102 SCRA 246.

the regulation of activities coming under its special and technical training and knowledge and the latter are given wide latitude in the evaluation of evidence and in the exercise of their adjudicative functions.[29] This Court has always given primary importance to the DAR Secretary's ruling and will not disturb such ruling without substantial reason:

> Considering that these issues involve an evaluation of the DAR's findings of facts, this Court is constrained to accord respect to such findings. It is settled that factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial evidence. **The factual findings of the Secretary of DAR who, by reason of his official position, has acquired expertise in specific matters within his jurisdiction, deserve full respect and, without justifiable reason, ought not to be altered, modified or reversed.**[30]

The CA erred in passing upon and ruling on an issue not raised by the farmers themselves. This Court must not countenance the violation of petitioner's right to due process by the CA upholding its conclusion founded on a legal theory only newly discovered by the CA itself. This is especially insupportable considering the long history of government affirmation of the conversion of the subject land.

II. Provision in DAR A.O. 12-94 is only a guiding principle.

Assuming for a moment that the notice of acquisition exists, it is not an absolute, perpetual ban on conversion. The provision invoked in AO 12-94, paragraph E, disallows applications for conversion of lands for which the DAR has issued a notice of acquisition. But paragraph E falls under heading VI, ***"Policies and Guiding Principles."*** **By no stretch of the imagination can a mere "principle" be interpreted as an absolute proscription on conversion.** Secretary Garilao thus acted

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[29] *Quiambao v. Court of Appeals*, G.R. No. 128305, 28 March 2005, 454 SCRA 17.

[30] *Sebastian v. Morales*, 445 Phil. 595, 609 (2003).

within his authority in issuing the Conversion Order, precisely because the law grants him the sole power to make this policy judgment, *despite* the "guiding principle" regarding the notice of acquisition. The CA committed grave error by favoring a principle over the DAR's own factual determination of the propriety of conversion. The CA agreed with the OP that land use conversion may be allowed when it is by reason of changes in the predominant use brought about by urban development, but the appellate court invalidated the OP Decision anyway for the following reason:

> The argument is valid if the agricultural land is still not subjected to compulsory acquisition under CARP. But as we saw, there has already been a *notice of coverage and notice of acquisition* issued for the property...Verily, no less than the cited DAR Administrative Order No. 12 enjoins conversions of lands already under a notice of acquisition. The objectives and ends of economic progress must always be sought after within the framework of the law, not against it, or in spite of it.[31]

However, under the same heading VI, on Guiding Principles, is paragraph B (3), which reads:

> If at the time of the application, the land still falls within the agricultural zone, conversion shall be allowed only on the following instances:
>
> a) When the land has ceased to be economically feasible and sound for agricultural purposes, as certified by the Regional Director of the Department of Agriculture (DA) or
>
> b) When the locality has become highly urbanized and the land will have a greater economic value for residential, commercial and industrial purposes, as certified by the local government unit.

The thrust of this provision, which DAR Secretary Garilao rightly took into account in issuing the Conversion Order, is that even if the land has not yet been reclassified, if its use has changed towards the modernization of the community, conversion is still allowed.

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[31] *Supra* note 24.

As DAR Secretary, Garilao had full authority to balance the guiding principle in paragraph E against that in paragraph B (3) and to find for conversion. Note that the same guiding principle which includes the general proscription against conversion was scrapped from the new rules on conversion, DAR A.O. 1, Series of 2002, or the "Comprehensive Rules on Land Use Conversion." It must be emphasized that the policy allowing conversion, on the other hand, was retained. This is a complex case in which there can be no simplistic or mechanical solution. The Comprehensive Agrarian Reform Law is not intractable, nor does it condemn a piece of land to a single use forever. With the same conviction that the state promotes rural development,[32] it also "recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments."[33]

Respondents herein muddle the issue in contending that a Sangguniang Bayan Resolution was not a sufficient compliance with the requirement of the Local Government Code that an ordinance must be enacted for a valid reclassification. **Yet there was already a Conversion Order.** To correct a situation in which lands redeemed from the MBC would remain idle, petitioners took the route of applying for conversion. Conversion and reclassification are separate procedures.[34] CCFI and ALI submitted the two Resolutions to the DAR (one issued by the Sangguniang Bayan of Silang, the other by the Sangguniang Panlalawigan of Cavite) only as supporting documents in their application.

Again, paragraph B (3), Part VI of DAR AO 12-94, cited above, allows conversion when the land will have greater economic value for residential, commercial or industrial purposes **"as certified by the Local Government Unit."** It is clear that the thrust of the community and the local government is the conversion of the lands. To this end, the two Resolutions,

[32] CONSTITUTION, Sec. 21, Art. II on State Policies.

[33] CONSTITUTION, Sec. 20, Art. II on State Policies.

[34] *Alarcon v. Court of Appeals*, G.R. No. 152085, 8 July 2003, 323 SCRA 716.

one issued by the Sangguniang Bayan of Silang, the other by the Sangguniang Panlalawigan of Cavite, while not strictly for purposes of reclassification, are sufficient compliance with the requirement of the Conversion Order.

Paragraph E and paragraph B (3) were thus set merely as guidelines in issues of conversion. CARL is to be solely implemented by the DAR, taking into account *current* land use as governed by the needs and political will of the local government and its people. The palpable intent of the Administrative Order is to make the DAR the principal agency in deciding questions on conversion. A.O. 12-94 clearly states:

A. The Department of Agrarian Reform is mandated to "approve or disapprove applications for conversion, restructuring, or readjustment of agricultural lands into non-agricultural uses," pursuant to Section 4 (j) of Executive Order No. 129-A, Series of 1987."

B. Section 5 (1) of E.O. No. 129-A, Series of 1987, ***vests in the DAR, exclusive authority to approve or disapprove applications for conversion*** of agricultural lands for residential, commercial, industrial, and other land uses.[35]

III. The Conversion Order has long attained finality and may no longer be questioned.

Respondents came forward as claimants under CARL almost three years after the Conversion Order was issued. In arguing that the claim of respondents had already prescribed, petitioner ALI applied DAR A.O. 1, Series of 1999, which lays down a one-year prescriptive period for petitions for cancellation or withdrawal. Section 34 thereof states:

Filing of Petition – A petition for cancellation or withdrawal of the conversion order may be filed at the instance of DAR or any aggrieved party before the approving authority within ninety (90) days from discovery of facts which would warrant such cancellation but not more than one (1) year from issuance of the

[35] DAR A.O. 12, S. of 1994, Part II, Legal Mandate, pars. A and B.

order: *Provided*, that where the ground refers to any of those enumerated in Sec. 35 (b), (e), and (f), the petition may be filed within ninety (90) days from discovery of such facts but not beyond the period for development stipulated in the order of conversion; *Provided further*, That where the ground is lack of jurisdiction, the petition shall be filed with the Secretary and the period prescribed herein shall not apply.

The Conversion Order was issued by Secretary Garilao on 31 October 1997. Respondents questioned the Order only on 19 May 2000, almost two years and seven months later. Since the action was filed during the effectivity of A.O. 01-99, its provision on prescription should apply.

Respondents, on the other hand, state that the applicable rule is A.O. 12 (promulgated in 1994), which was the rule subsisting at the time the Conversion Order was issued. A.O. 12-94 imposes a prescriptive period of five (5) years; thus, according to the farmers, the petition was filed well within the period.

Petitioner ALI's argument is well-taken. A.O. 01-99 entitled "REVISED RULES AND REGULATIONS ON THE CONVERSION OF AGRICULTURAL LANDS TO NON-AGRICULTURAL USES," provides for its own effectivity as follows:

SEC. 56. *Effectivity* – This Order shall take effect ten (10) days after its publication in two (2) national newspapers of general circulation.

A.O. 01-99 was promulgated on 30 March 1999 and published in *Malaya* and *Manila Standard* on the following day, 31 March 1999. Thus, A.O. 01-99 was the rule governing the filing of a "petition for cancellation or withdrawal of the conversion order" at the time the farmers filed their petition.

Respondent farmers argue that, according to A.O. No. 01-99, the one-year prescriptive period should be reckoned from the issuance of the Conversion Order. They point out that it was impossible for them to receive notice of this rule when Secretary Garilao issued the Conversion Order, since the rule

was published only one year and seven months after the issuance of the Order. Thus, it should be A.O. 12-94, or the five-year prescription period, that should be applied to them, and not the one-year period in A.O. 01-99.

Respondents assume that the rule to be applied is that prevailing at the time of the issuance of the Conversion Order. This is incorrect. The rule applicable in determining the timeliness of a petition for cancellation or withdrawal of a conversion order is the rule prevailing at the time of the filing of that petition, and not at the time of the issuance of the Conversion Order. It is axiomatic that laws have prospective effect, as the Administrative Code provides.[36] While A.O. 01-99 was not yet promulgated at the time of the issuance of the Conversion Order, it was already published and in effect when the Petition for Revocation was filed on 19 May 2000.

Regarding the question on when the one-year prescription period should be reckoned, it must be still be resolved in conformity with the prospective character of laws and rules. In this case, the one-year period should be reckoned from the date of effectivity of A.O. 1-99, which is 31 March 1999. Therefore, no petition for cancellation or withdrawal of conversion of lands already converted as of 30 March 1999 may be filed after 1 March 2000.

The Conversion Order is final and executory. The Court ruled in *Villorente v. Aplaya Laiya Corporation*:

> Indubitably, the Conversion Order of the DAR was a final order, because it resolved the issue of whether the subject property may be converted to non-agricultural use. The finality of such Conversion Order is not dependent upon the subsequent determination, either by agreement of the parties or by the DAR, of the compensation due to the tenants/occupants of the property caused by its conversion to non-agricultural use. Once final and executory, the Conversion Order can no longer be questioned.[37]

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[36] EO 292, Book 1, Chapter 5, Sec. 18.

[37] G.R. No. 145013, 31 March 2005, 454 SCRA 493.

A conversion order is a final judgment and cannot be repeatedly assailed by respondents in perpetuity, after they have received compensation and exhausted other means. In *Villorente,* the Court had occasion to rebuke the would-be beneficiaries who, after accepting the compensation stipulated in the conversion Order – thereby impliedly acknowledging the validity of the order – turned around and suddenly assailed it. The Court held:

> We are convinced that the petition for review filed by the petitioners with the CA was merely an afterthought…
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> … … …
>
> It must be stressed that the petitioners agreed to negotiate with the respondent for the disturbance compensation which they claimed was due them, conformably with the said Conversion Order. Hence, they cannot now assail the said order without running afoul to (*sic*) the doctrine of estoppel. The petitioners cannot approbate and disapprobate at the same time.[38]

It must be borne in mind that there can be no vested right to judicial relief, as ruled by the Court in *United Paracale Mining v. Dela Rosa*:

> There can be no vested right in a judicial relief for this is a mere statutory privilege and not a property right…the right to judicial relief is not a right which may constitute vested right because to be vested, a right must have become a title, legal or equitable, to the present or future enjoyment of property, or to the present or future enforcement of a demand or legal exemption from a demand made by another.[39]

IV. The conversion and/or reclassification of the said lands has become an operative fact.

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[38] *Id.* at 501.

[39] *United Paracale Mining Company v. Joselito Dela Rosa*, G.R. Nos. 63786-7, 7 April 1993, 221 SCRA 108, 115.

Respondent farmers do not deny that at the time of filing of the Petition for Revocation, the lands in question were no longer agricultural. Secretary Morales affirmed this fact in his Decision, even as he revoked Secretary Garilao's Order of conversion:

> When respondent Capitol applied for conversion of the subject land on 7 May 1996, the land is already reclassified from agricultural to other uses. Respondent Capitol applied for conversion as the registered owner of the land, although in truth it was no longer the owner of the same by virtue of its sale to ALI. This fact of transfer of ownership is not known since the absolute sale of the land was not yet public, the deed of sale not having been registered before the Register of Deeds at that time.
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> … … …
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> **At the time of the registration of the deed on 29 September 1999, the subject land had ceased to be an agricultural land since it has already been converted to other uses by virtue of an approved conversion application. As such, the requirement of reporting by the Register of Deeds of any transaction involving agricultural lands beyond five (5) hectares, was not made as it is no longer necessary.**

Clearly, the findings of the CLUPPI, the Sangguniang Bayan of Silang, and Secretary Morales himself confirm as an operative fact the reclassification and/or conversion of the lands. Both the DAR and the Sangguniang Bayan anchored their findings on the Certifications from the CLUPPI (obtained by the CLUPPI's executive committee as required by the DAR procedure), the National Irrigation Administration, the Philippine Coconut Authority, and the Department of Environment and Natural Resources.[40] The CLUPPI and the MARO (Municipal Agrarian Reform Office) conducted their own ocular inspection. The Sangguniang Bayan of Silang conducted plebiscites before issuing the Resolution for reclassification.[41]

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[40] DAR records, Folder 3 of 3, at 516-528.

[41] DAR records, Folder 1 of 3, at 16-18.

In sum, the findings of the different government agencies are as follows:

1. The property is about ten (10) kilometers from the provincial road.
2. The land sits on a mountainside overlooking Santa Rosa Technopark.
3. The property is beyond eighteen (18) degrees in slope and undeveloped.
4. Based on a DAR Soil Investigation Report, the property is only marginally suitable for agriculture use due to its undulating topography.[42]
5. The land is outside the irrigable area of the Cavite Friar Lands Irrigation Systems.
6. DENR Administrative Order No. 08 granted the application for an Environmental Clearance while presenting these additional findings:
   - The area is unirrigated, and the main source of water supply is rainfall.
   - The occupants have been paid disturbance compensation.
   - The area in question had been granted a Certificate of Eligibility for Conversion by the DAR on 16 January 1996.

The reclassification/conversion of the land has long been a foregone fact. While respondents insist that the process by which the land was reclassified was invalid, their claim is immaterial, because, as stated, the two procedures are distinct. Independently of the Sangguniang Bayan's own initiative, the DAR issued a Certificate of Eligibility. These issuances only bolster the fact that, at the time it was converted, the land was no longer agricultural, and that it would generate more revenue

[42] CA *rollo* at 38-40.

if reclassified as a residential area. Resolution No. ML-08-S-96, adopted by the Sangguniang Bayan of Silang, recommended conversion based on the favorable findings of the Committee on Housing and Land Use. The Resolution states:[43]

> ...Whereas based on the favorable findings by the Committee on Housing and Land Use after careful study and after conducting several public hearings has favorably recommended the approval of the request of Capitol Citifarms, Inc.;
>
> Whereas, the land use reclassification of the said parcels of land will benefit the people of Silang by way of increased municipal revenue, generate employment, increased commercial activities and general *(sic)* uplift the socio-economic condition of the people particularly those in the vicinity of said parcels of land.

It is no longer necessary to delve into the allegations of the lack of a valid ordinance or the lack of a land use plan. Aside from the OP finding that this issue was raised belatedly, the submission of "new or revised town plans approved by the HLURB" is a requirement only in the process of reclassification embodied in the Local Government Code. This is not a requirement in the process of conversion, wherein the DAR is given the sole prerogative to make technical determinations on changes in land use and to decide whether a particular parcel of agricultural land, due to modernization and the needs of the community, has indeed been converted to non-agricultural use.

V. It has long been resolved by the Office of the President that the lands in this case are exempted from CARL coverage, partly in order to maintain the stability of the country's banking system.

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[43] *Supra* note 12.

In the first OP Decision dated 11 October 1996, Executive Secretary Ruben D. Torres expressly declared that the preservation of the assets of the BSP warranted higher consideration, so certain lands of the MBC were exempt from coverage of the CARL. In remanding the case to the DAR for it to identify which lands should be exempted, Secretary Torres held:

> Upon review of the entire records of the case, this Office is persuaded that a stringent appreciation of the issues raised by the parties may not do justice to their respective causes, and the public in general. What is involved is the susceptibility of a bank to undergo rehabilitation which will be jeopardized by the distribution of its assets…a careful balance between the interest of the petitioner bank, its creditors (which includes the Bangko Sentral ng Pilipinas) and the general public on the one hand, and adherence to the implementation of the agrarian reform program on the other, must be established.
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> … … …
>
> …the ends of justice will be better subserved if the Statutory Receiver is given the fullest opportunity to monetize the assets of the bank which are supposed to be outside of the coverage of the CARL or may be converted into non-agricultural uses.[44]

Secretary Torres denied the Motion for Reconsideration filed by the DAR. The denial was based precisely on the need to balance the agrarian reform law with another policy consideration, the stability of the banking system. He explained as follows:

> The guiding principle on land use conversion is to preserve prime agricultural lands. On the other hand, when coinciding with the objectives of the Comprehensive Agrarian Reform Law to promote social justice, industrialization and the optimum use of lands as a national resource for public welfare, shall be pursued in a speedy and judicious manner.
>
> … … …
>
> Finally, we wish to reiterate the need to balance the interest between the petitioner bank (under receivership by the BSP), its creditors (85%

[44] OP Decision, 11 October 1996, at 9.

of which or a total of ₱8,771,893,000 is payable to BSP) and the general public on one hand, and the faithful implementation of agrarian reform program on the other hand, with the view to harmonizing them and ensuring that the objectives of the CAR are met and satisfied.[45]

The Conversion Order was a product of policy determinations made by the DAR, the Office of the President, and even the Supreme Court. Secretary Torres had ordered the DAR to "respect the temporary custody of those properties by the Statutory Receiver (BSP Deputy Governor Alberto Reyes) by deferring their coverage under the CARL…" This order stemmed in turn from the BSP Resolution of 22 May 1987 placing MBC's assets under *custodia legis*. Bolstered by the need to save MBC, which was one of BSP's crucial debtors, the Supreme Court allowed the BSP receiver to sell MBC's assets to a third party "under the best terms and conditions," to give it ample opportunity to rehabilitate MBC. The disposition of MBC's properties was a judgment call made by the BSP, which, as the sole agency mandated to assist banks and financial institutions in distress, exercises asset management on a macro level. The Supreme Court Resolution called the arrangement the "best solution for Manila Banking and CCFI."

In light of the foregoing, it would be absurd to impute bad faith to ALI solely because it chose to purchase the redeemed land. Similarly, ALI cannot be held accountable for all the years that the land remained idle pending conversion. To deny relief to ALI would be tantamount to placing the private sector in the unjust situation of investing, upon invitation from the government, in a bank's distressed assets – among which are lands the government itself has ordered converted – then subsequently confiscating the same from it.

Petitioners did not renege on their duty to pay disturbance compensation to the tenant-farmers. They expended substantial amounts in addition to the purchase price of the foreclosed lands – for litigation and administrative processing costs, the farmers' compensation, and improvements on the land. The

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[45] OP Decision, 14 March 1997, at 2.

development projects were grounded on a reliance on national government actions that support the thrust of Cavite towards urbanization.

It was the OP's first Decision, together with the Supreme Court Resolution, that ultimately paved the way for ALI to acquire title to the subject lands as a third party buyer. When the dispute over the subject land reached the OP for the second time – when the validity of the conversion order was in dispute – the OP of course found no merit in the allegation of concealment. There is therefore absolutely no basis for the imputation of bad faith upon ALI simply on account of the alleged delay in the registration of the sale from CCFI to it.

It must be emphasized that the OP's ground for supporting conversion finds its moorings in DAR Memorandum Circular 11-79 governing the conversion of private agricultural lands into other uses. The Circular states that conversion may be allowed when it is by reason of the changes in the predominant land use, brought about by urban development. The OP Decision pointed to the fact that the close proximity of Cavite to Manila opened Cavite to the effects of modernization and urbanization. While the CA characterized this ground as "novel," it still agreed that land use conversion may be allowed, if caused by changes in predominant land use due to urban development.

The DAR found merit in the thrust of the local government to "disperse urban growth towards neighboring regions of Metro Manila"; to encourage the movement of residential development in the area; and to support the housing needs not just of the neighboring Santa Rosa Technopark, but also of other commercial centers. It is helpful to remember that it is the local government, in this case, that of Silang, Cavite, that occupies the primary policy role of allowing the development of real estate to generate real property taxes and other local revenues.

The CA Decision effectively enfeebles the Orders of no less than three Secretaries of the DAR and the policy pronouncements of the OP. The actions of respondents – accepting disturbance compensation for the land, seeking petitioners'

compliance with the terms of the Conversion Order, then reversing themselves by assailing the Order itself long after the proper period had prescribed – contradict this Court's rule that conversion orders, once final and executory, may no longer be questioned.

The only justification for the CA ruling – that the lands had already been subjected to a Notice of Acquisition, hence no conversion thereof can take place – cannot stand in the light of two points: 1) the record before this Court (including the CA and the DAR records) is bereft of any copy, certified or otherwise, of the alleged Notice of Acquisition; and 2) even if the land is subject to a Notice of Acquisition, this issue was never raised before the DAR or the OP, nor was it argued before the CA. It existed as a single-line statement in petitioners' Appeal Memorandum.[46] Since the DAR and the OP had ruled for petitioners CCFI and ALI, and the CA itself admitted that petitioners' stand would have been valid if not for the alleged Notice, the CA should have been more circumspect in verifying whether the evidence on record supported respondents' self-serving claim.

Before the CA's unilateral action, this unsupported allegation was never raised as a live legal issue. Hence, CCFI and ALI were deprived of any opportunity to controvert the fact of the Notice of Acquisition and its legal effect, because they were never alerted that the existence of such Notice would in any way endanger their legal position. They had the right to expect that only issues properly raised before the administrative tribunals needed to be addressed. Even assuming that the Notice of Acquisition did exist, considering that CCFI and ALI had no chance to controvert the CA finding of its legal bar to conversion, this Court is unable to ascertain the details of the Notice of Acquisition at this belated stage, or rule on its legal effect on the Conversion Order duly issued by the DAR, without undermining the technical expertise of the DAR itself. To do so would run counter to another basic rule that courts will not resolve a controversy involving a question that is within the

[46] CA *rollo* at 42.

jurisdiction of the administrative tribunal prior to its resolution of that question.[47]

CARL cannot be used to stultify modernization. It is not the role of the Supreme Court to apply the missing notice of acquisition in perpetuity. This is not a case wherein a feudal landowner is unjustly enriched by the plantings of a long-suffering tenant. ALI is in the precarious position of having been that third-party buyer who offered the terms and conditions most helpful to CCFI, MBC, and effectively, the BSP, considering the 85% portion of the total debt of MBC that BSP owns. What this Court can do positively is to contribute to policy stability by binding the government to its clear policy decisions borne over a long period of time.

WHEREFORE, premises considered, the Court of Appeals committed reversible error in nullifying the policy pronouncement of the Office of the President and the Department of Agrarian Reform. The instant petition for *certiorari* is hereby *GRANTED*, and the Order of the Office of the President dated 26 January 2004 is *AFFIRMED*.

SO ORDERED.

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

Bersamin, J., joins the dissenting opinion of *J.* Villarama, Jr.

Villarama, Jr., J., see dissenting opinion.

DISSENTING OPINION

VILLARAMA, JR., *J.*:

I dissent from the majority ruling for the following reasons:

1. The grant of the appeal was mainly premised on petitioners' unfounded assertion that the issuance of

[47] The Supreme Court discusses the Doctrine of Primary Jurisdiction in *Smart Communications, Inc. v. National Telecommunications Commission*, G.R. No. 151908, 12 August 2003, 408 SCRA 678.

the notice of coverage and notice of acquisition was raised for the first time on appeal.

2. The prohibition on the filing of a petition for conversion of agricultural lands already placed under CARP coverage is not a "mere guiding principle" but a preventive measure against any act of the landowner to evade the application of Republic Act (R.A.) No. 6657 to his landholding.

3. The rules on land conversion expressly provide for the remedy of cancellation or revocation of conversion order within a *five-year period* if the petition is based on *any* violation of relevant rules and regulations of the Department of Agrarian Reform (DAR).

4. Petitioners have not complied with the requirements for a valid reclassification of agricultural lands.

5. The "policy pronouncement" of the Office of the President (OP) on the supposed balancing of the rights of agricultural tenants and farm workers with substantial financial losses to be incurred by the *Bangko Sentral ng Pilipinas* (BSP), the biggest creditor of the landowner's mortgagee bank, ignores the declared policy of the State that "[T]he welfare of the landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic size farms as the basis of Philippine agriculture."

The buy-out arrangement clearly favored the landowner CCFI who was able to evade CARP coverage and at the same pay off its huge mortgage debt—which otherwise it could not fully settle from the proceeds of a foreclosure sale—to a private bank then under liquidation, at the expense of impoverished farmers and ***in violation of existing DAR regulations****. In these situations, the landowner-mortgagor alone should bear the loss in case of deficiency because the foreclosure buyer is merely*

substituted to the landowner entitled only to just compensation pursuant to R.A. No. 6657 and DAR rules.

The factual antecedents are undisputed:

Capitol City Farms, Inc. (CCFI) is the registered owner of a parcel of land with an area of 221.3048 hectares located at Barangay Munting Ilog (now Tibig), Silang, Cavite under Transfer Certificate of Title (TCT) No. 128672,[1] one of its two properties mortgaged to Manila Banking Corporation (MBC). The mortgage lien in favor of MBC was duly annotated on the said title. In 1987, MBC was placed under receivership pursuant to the order of the BSP.

On September 29, 1989, the DAR issued a **Notice of Coverage**, placing the subject property under compulsory acquisition pursuant to Section 7 of R.A. No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988 (CARL). On December 22, 1989, DAR issued a **Notice of Acquisition** in which the government offered the amount of ₱1,263,015.87 as purchase price.

Subsequently, MBC foreclosed its mortgage lien over CCFI's properties and as a result of the foreclosure sale, MBC acquired the same, as evidenced by a Certificate of Sale[2] issued in its favor. Said certificate of sale was registered on January 4, 1991.[3] However, MBC was unable to transfer to its name title over several acquired assets as it was still under receivership and also because DAR had placed these lands under compulsory acquisition.

In a special civil action filed before this Court (G.R. No. 85960), MBC sought to enjoin the Monetary Board, the Central Bank of the Philippines and two of its officials from proceeding with MBC's liquidation. On January 11, 1989, this Court issued

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[1] CA *rollo*, pp. 152-157.

[2] DAR records, folder #3 of 3, pp. 1455-1457.

[3] CA *rollo*, p. 157.

a Resolution enjoining the liquidation of MBC's assets, but MBC later moved for the partial liquidation of some of its assets, including the subject property, so that it could settle its obligations with BSP and its other creditors and finance its re-opening.[4] Apparently, MBC did not mention the fact that the subject landholdings have been placed under the CARL.

On August 29, 1995, this Court issued a Resolution[5] authorizing the partial liquidation. MBC then executed a Deed of Partial Redemption[6] on December 29, 1995, allowing CCFI to redeem partially the subject property and to sell the subject property to a third party pending full payment of the redemption price. It was stipulated that the down payment (30% of the total price) shall be payable to MBC upon "approval of the exemption of the two (2) parcels of land x x x from the coverage of the Agrarian Reform Law x x x or the conversion of the aforesaid parcels of land to non-agricultural use." MBC likewise shall continue to have custody and possession of the corresponding titles for as long as any obligation remains due to it, unless CCFI or its successor-in-interest pays the full value of either parcel of land at the rate of ₱500.00 per square meter excluding interest.[7]

On the same date, CCFI executed a Deed of Absolute Sale[8] in favor of Ayala Land, Inc. (ALI) over its properties covered by TCT Nos. 128672 and 144245. The payment of purchase price to CCFI was subject to certain terms and conditions, among which is the "issuance of DAR Approval for the Parcels of Land," meaning the exemption from coverage of the CARL or conversion of the land to non-agricultural use, "signed in either case by the Secretary of the Department of Agrarian Reform."[9]

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[4] DAR records, folder #3 of 3, p. 1443.

[5] *Id.* at 1443-1444.

[6] *Id.* at 1445-1454.

[7] *Id.* at 1448, 1452-1453.

[8] *Id.* at 1465-1477.

[9] *Id.* at 1466 and 1469.

However, this sale was registered only on September 27, 1999 under Entry No. 2311 on TCT No. 128672.[10]

Sometime in August 1995, BSP through then Deputy Governor Alberto V. Reyes, requested the DAR Secretary to issue an order exempting MBC's landholdings from the coverage of CARL and declaring a moratorium on compulsory acquisition proceedings against the same. This request was denied by the DAR Secretary in his letter-decision dated February 14, 1995 stating that MBC's landholdings are subject to the immediate coverage of CARL and directing the distribution of lands to qualified beneficiaries. While MBC through BSP sought reconsideration of the said letter-decision, the DAR Secretary denied it in his letter-resolution dated June 13, 1995. Records showed that MBC appealed the DAR Secretary's denial of its request for exemption to the OP (OP Case No. 6231). Upon motion of MBC and pursuant to Section 6 of Administrative Order (AO) No. 18 dated February 12, 1987, the OP issued an Order dated August 30, 1995 staying the execution of the appealed DAR orders.[11]

In the meantime, CCFI's counsel sent a letter dated May 7, 1996 to the Regional Director of DAR Region IV requesting that the Notice of Acquisition be lifted. CCFI claimed that: (1) the subject property has been reclassified by the Municipal Council of Silang, Cavite, from agricultural to residential by virtue of a Municipal Resolution; (2) the subject property is not serviced by the National Irrigation Administration; (3) the subject property is not planted with coconut trees as certified by the Philippine Coconut Authority; (4) the subject property is certified to be eligible for land conversion as certified by the DAR based on the foregoing certifications; and (5) the subject property is not tenanted although there are occupants who have, however, already been paid their disturbance compensation and have already executed a Waiver of Rights and endorsement for the lifting of the Notice of Acquisition.[12] While this letter-request

[10] CA *rollo*, p. 157.

[11] DAR records, folder #3 of 3, p. 1482; CA *rollo*, pp. 60-65.

[12] DAR records, folder #1 of 3, p. 526.

was endorsed to the Legal Division of DAR Region IV and set for hearing,[13] there is no showing in the records of any further action or resolution made by the DAR.

On October 11, 1996, then Executive Secretary Ruben D. Torres issued his Decision[14] in OP Case No. 6231. MBC had earlier filed a motion for the issuance of an order granting MBC a period of five years within which to seek conversion of its landholdings to non-agricultural use. The OP declared that the threshold issue is whether or not the land being sought to be covered are agricultural lands within the compulsory coverage of the CARL. It opined that the ends of justice will be better served if BSP is given the fullest opportunity to monetize the assets of the bank which are outside the coverage of CARL or may be converted into non-agricultural uses. Hence, the respondent DAR officials should respect the temporary custody of the landholdings by BSP by deferring coverage under the CARL until the BSP has been given the amplest opportunity to evaluate those assets and submit proof of exemption or convertibility, even after the termination of such receivership. The OP thus decreed:

> WHEREFORE, premises considered, the instant case is hereby remanded to the Department of Agrarian Reform for the purpose of receiving evidence on the question of which among the parcels of land, subject matter of this case, are exempt from the coverage of the Comprehensive Agrarian Reform Law, which lands may be converted into non-agricultural uses, and which may be subjected to compulsory coverage. In the meantime, and while these issues have not been resolved, Respondents are hereby directed to cease and desist from subjecting the Petitioner's properties to the CARL, or otherwise distributing those parcels of land already covered to farmer-beneficiaries.
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> The parties are further enjoined to assist each other in formulating a mutually beneficial solution to this dispute, bearing in mind that the rehabilitation of the Petitioner will be beneficial to the Bangko

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[13] *Id.* at 519-523.

[14] DAR records, folder #3 of 3, pp. 1481-1490.

Sentral ng Pilipinas and the general public, without losing sight of the objectives of the Comprehensive Agrarian Reform Program.

SO ORDERED.[15]

DAR's motion for reconsideration of the above decision was denied by the OP which reiterated the "need to balance the interests of MBC, its creditors [including the BSP to which MBC was indebted in the total amount of ₱8,771,893,000 or 85% of MBC's total indebtedness] and the general public, and the faithful implementation of the agrarian reform, with the view of harmonizing them and ensuring that the objectives of CARP are met and satisfied."[16]

Meanwhile, in his Resolution[17] dated October 3, 1997, DAR Secretary Ernesto D. Garilao granted MBC's request for clearance to sell its landholdings which included the subject property (TCT No. 128672), citing Section 73-A of R.A. No. 6657, as amended by R.A. No. 7881, and further clarified in Memorandum Circular No. 05, Series of 1996, which permits the sale and/or transfer of agricultural land in cases where such sale, transfer or conveyance is made necessary as a result of bank's foreclosure of the mortgaged land. However, it was declared that the properties sold shall remain under CARL coverage unless MBC is able to comply with the requirements of the DAR on exemption or conversion. Furthermore, MBC or the rightful owners of the properties, should a transfer, sale or conveyance materialize, were granted a period of ninety (90) days to submit completed applications for exemptions or conversions. Note that the subject property had earlier been sold to ALI by virtue of the authority granted to CCFI by MBC under the Deed of Partial Redemption while CCFI's 1996 request for the DAR to lift the Notice of Acquisition was made in pursuance of its contractual undertaking with MBC and ALI to seek exemption from CARL or conversion of the land to non-agricultural use.

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[15] *Id.* at 1489-1490.

[16] *Id.* at 1491-1493.

[17] *Id.* at 1494-1497.

Subsequently, CCFI filed an application for land conversion which was approved by then DAR Secretary Ernesto D. Garilao. DAR Conversion Order No. 4-97-1029-051[18] issued on October 31, 1997 thus decreed:

> WHEREFORE, premises considered, the conversion/exemption application filed by the Capitol Citifarms[,] Incorporated over a parcel of land covered by TCT No. 128672 with an area of 221.3048 hectares, located at Brgy. Munting Ilog [now Tibig], Silang, Cavite is hereby APPROVED subject to the following conditions:
>
> 1) Submission of the abovementioned lacking documentary requirements as required by the Committee within thirty days from receipt of this Order;
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> 2) The development of the land should be completed within five years from the issuance of this Order;
>
> 3) Notice of Conversion should be posted at the most conspicuous place within the project area using appropriate materials with a minimum size of one (1) by two (2) meters, indicating the name of the project and area, name of the developer/landowner, date when conversion was approved, and the date when the development permit was granted; and,
>
> 4) The DAR reserves the right to cancel or withdraw this order for misrepresentation of facts integral to its issuance and for violation of the rules and regulation on land use conversion.[19]

Among the documents submitted by CCFI is the Department of Agriculture Soil Investigation Report stating that "the said property is considered moderately to marginally suitable to agricultural crops due to very shallow to shallow soil depth, moderate erosion hazard, moderate to low soil fertility, undulating topography, strongly rolling to steep hilly physiology and is not economically suitable to agricultural development due to serious soil/land limitation existing in the area."[20] The conversion order

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[18] CA *rollo*, pp. 38-40.

[19] *Id.* at 39-40.

[20] *Id.* at 38.

likewise cited the findings of the Center for Land Use Policy, Planning and Implementation (CLUPPI-1 & 2) which together with the Municipal Agrarian Reform Officer (MARO) of Silang conducted a joint ocular inspection on October 17, 1997. The CLUPPI-1 Executive Committee thus recommended the approval of CCFI's application, on the basis of the finding that the land is eligible for exemption from CARL coverage, considering the following:

a. The subject property is about 10 kilometers from the Provincial Road.

b. The topography of the landholding is hilly and has an average slope of more than 18%, undeveloped and is mostly covered with wild growth of thick vines and bushes and secondary growth of forest trees except for the portion where few pineapple and cassava are planted which is approximately 2,000 square meters.

c. The dominant use of the surrounding area is industrial/forest growth as the landholding is sitting on a mountainous slope overlooking the Sta. Rosa Technopark.

d. The area is not irrigated and no irrigation system was noted in the area.[21]

On May 19, 2000, Ricardo Sim, Mario Perlas, Simeona Castillo, and Marilou Buklatin, on their behalf and as representatives of fifty-two (52) fellow tenant-farmers (herein respondents), filed with the DAR a Petition for Revocation of Conversion Order No. 4-97-1029-051 against CCFI and ALI.[22] They claimed that CCFI grossly violated the conversion order because instead of developing the land within five years from the issuance of the order as required in No. 2 above, it sold the land to ALI. They also pointed out that when CCFI sold the land to ALI in 1995, it was still agricultural land. Thus, CCFI violated Section 6[23]

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[21] *Id.* at 39.

[22] DAR records, folder #1 of 3, pp. 577-582; CA *rollo*, pp. 101-106.

[23] SEC. 6. *Retention Limits*. - *Except* as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private

of the CARL and DAR Administrative Order No. 1, Series of 1989.[24] They further alleged that the application for conversion was a mere ploy to cover up the illegal transaction and to evade the coverage of the property under the CARL, and in violation of the tenant-farmers' right to buy the land pursuant to the right of pre-emption granted to them under R.A. No. 3844.

CCFI also committed gross misrepresentation when it made it appear that the land had been duly reclassified from agricultural to other uses when in truth, as certified by the Housing and Land Use Regulatory Board (HLURB),[25] the Municipality of Silang does not have an approved town plan/zoning ordinance as of October 24, 1997 and only passed Sangguniang Bayan

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agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: *Provided*, That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder; *Provided, further*, That original homestead grantees or their direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

x x x x x x x x x

Upon the effectivity of this Act, any sale, disposition, lease, management contract or transfer of possession of private lands executed by the original landowner in violation of this Act shall be null and void: *Provided, however*, That those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the [Department of Agrarian Reform] within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares. (Emphasis supplied.)

[24] RULES AND PROCEDURES GOVERNING LAND TRANSACTIONS.

[25] DAR records, folder #1 of 3, p. 566; CA *rollo*, p. 120.

Resolution No. ML-008, Series of 1996,[26] which is not an ordinance but mere resolution *approving* CCFI's request for reclassification of the subject property. Lastly, respondents claimed that CCFI failed to comply with the undertaking to effect the complete payment of the disturbance compensation of tenant-farmers.

On December 18, 2000, then DAR Secretary Horacio R. Morales, Jr. issued an Order[27] (Morales Order) revoking DAR Conversion Order No. 4-97-1029-051. It was noted that the power of the cities or municipalities to reclassify agricultural lands to other uses is exercised through its local legislature and no less than an ordinance has to be passed after conducting public hearings for the said reclassification to be valid. Secretary Morales thus ruled:

> x x x we find that respondents have violated the provisions of paragraph 4, Section 6 of RA 6657 and DAR Administrative Order No. 1, Series of 1989, when Capitol Citifarms, Inc. sold the subject property to respondent Ayala Land, Inc. and did not register the same within a reasonable time. This is in order to avoid the full effects of the said law and rules and regulations. **The conversion is resorted to evade the coverage of the land under CARP, with accompanying misrepresentation as to the ownership of the subject landholding to avoid detection of their unauthorized transaction.** These are violations of the law and DAR rules and regulations and are grounds sufficient to warrant the revocation/withdrawal of the conversion order in respondents' favor.[28] (Emphasis supplied.)

ALI moved to reconsider the Morales Order. On September 3, 2002, while the motion for reconsideration was pending, respondent Simeona S. Castillo submitted to DAR a comment on the Withdrawal of Appearance of Atty. Annalyn S. Dolor, who was acting as counsel for the tenant-farmers. Castillo requested for the resolution of ALI's motion for reconsideration

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[26] *Id.* at 527-528. The *Sangguniang Bayan* Resolution was issued on February 9, 1996.

[27] CA *rollo*, pp. 66-83.

[28] *Id.* at 81.

and also mentioned therein the existence of a Notice of Coverage issued on the subject property. A copy of the Notice of Coverage was attached to her comment.[29]

On September 26, 2002, then DAR Secretary Hernani A. Braganza issued an Order[30] (Braganza Order) reversing the Morales Order. It was held that since the Deed of Partial Redemption and Deed of Absolute Sale were subject to several conditions, MBC's obligation to transfer ownership to CCFI did not arise unless the happening of said conditions. On the other hand, ALI's obligation to make full payment of the purchase price to CCFI was also subject to specified conditions, foremost of which is the issuance by the DAR of an order of exemption or conversion. Hence, there was no transfer of ownership when the Deed of Absolute Sale was executed on December 29, 1995.

The motion for reconsideration filed by Atty. Henry So in behalf of the respondents was denied by DAR Secretary Roberto M. Pagdanganan on August 13, 2003.[31] It was held that Atty. So had no more *locus standi* to represent the tenant-farmers as he only represents the interest of Mr. Lamberto Javier who had entered into a compromise agreement with ALI.

Aggrieved, respondents elevated the case to the OP. In their Appeal Memorandum, they stressed that a Notice of Coverage and Notice of Acquisition have already been issued over the subject property as early as 1989. It was reiterated that there was misrepresentation and concealment on the part of CCFI and ALI when they did not register the sale to escape the coverage of the subject land under the CARL pertaining to ownership of lands exceeding the limits therein imposed. Attached to the appeal memorandum is a copy of the Certification dated July 23, 2003 issued by Charito B. Lansang, Board Secretary of the HLURB stating that as per their records on file, the

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[29] *See* DAR records, folder #2 of 3, pp. 1357-1359.

[30] CA *rollo*, pp. 84-94.

[31] *Rollo*, pp. 158-164.

Municipality of Silang has no approved town plan/zoning ordinance/comprehensive land use plan.[32]

On January 28, 2004, the OP rendered a Decision[33] dismissing the appeal. It noted that the alleged lack of approved land classification in Silang was not among those issues raised before the DAR Secretary, as the same was not included in the recitation of issues in the August 13, 2003 Order denying the motion for reconsideration of the Braganza Order. On the issue of concealment, the OP adopted the finding of Secretary Braganza that there was no transfer of ownership at the time the Deed of Absolute Sale was executed on December 29, 1995. It likewise found that no evidence was submitted to controvert the DAR's factual finding that the subject property had long been converted to non-agricultural uses since October 1997, upon approval of the application for conversion.

Finding the subject property to have been legally and validly converted into non-agricultural land, the OP declared:

> Moreover, in the absence of controverting evidence filed by the appellants to support otherwise, there is no reason to doubt the veracity of the findings of the Central Land Use Planning Policy & Implementation-1 (CLUPPI-1 and 2) and the Municipal Agrarian Reform Officer of Silang, Cavite in a joint ocular inspection conducted on the subject property finding the same as beyond 18% in slope and undeveloped, not irrigated and no irrigation … was noted in the area, which, in turn, were used as basis by the CLUPPI-1 Executive Committee to recommend that the subject property was not proper for Comprehensive Agrarian Reform Program (CARP) coverage.
>
> Under DAR Memo Circular No. 11-79, land use conversion is allowed when the conversion to non-agricultural purposes is by reason of the change in the predominant land use brought about by urban development or zoning regulations which render the landholdings more economically suitable to non-agricultural uses. Moreso, in the instant case, where **the physical condition of the subject land and its surroundings qualify the same to be exempted from the coverage of the CARP.**

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[32] CA *rollo*, pp. 41-48, 57 and 96.

[33] *Supra* note 3.

It is a known fact that the close proximity of the province of Cavite to Metro Manila is the cause of the present economic boom it is presently enjoying. Foreign investors had been attracted to invest in the province as evidenced by the many factories and plants situated in the area. All of these businesses generate employment within the area, and consequently, more and more residents. Further, the congestion in Metro Manila, plus the cities' exorbitant real estate prices compel the many entities to relocate residences or offices in the suburbs. **In the light of all these modernization, industrialization, and urbanization happening in the environs of respondents, it becomes all the more justified to not limit lands for agricultural purposes only when the same can be more productive if put to other usage. As it is, we would only succeed in hindering progress if respondents' properties would be covered by CARP.**

It must be stressed, however, that regardless of the urbanization and industrialization taking place in Cavite, the same is only incidental and does not constitute sufficient legal basis for exempting the subject property from CARP coverage and approving its conversion to non-agricultural one.[34] (Emphasis supplied.)

Respondents appealed to the CA which by Decision[35] dated January 31, 2007 reversed the OP and ruled that said office committed a reversible error in upholding a conversion order that permits the circumvention of agrarian laws. After discussing the conflicting rulings of Secretaries Morales and Braganza, the appellate court made the following observations:

The only point argued at length in the Pagdanganan order was soundly rejected by the OP. Emphasis was made in the order on the lack of *locus standi* of the lawyer of the petitioners to file the motion for reconsideration against the Braganza order. But the OP said that in administrative cases, technicality must give way to the bigger purpose of providing relief to parties. The OP upheld the grounds in the Braganza order for maintaining the conversion order, but added one more, something original and novel.

At the concluding part of its discussion, it alluded to another memorandum circular of the DAR that land use conversion may be

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

[35] *Supra* note 1.

allowed when it is by reason of the changes in the predominant land use brought about by urban development. It then pointed to the fact that the close proximity of the province of Cavite to Metro Manila has opened it to the effects of modernization and urbanization. It warned that we would only succeed in hindering progress if under these conditions we would still insist on CARP coverage.

The argument is valid if the agricultural land is still not subjected to compulsory acquisition under CARP. But as we saw, **there has already been a *notice of coverage* and *notice of acquisition* issued for the property**. The OP was right in tempering its enthusiasm for modernization by recognizing that urbanization and industrialization may not be sufficient legal grounds for converting areas under land reform to other uses. Verily, no less than the cited **DAR Administrative Order No. 12 enjoins conversions of lands already under a notice of acquisition.** The objectives and ends of economic progress must always be sought after *[sic]* within the framework of the law, not against it, or in spite of it. This is what the rule of law is all about.[36] (Emphasis supplied.)

Petitioners anchored their petition on the following grounds:

A. RESPONDENTS ARE GUILTY OF FRAUD AND COME TO COURT WITH UNCLEAN HANDS. RESPONDENTS JESSIELYN CASTILLO, LUIS MAESA, ROLANDO BATIQUIN AND BUKLURAN MAGSASAKA NG TIBIG ARE NOT AMONG THOSE WHO FILED THE PETITION FOR THE REVOCATION OF THE SUBJECT CONVERSION ORDER.

B. WITH ALL DUE RESPECT, THE COURT OF APPEALS DECIDED A LEGAL QUESTION NOT IN ACCORDANCE WITH JURISPRUDENCE AND SANCTIONED A DEPARTURE FROM THE USUAL AND ACCEPTED COURSE OF JUDICIAL PROCEEDINGS WHEN IT ISSUED THE SUBJECT DECISION AND RESOLUTION CONSIDERING THAT:

   1) THE HONORABLE COURT OF APPEALS RESOLVED AN ISSUE RAISED FOR THE FIRST TIME ON APPEAL. THIS IS OFFENSIVE TO JUSTICE, DUE PROCESS, AND FAIR PLAY.

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

2) THIS HONORABLE COURT OF APPEALS INVOKED A DAR RULE THAT HAD BEEN SUPERSEDED EARLY ON.

3) THE FINDING OF THE HONORABLE COURT OF APPEALS THAT THE BRAGANZA ORDER "FAILED TO YIELD ANY DIRECT CHALLENGE" TO THE MORALES ORDER HAS NO FACTUAL BASIS.

4) THE DAR ITSELF FOUND THAT THE SUBJECT PROPERTY IS NOT PROPER TO BE ACQUIRED AND DISTRIBUTED UNDER THE COMPREHENSIVE AGRARIAN REFORM PROGRAM AND HAS LONG BEEN CONVERTED TO NON-AGRICULTURAL USES.

5) THE RULING OF THE OFFICE OF THE PRESIDENT THAT DAR MEMO CIRCULAR NO. 11-79 AUTHORIZED THE CONVERSION OF THE PROPERTY IS ENTITLED TO GREAT RESPECT.

6) THE PAGDANGANAN ORDER DIRECTED THE ISSUANCE OF A CERTIFICATE OF FINALITY OF THE BRAGANZA ORDER. HENCE, THE LATTER CAN NO LONGER BE REVIEWED OR MODIFIED.

7) THE EQUITIES MILITATE AGAINST PETITIONERS BECAUSE THEY ARE BARRED BY LACHES WHILE ALI HAS ALREADY DEVELOPED THE SUBJECT PROPERTIES IN KEEPING WITH ITS URBANIZED SETTING.[37]

The core issue to be addressed is whether there exists legal ground to cancel or revoke the conversion order previously issued on the subject land.

But first, the issue of prescription, which was raised by the petitioner in opposition to the petition for revocation filed by the respondents before the DAR Secretary on May 19, 2000, must be resolved.

The Petition for Cancellation/ Revocation of Conversion Order is not time-barred

[37] *Id.* at 20-21.

Petitioners contended that respondents' action had prescribed, citing Section 34 of DAR AO No. 1, Series of 1999 which states:

> Article VII
>
> Cancellation or Withdrawal of Conversion Orders
>
> SEC. 34. *Filing of Petition.* - A petition for cancellation or withdrawal of the conversion order may be filed at the instance of DAR or any aggrieved party before the approving authority within ninety (90) days from discovery of facts which would warrant such cancellation but **not more than one (1) year from issuance of the order:** *Provided*, That where the ground refers to any of those enumerated in **Sec. 35 (b), (e), and (f),** the petition may be filed within ninety (90) days from discovery of such facts **but not beyond the period for development stipulated in the order of conversion**: *Provided further,* That where the ground is lack of jurisdiction, the petition shall be filed with the Secretary and the period prescribed herein shall not apply.

Resolving the issue, Secretary Morales found the above inapplicable as AO No. 1 applies only to those applications filed subsequent to its effectivity, as can be gleaned from Article II, Section 3 thereof. Instead, the provisions of DAR AO No. 12, Series of 1994 were applied, which administrative order did not provide for any prescriptive period for the filing of such petition. Petitioners however, assail this interpretation as leading to absurd consequences because then conversion orders filed after the effectivity of DAR AO No. 1 would have to reckon with the one-year prescriptive period for filing a petition for revocation/cancellation whereas those petitions for revocation of conversion orders rendered *before* the effectivity of DAR AO No. 1 would be imprescriptible.[38]

Further, petitioners pointed out that Section 3(d), Article II of DAR AO No. 1 provides that the rules shall apply to those agricultural lands "reclassified to residential, commercial, industrial, or other non-agricultural uses on or after the effectivity of RA 6657 on June 15, 1988 pursuant to Section 20 of RA

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

7160 and other pertinent laws and regulations, and are to be converted to such uses." Since the property had already been reclassified for residential, commercial and industrial use as early as February 9, 1996 by virtue of *Sangguniang Bayan* Resolution No. ML-008 of the Municipality of Silang, it follows that respondents' petition for revocation is barred by Section 34 of DAR AO No. 1. Petitioners likewise stressed that respondents failed to seasonably avail of remedies under existing rules such as filing of motion for reconsideration and appeal to the OP or the CA.

The majority ruled that the petitioners may no longer question the conversion order which had attained finality considering that the action for its cancellation was filed almost three years after the said order had been in force and effect.

I disagree on the ground that this is a clear misapplication of the rules on conversion.

As provided in Section 34, Article VII of DAR AO No. 1, a petition for cancellation/withdrawal of conversion order may be filed within the period of development provided in the order of conversion if the ground refers to any of those mentioned in Section 35 (b), (e) and (f):

x x x x x x x x x

(b) **Noncompliance with the conditions of the conversion order;**

x x x x x x x x x

(e) Conversion to a use other than that authorized in the conversion order; and/or

(f) **Any other violation of relevant rules and regulations of DAR.** (Emphasis supplied.)

Moreover, the October 31, 1997 conversion order explicitly stated that–

The DAR reserves the right to cancel or withdraw this order for misrepresentation of facts integral to its issuance and for violation of the rules and regulation on land use conversion.

Petitioners are bound by the above express condition in the conversion order issued to it such that even if DAR AO No. 1 is applicable, the respondents raised as among the grounds for the revocation or cancellation of the conversion order the non-compliance with the condition of developing the area within five years, the illegal sale transaction made by CCFI to evade coverage under CARL, and CCFI's gross misrepresentation before the DAR that the land subject of conversion had already been reclassified to non-agricultural uses when in fact the Municipality of Silang does not have an approved town plan/ zoning ordinance as of October 24, 1997 and what was passed was a mere resolution and not an ordinance, and pressure exerted on the tenant-farmers left them with no alternative but to accept partial payments and sign waivers. Such alleged misrepresentation of facts and *violation of the rules and regulations on land conversion* were legally sufficient for the filing of a petition to revoke or cancel the October 31, 1997 order, and to exempt the same from the one-year prescriptive period laid down in DAR AO No. 1. The situation clearly falls under the first exception under Section 34 in relation to Section 35 (f) of AO No. 1 such that the petition may be filed within five years – the period of development stated in the order of conversion. Since the order of conversion was issued on October 31, 1997, respondents have until October 31, 2002 within which to seek its revocation. Respondents' act of filing the petition for revocation on May 19, 2000 was therefore well within the prescriptive period set by DAR AO No. 1.

The majority also cited this Court's ruling in *Villorente v. Aplaya Laiya Corp.*[39] However, the facts in said case are not on all fours with the present case. In that case, the petitioners farmer-beneficiaries who did not appeal the conversion order, proceeded to negotiate with the respondent regarding disturbance compensation, but after one year of protracted negotiations decided to file a motion for reconsideration of the conversion order, praying that it be set aside and should not be enforced due to non-observance of due process as they allegedly were

[39] G.R. No. 145013, March 31, 2005, 454 SCRA 493.

belatedly notified. When their motion for reconsideration was denied by the DAR, petitioners filed a petition for review before the CA which dismissed the same. We sustained the CA and ruled that estoppel had set in considering that the petition for review filed by the petitioners with the CA was merely an afterthought, when negotiations with the respondent for their claims for disturbance compensation failed. Having agreed to negotiate with the respondent for the disturbance compensation which they claimed was due them, conformably with the Conversion Order, we held that petitioners can no longer assail the conversion order which had become final and executory.

In the case at bar, the Court is confronted with a different factual milieu which involves not an appeal from a conversion order but a petition to cancel or revoke the same. A petition for cancellation or withdrawal of the conversion order is a remedy provided under DAR AO No. 01, Series of 1999 (Revised Rules and Regulations on the Conversion of Agricultural Lands to Non-Agricultural Uses), already in force when respondents filed their petition before the DAR.

The finality of the 1997 Conversion Order issued to CCFI notwithstanding, Sec. 34 of AO No. 01 provides a one-year period from the issuance of the order within which to file the petition. By way of an exception, a petition for cancellation may still be filed even beyond said period if the grounds for cancellation are those enumerated in Sec. 35 (b), (e) and (f), but not beyond the period for development stipulated in the order of conversion. Since the respondents raised as grounds for cancellation of the conversion order the 1995 non-compliance with the conditions of the conversion order, the 1995 sale between CCFI and ALI of the subject agricultural lands, and gross misrepresentation on the requisite reclassification pursuant to local *sanggunian* ordinance – grounds which fall under Sec. 35 (b) and (f) — the period for filing the petition was five years. Hence, the petition was timely filed in May 2000.

Revocation of Conversion Order made by Secretary Morales was proper as the lands were already placed under CARP coverage

The timeliness of respondents' petition for revocation having been established, the principal issue for resolution is to determine whether the October 31, 1997 order of conversion was validly revoked by Secretary Morales.

Executive Order No. 129-A, Series of 1987 vests on the DAR "exclusive authority to approve or disapprove [applications for] conversion of agricultural lands for residential, commercial, industrial, and other land uses as may be provided for by law." Pursuant to its mandate, DAR promulgated AO No. 12 on October 24, 1994, which was in force at the time CCFI filed the application for conversion and its approval by the DAR. Paragraph VI, subparagraph E of AO No. 12, Series of 1994 provides:

E. **No application for conversion shall be given due course if 1) the DAR has issued a Notice of Acquisition under the Compulsory Acquisition (CA) process**; 2) Voluntary Offer to Sell (VOS), or an application for stock distribution covering the subject property has been received by DAR; or 3) there is already a perfected agreement between the landowner and the beneficiaries under Voluntary Land Transfer (VLT). (Emphasis and underscoring supplied.)

Since a Notice of Acquisition was already issued over the subject property, DAR clearly erred in giving due course to and granting CCFI's application for conversion.

The majority decision, however, holds that respondents are barred from asserting that Notice of Acquisition had been issued over the subject landholding because such cannot be raised for the first time on appeal. Besides, the respondents were unable to substantiate their claim as no such document is found in the records of the DAR, OP and the CA.

The decision thus emphasized in bold print: "In fact, the records show that this issue was not raised in the original Petition for *Certiorari* in the second Motion for Reconsideration filed by the farmers before the DAR, and that no Notice of Acquisition was attached to their Appeal Memorandum to the OP" and adding that "[A]s a consequence, the OP, Secretary Pagdanganan, Secretary Braganza, and Secretary Morales did not have any opportunity to dwell on this issue in their Orders and Decision." Obviously, the majority deemed it of central importance so that the non-production of this document resulted in grave violation of petitioners' right to due process, which cannot be countenanced.

With due respect to the *ponente* and my esteemed colleagues, I cannot agree with this approach as it conveniently overlooks substantive rights on a mere invocation of a procedural norm.

The existence of Notice of Acquisition is an admitted fact; no proof necessary

Records of the DAR would show that the fact of issuance of notices of coverage and acquisition over the subject property was never in issue, notwithstanding the absence of reference to such issuances in the Morales Order. MBC and CCFI simply resorted to all legal maneuvers to delay their implementation.

That the lands have already been placed under CARL coverage even before MBC acquired the subject property is further evidently confirmed by the following documentary evidence: (1) the stipulation/condition in the Deed of Partial Redemption and Deed of Absolute Sale, both dated August 25, 1995, in which CCFI undertook to obtain DAR approval for CARP exemption or conversion to non-agricultural use; (2) CCFI's letter-request dated May 7, 1996 addressed to the DAR Regional Director for the *lifting of the Notice of Acquisition*; (3) BSP's request in 1995 made in behalf of MBC for exemption of the subject property from CARL coverage, and the letter-denial of DAR Secretary who directed the distribution of the land to

qualified farmer beneficiaries; (4) the Decision dated October 11, 1996 of Executive Secretary Ruben D. Torres on the appeal of BSP from the DAR Secretary's denial of its request for exemption, in which the DAR was directed to defer proceeding with the distribution of lands already covered by CARL and petitioner was granted the opportunity to present proof that the lands are qualified for exemption or conversion; and (5) MBC's request for DAR clearance in October 1997 to sell its landholdings placed under CARL coverage, which includes the subject property.

Indeed, records bear out that on May 7, 1996, counsel for CCFI wrote the DAR Regional Director to request the **lifting of the Notice of Acquisition**,[40] citing as reasons the alleged reclassification of the lands from agricultural to commercial/ industrial by the Municipal Council of Silang, DA certification that the property is eligible for conversion, non-irrigated character of the land, and absence of tenants except for some occupants who had executed waiver of right and endorsed the lifting of the notice of acquisition. It is to be noted that such request was made in compliance with the terms and conditions of the Deed of Partial Redemption dated December 29, 1995 executed between CCFI and MBC, as well as the Deed of Absolute Sale on even date in favor of ALI. Under par. II, (b)(3) of the Deed of Absolute Sale, CFI undertook to secure exemption or conversion from the DAR for the two parcels of land it sold to ALI, by February 15 and March 15, 1996.

Moreover, the request for the lifting of the Notice of Acquisition was made following the denial by Secretary Ernesto Garilao of MBC's request for a DAR order exempting the subject lands from the coverage of CARL, under letters dated February 14, 1995 and June 13, 1995.[41] While MBC appealed the said denial to the OP, CCFI, under the Deed of Absolute Sale with ALI, remained duty-bound to fulfill the condition precedent to the direct payment of down payment to MBC (equivalent to payment

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[40] DAR records (Vol. I), pp. 7-8.

[41] *Rollo,* pp. 326-331.

of down payment due to CCFI under the contract of sale), that is, to obtain an order of exemption or land conversion from DAR.

Notwithstanding the favorable ruling issued by Executive Secretary Ruben Torres who ordered the remand of the case to the DAR for further proceedings to determine whether the subject lands can qualify for exemption or conversion, and issued a cease and desist order against proceedings for compulsory acquisition being undertaken by the DAR, MBC still sought DAR clearance to sell all its foreclosed assets which have been placed under CARP coverage. **This confirms that the subject lands have already been subjected to compulsory acquisition under R.A. No. 6657.** Notably, Secretary Garilao in his Order dated 03 October 1997[42] clarified that despite the sale to be effected by MBC, which is allowed under Sec. 73-A of R.A. No. 6657, as amended by R.A. No. 7881, the subject lands remain subject to compulsory transfer pursuant to Sec. 71 of said law, and also directed that only those parcels not yet covered by CLOAs or EPs may be sold or conveyed by MBC. However, MBC and CCFI failed to disclose that the subject lands have already been **sold by CCFI** to ALI as early as December 1995. Secretary Garilao acknowledged the fact that a cease and desist order was issued by the OP but nevertheless maintained that the landholdings remained subject to the provisions on acquisition under CARL although the acquisition of petitioners' properties is thereby *suspended.* The clearance to sell requested by MBC was thus granted simply because the sale and/or transfer of agricultural land in case such sale, transfer or conveyance is made necessary as a result of a bank's foreclosure of the mortgaged land, is permitted under Sec. 73-A, R.A. No. 6657, as amended by R.A. No. 7881. Such clearance was granted to enable MBC, the foreclosing mortgagee bank, to sell the subject lands as a consequence of foreclosure under the law, *but not for the purpose of its disposition by CCFI.* Conveyance or sale **by the original landowner** is subject to **restrictions or limitations** under the CARL.

[42] DAR records (Vol. 3).

Considering the attendant circumstances, CCFI's **May 1996 request for the lifting of Notice of Acquisition** constitutes an admission against interest of the fact that such notice have been issued following the earlier issuance of Notice of Coverage over its landholdings. Admissions against interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party, and are admissible whether or not the declarant is available as a witness.[43] An admission against interest is the best evidence that affords the greatest certainty of the facts in dispute, based on the presumption that no man would declare anything against himself unless such declaration is true.[44]

As the successor-in-interest of CCFI, ALI is bound by the admission under the aforesaid request to lift Notice of Acquisition made by CCFI and may not be allowed in this case to dispute its existence and issuance. Besides, the fact that the DAR was already in the process of distributing the lands under the Compulsory Acquisition *at the time of the sale and application for conversion,* was never disputed by the petitioners until the respondents mentioned it in their appeal memorandum filed with the OP.

While it is true that an issue which was neither alleged in the complaint nor raised during the trial cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice, and due process, the same is not without exception.[45] The CA under Section 3, Rule 43 of the

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[43] *Lazaro v. Agustin,* G.R. No. 152364, April 15, 2010, 618 SCRA 298, 308, citing *Unchuan v. Lozada,* G.R. No. 172671. April 16, 2009, 585 SCRA 421, 435.

[44] *Taghoy v. Tigol, Jr.,* G.R. No. 159665, August 3, 2010, 626 SCRA 341, 350, citing *Heirs of Miguel Franco v. Court of Appeals,* 463 Phil. 417, 425 (2003); *Yuliongsiu v. PNB,* 130 Phil. 575, 580 (1968); *Republic v. Bautista,* G.R. No. 169801, September 11, 2007, 532 SCRA 598, 609; and *Bon v. People,* 464 Phil. 125, 138 (2004).

[45] *Milestone Farm, Inc. v. Office of the President,* G.R. No. 182332, February 23, 2011, citing *Dosch v. NLRC, et al.*, 208 Phil. 259, 272 (1983) and *DOH v. C.V. Canchela & Associates, Architects (CVCAA),* 511 Phil. 654, 670 (2005).

1997 Rules of Civil Procedure, as amended, can, in the interest of justice, entertain and resolve factual issues.[46] In concluding that the conversion order was improperly granted because there have been issued a notice of coverage and notice of acquisition covering the subject landholdings, the CA is deemed to have duly considered all relevant evidence on record inasmuch as it painstakingly analyzed the orders, not only of the OP but also those rendered by the three DAR Secretaries.

It is of course well-settled that points of law, theories, issues and arguments not brought to the attention of the lower court need not be — and ordinarily will not be — considered by a reviewing court, as they cannot be raised for the first time at that late stage. There are, however, exceptions to the general rule. Though not raised below, the following issues may be considered by the reviewing court: lack of jurisdiction over the subject matter, as this issue may be raised at any stage; plain error; jurisprudential developments affecting the issues; or the raising of a matter of public policy.[47]

In this case, the CA found as crucial the previous issuance of a notice of coverage and notice of acquisition to the resolution of the issue of whether or not the OP erred in sustaining the Braganza and Pagdanganan orders which reversed the Morales Order revoking the conversion order granted to CCFI. Ruling in the affirmative, the appellate court declared that such reversal was grave error considering that under the provisions of DAR AO No. 12, Series of 1994, such application for conversion should not have been entertained in the first place. Assuming *arguendo* this was raised only before the OP, the CA's finding

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[46] Section 3 of Rule 43 of the 1997 Rules of Civil Procedure, as amended, provides:

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 herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.

[47] *Villaranda v. Villaranda*, G.R. No. 153447, February 23, 2004, 423 SCRA 571, 589-580.

and conclusions cannot be assailed as reversible error or grave abuse.

Petitioners committed serious violations of DAR rules and regulations

Even assuming that respondents were unable to produce a copy of the Notice of Acquisition, such did not negate or cure petitioners' serious violations of DAR rules and regulations warranting the cancellation of the conversion order, pursuant to DAR AO No. 01, Series of 1999.

The ground cited in the Morales Order was the failure of CCFI to register the sale to ALI, which was made only four years later (1999) after its application for conversion was approved. This was deliberately done in view of the retention limits set by law on ownership of agricultural lands after the effectivity of CARL. Secretary Morales exhaustively discussed this finding which justified the revocation of the conversion order, thus:

> The registration of the absolute deed of sale between respondents involving the subject property was made on September 29, 1999, almost two (2) years after the conversion of the land from agricultural to residential, commercial and industrial uses was approved on October 31, 1997.
>
> The sale or transaction between Capitol and ALI involving the subject parcel, which at that time of sale is still agricultural, is subject to the prohibition on any sale, disposition, lease, management contract or transfer of possession of private lands *executed by the original landowner* in violation of the act, and the requirement imposed upon the Registers of Deeds to inform the DAR within thirty days of any transaction involving agricultural lands *in excess of five hectares,* as provided for under paragraph 4, Section 6 of RA 6657. These same prohibitions and requirements are contained under DAR AO 1, Series of 1989, the Rules and Procedures Governing Land Transactions, then in force at the time of the sale.
>
> ... No reporting of this sale of agricultural land which is beyond five (5) hectares to the DAR can be made by the Register of Deeds,

and the transferee ALI, can not be required to furnish the Register of Deeds of an affidavit attesting that their total landholding as a result of the said acquisition do not exceed five (5) hectares, *since the sale was not brought to the attention of the Register of Deeds until lately.* The Register of Deeds who is tasked to perform such requirements cannot do so until the sale was brought to the attention of the Register of Deeds, and to the public at large, only from the day of the registration of the deed.

At the time of the registration of the deed on September 29, 1999, the subject land had ceased to be an agricultural land since it has already been converted to other uses by virtue of an approved conversion application. As such, the requirement of reporting by the Register of Deed[s] of any transaction involving agricultural lands beyond five (5) hectares, was not made as it is no longer necessary.

The conclusion that can be drawn from the chronological events answers the issue at hand in the affirmative. *There was clear intention on the part of respondents to evade the coverage of the land under CARP. Not only that, they have violated and failed to comply with the requirements on transactions on agricultural lands under RA 6657 and pertinent DAR administrative order.* **These will warrant the revocation/withdrawal of the order as provided under item** XV(c) of DAR AO 12, Series of 1994.

At the time of the sale, there was a requirement that once a transaction involving an agricultural land in excess of five (5) hectares is known to the Register of Deeds, he is to report the same to the Department within thirty (30) days. The transferee of the said land is likewise required to submit an affidavit to the Register of Deeds … and the BARC Chairman, attesting that he does not own more than five (5) hectares of agricultural land as a result of the said transactions. These requirements find justification in Section 6 of RA 6657 on retention limits. "Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm…but *in no case shall retention by landowner exceed five (5) hectares*."

The sale made in 1995 was not registered within a reasonable time but nearly four (4) years after the sale in 1999, at the time the land is no longer agricultural. **This is in order to avoid compliance with the abovementioned requirements on sale of agricultural land.** Had they registered the sale at the time the land was still agricultural in

nature and not yet reclassified, the transaction, when reported can be struck down as null and void. Besides, at that time, the transferee, ALI, can not attest that its landholding does not exceed the retention limit, as a result of the transaction because they hold more.[48] (Emphasis and italics supplied.)

The above findings and ruling of Secretary Morales were upheld by the CA which noted that what renders the conversion order revocable was the deliberate attempt of both CCFI and ALI to conceal their sale transaction in order to circumvent the agrarian laws. The Braganza ruling that the conveyance to ALI did not transfer ownership since it was a conditional sale and hence not proscribed, overlooks the fact that a Notice of Acquisition had already been issued. Allowing the landowner to use this convenient ploy to evade CARP coverage ultimately defeats the purpose of the agrarian reform program of achieving social justice through equitable distribution of large landholdings to tenants or farmers tilling the same.

As mentioned earlier, DAR clearance was given authorizing MBC to sell the foreclosed mortgaged land. The clearance to sell does not cover a sale by landowner *CCFI.* Any sale by CCFI at the time the land was still agricultural would be an illegal transfer under Sec. 73 of R.A. No. 6657 for which DAR clearance could not have been issued. Section 6 of the same Act allows only the retention limit of the landowner up to five (5) hectares. This means that the landowner is only allowed to dispose of his property within his retention limit and the excess of five (5) hectares shall be covered by CARP for distribution to qualified farmers and beneficiaries.[49] CCFI then could not have obtained the requisite DAR clearance for it to sell **more than 200 hectares** of land to ALI. Under DAR rules then already in force, in all transactions involving the transfer or sale of agricultural land to another, the issuance of a DAR clearance is an essential requisite in order that it may be considered a valid transfer. This is in view of DAR's policy to protect the

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[48] *Rollo,* pp. 114-116.

[49] DAR Opinion No. 25, S. 2006, August 29, 2006.

rights of tenants and other farmworkers who may be displaced therein.[50]

Petitioners failed to comply with the requirements for a valid reclassification

Petitioners submitted Resolution No. ML-008, Series of 1996 adopted by the *Sangguniang Bayan* of Silang in support of their application for conversion. But as found by Secretary Morales, said resolution merely approved CCFI's request for reclassification.

Section 20 of R.A. No. 7160 states that:

SECTION 20. ***Reclassification of Lands***. – (a) A city or municipality may, **through an ordinance passed by the *sanggunian* after conducting public hearings for the purpose**, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture or (2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the *sanggunian* concerned: *Provided*, That such reclassification shall be limited to the following percentage of the total agricultural land area at the time of the passage of the ordinance:

x x x x x x x x x

(e) Nothing in this Section shall be construed as repealing, amending, or modifying in any manner the provisions of R.A. No. 6657.

The document submitted by petitioners being a mere resolution and not an ordinance, it cannot support their application for conversion. Even assuming *arguendo* that the *Sangguniang Bayan* of Silang passed an ordinance to the effect, still such reclassification would be legally infirm. Memorandum

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[50] DAR Opinion, No. 15, s. 2006, March 21, 2006. DAR AO No. 01, Series of 1989 provides for transactions exempted from prior clearance requirement.

Circular No. 54 "Prescribing the Guidelines Governing Section 20 of RA 7160 Otherwise Known as the Local Government Code of 1991 Authorizing Cities and Municipalities to Reclassify Agricultural Lands Into Non-Agricultural Uses" issued by President Fidel V. Ramos on June 8, 1993 specified the scope and limitations on the power of the cities and municipalities to reclassify agricultural lands into other uses.

SECTION 1. Scope and Limitations. – (a) Cities and municipalities with comprehensive land use plans reviewed and approved in accordance with EO 72 (1993), may authorize the reclassification of agricultural lands into non-agricultural uses and provide for the manner of their utilization or disposition, subject to the limitations and other conditions prescribed in this Order.

x x x x x x x x x

(d) In addition, **the following types of agricultural lands shall not be covered by the said reclassification**:

(1) Agricultural lands distributed to agrarian reform beneficiaries subject to Section 65 of RA 6657;

(2) **Agricultural lands already issued a notice of coverage or voluntarily offered for coverage under CARP.**

(3) Agricultural lands identified under AO 20, s. of 1992, as non-negotiable for conversion as follows:

x x x (Emphasis supplied.)

The power of the LGUs to reclassify agricultural lands is not absolute and the reclassification of agricultural lands by LGUs shall be subject to the requirements of land use conversion procedure.[51] The exclusion of agricultural lands already covered by CARP from the operation of Section 20 of R.A. No. 7160 was reiterated in the statement of policies and governing principles of DAR AO No. 12, Series of 1994 which expressly directs the DAR not to give due course to applications for conversion of lands already issued a Notice of Acquisition. Clearly, the

[51] See *Chamber of Real Estate and Builders Associations, Inc. (CREBA) v. Secretary of Agrarian Reform,* G.R. No. 183409, June 18, 2010, 621 SCRA 295, 323-324.

cancellation by Secretary Morales of the 1997 Order of conversion issued by Secretary Garilao, for violation of existing DAR rules and regulations, was proper and justified.

It is also to be noted that in the 1997 Order, Secretary Garilao approved the conversion *and* exemption from CARP coverage sought by CCFI despite the lack of documentary requirements enumerated by the CLUPPI-1. While the CLUPPI-1 recommended the issuance of an order stating that the land is exempt, it nonetheless explicitly declared that such approval for exemption is subject to the submission of said documents. These documents are:

1. Provincial Land Use Plan showing that the area is part of those reclassified into residential/commercial/industrial use;
2. Statement of justification of Economic/Social benefits of the proposed subdivision project;
3. Development Plan including the Work and Financial Plan;
4. Proof of Financial and Organizational capability of the proponent, and
5. Proof of disturbance compensation for the remaining unpaid farmer beneficiaries.[52]

Petitioners nonetheless contend that the recommendation of CLUPPI-1 Executive Committee to exempt the subject property from CARP coverage in the light of the finding of the joint ocular inspection with the MARO of Silang that "[t]he topography of the landholding is hilly and has an average slope of more than 18%, undeveloped x x x" and the "dominant use of the surrounding area is industrial/forest growth", was never disputed. They point out that even the Morales Order noted that the property had long been converted into non-agricultural uses when the conversion order was issued on October 31, 1997.

At the time of CCFI's filing of application for conversion, the property was agricultural land as defined under DAR rules

[52] CA *rollo*, p. 39.

and regulations. In its Revised Rules and Regulations for Conversion of Agricultural Lands to Non-Agricultural Uses (DAR AO No. 1, Series of 1990, issued on March 22, 1990), DAR itself defined "agricultural land" thus –

> x x x *Agricultural land refers* to those devoted to agricultural activity as defined in RA 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessor agencies, and *not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding competent authorities prior to 15 June 1988 for residential*, commercial or industrial use. (Italics supplied.)

Respondents attached to their petition for revocation a certification issued by Board Secretary Charito B. Lansang that per HLURB records, the Municipality of Silang, Cavite does not have a town plan/zoning ordinance/comprehensive land use plan approved by the Board as of July 23, 2003. The OP clearly erred in stating that it was an issue raised for the first time on appeal. In any case, DAR AO No. 12 itself provides that:

> 4. If the city/municipality does not have a comprehensive development plan and zoning ordinance duly approved by HLURB/SP but the dominant use of the area surrounding the land subject of the application for conversion is no longer agricultural, or if the proposed use is similar to, or compatible with the dominant use of the surrounding area as determined by the DAR, conversion **may be possible**.[53] (Emphasis supplied.)

The above exception notwithstanding, DAR AO No. 12 is categorical in declaring the policy that no application for conversion *shall be given due course* if the DAR has issued a Notice of Acquisition under the Compulsory Acquisition process.[54]

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[53] DAR AO No. 12, Series of 1994, VI [B](4).

[54] *Id.*, VI[E].

The OP's "policy pronouncement" is not an imprimatur to disregard existing DAR rules and defeat the rights of agricultural tenants and farm workers

The majority decision stresses that the conversion and/or reclassification of the subject lands has become an operative fact, citing the findings of NIA, PCA, DENR and CLUPPI. It was also noted that respondent farmers themselves "do not deny that at the time of the filing of the Petition for Revocation, the lands in question were no longer agricultural."

I maintain my disagreement that the grant of conversion order was legally infirm.

The CLUPPI indeed recommended the approval of the application for land conversion, its stated basis being the finding of the ocular inspection team that the property is "beyond 18º in slope, idle and undeveloped" and is "also considered eligible for exemption *subject to the submission of the required documents.*" However, exemption alone even if granted will not suffice if the intention of the landowner is to modify the actual use of the land. Compliance with the rules on land conversion is therefore still necessary to obtain a DAR conversion order.[55]

The majority further held that the policy declaration in DAR AO No. 12, Series of 1994 was a mere guiding principle, which should not be interpreted as an absolute proscription on conversion, citing the same administrative order which likewise allowed conversion if the use has changed due to urbanization or the land has ceased to be economically feasible. It specifically cites par. B(3), Part VI of DAR AO 12-94 which allows conversion when the land will have greater economic value for residential, commercial or industrial purposes "as certified by the Local Government Unit." According to the majority, this signifies that the thrust of the community and the local

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[55] See DAR Opinion No. 16, s. 2001, September 10, 2001.

government is the conversion of lands, and hence the two resolutions issued by the *Sangguniang Bayan* of Silang and the *Sangguniang Panlalawigan* of Cavite, are sufficient compliance with the requirement of the conversion order.

I disagree with this proposition because it overlooks the injustice wrought upon the agricultural tenants and farm workers who have been deprived of the benefits of the CARP designed to uplift their condition.

The OP remanded the case to the DAR for further proceedings in order to give the petitioners opportunity to prove that their landholdings are qualified for exemption and/or conversion, as a matter of due process highlighted by the public interest involved (*i.e.*, rehabilitation of financially distressed MBC). While the said office indeed underscored the need to "balance the interest between the petitioner bank (under receivership by the BSP), its creditors [including the BSP to which MBC was indebted in the total amount of ₱8,771,893,000 representing 85% of its total indebtedness] and the general public on one hand, and the faithful implementation of agrarian reform program on the other, with the view of harmonizing them and ensuring that the objectives of the CARP are met and satisfied," *this should not signal disregard of existing DAR rules and regulations nor overlook patent violations thereof committed by the petitioners.* As far as the DAR is concerned, the correct perspective has been expressed in its declaration that "[S]ince RA. No. 6657 is a social welfare legislation, the rules on exemptions, exclusions and/or conversions must be *interpreted restrictively* and *any doubt* as to the applicability of the law should be resolved in favor of inclusion."[56]

In reality, the buy-out arrangement did not involve such "public interests" balancing, but one which clearly favored the landowner CCFI. The sale by CCFI, in contravention of DAR rules and regulations, enabled it to evade CARP coverage while paying off its huge debts to the already financially distressed MBC,

[56] See DAR Opinion No. 18, s. 2003, September 17, 2003.

at the expense of its tenants and farm workers who would have rightfully benefitted from the distribution of the vast agricultural landholding *had the compulsory acquisition process not been scuttled by the combined efforts of MBC, CCFI and ALI since the lands were placed under CARP coverage in 1989.*

In these situations where the mortgaged agricultural lands are foreclosed, the defaulting landowner alone should bear the loss in case of deficiency because the foreclosure buyer is merely substituted to the landowner entitled only to just compensation pursuant to R.A. No. 6657 and its implementing rules.[57] While Sec. 73-A of the law was amended by R.A. No. 7881 to permit the sale of mortgaged agricultural lands made necessary as a result of a bank's foreclosure, *it did not exempt the land sold from the operation of CARP.*

DAR Opinion No. 09, Series of 2008[58] states this unchanged policy with respect to mortgaged agricultural lands foreclosed by a bank, even if the latter is under receivership/liquidation:

FORECLOSURE BY PRIVATE BANK PLACED UNDER RECEIVERSHIP/LIQUIDATION STILL UNDER ACQUISITION AND DISTRIBUTION TO QUALIFIED BENEFICIARIES

. Private bank's foreclosed assets, regardless of the area, are subject to existing laws on their compulsory transfer under the General Banking Act as a consequence of foreclosure and acquisition under Section 16 of R.A. No. 6657. As long as the subject property is agricultural, the same shall still be subjected to acquisition and distribution to qualified beneficiaries pursuant to the provisions of the CARL. Private bank may sell to third parties their foreclosed asset, as a consequence of foreclosure, but still subject to acquisition under CARP.

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[57] See DAR Administrative Order No. 1, Series of 2000 entitled "REVISED RULES AND REGULATIONS ON THE ACQUISITION OF AGRICULTURAL LANDS SUBJECT OF MORTGAGE OR FORECLOSURE."

[58] Dated April 14, 2008.

. Even if the subject foreclosed property was placed under receivership or liquidation by the BSP, the same shall still be subjected to acquisition under CARL. In case said foreclosed property was sold or will be sold as a consequence of liquidation or receivership by the BSP, the same will still be subjected to acquisition and eventual distribution to agrarian reform beneficiaries pursuant to CARL.

In this case, MBC sought authority from this Court to sell its acquired assets in G.R. No. 85960 in view of the injunction issued enjoining the BSP from liquidating MBC pending the outcome of Civil Case No. 87-40659 pending in the RTC of Manila, Branch 23. The Court authorized the intended sale "under the best terms and conditions" to enable the MBC to settle its obligations to BSP. Records fail to show that MBC disclosed to this Court that among those assets requested to be sold are agricultural lands already covered by CARP.

Section 2 of R.A. No. 6657 declares in no uncertain terms that the welfare of the landless farmers and farmworkers will receive the highest consideration to promote *social justice* and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-sized farms as the basis of Philippine agriculture. It is this fundamental goal that breathes spirit into the strict regulation of conversions and exemptions at the instance of landowners. **Landowners such as CCFI may not stall the acquisition proceedings started as early as 1989, dragging it for several years – in this case ten years – and later claim that the land had already ceased to be economically feasible for agricultural purposes.** Precisely, the CARL had envisioned the advent of urbanization that would affect lands awarded to the farmers. However, it is altogether a different matter when the CARP was never even given the chance to be implemented as a result of the landowner's legal maneuvers until conditions of the land had so changed with the lapse of time. Of late, the unabated land-use conversion from agricultural to industrial, commercial, residential or tourist purposes has been described as

"systematically reversing land reform in a way that was never foreseen by the framers of CARL."[59]

That CARL must first be implemented as a social justice measure prior to these perceived developments in the locality is evident from a reading of Section 65, thus:

> SEC. 65. *Conversion of lands.* – **After the lapse of five (5) years from its award,** when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR upon application of the beneficiary or the landowner, with due notice to the affected parties and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: *Provided,* That the beneficiary shall have fully paid his obligation. (Emphasis supplied.)

It is my humble view that in resolving this controversy, the interest of the landless farmers is paramount.

Referral to the Court En Banc

Given the facts and issues set forth, I reiterate my position that this case is proper for resolution by the Court *En Banc* pursuant to Section 3 (k), Rule 2 of the Internal Rules of the Supreme Court which states:

> SEC. 3. *Court en banc matters and cases.* — The Court *en banc* shall act on the following matters and cases:
>
> x x x x x x x x x
>
> (k) Division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community;
>
> x x x x x x x x x

The huge financial impact of the Court's ruling in this case is clearly apparent in the figures involved in current

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[59] Antonio Ma. Nieva, "*Agrarian 'Reform,' Ramos Style*" based on a series of articles published by the Philippine Daily Inquirer, source: *http://www.multinationalmonitor.org/hyper/issues/1994/01/nieva.html.*

transactions within the Nuvali estate, reportedly at ₱11,000 per square meter, or more than **₱24 Billion plus** for the entire 221.3048 hectares. Moreover, there is also no dispute that with the billion-peso loan owed and apparently not yet fully settled by MBC with the BSP, the substantial amounts already spent for the initial payment of disturbance compensation to tenants-beneficiaries, improvements began on the land and mounting litigation costs incurred by the parties for more than ten years already, the final disposition of this case would have tremendous effect on the banking and real estate sectors, as well as significant bearing on the economic well-being of the affected tenants-beneficiaries.

I also submit to the discretion of my colleagues the possible transfer of this case to the Court *en banc*, in accordance with sub-section (l) of the same Rule which reads:

> (l) subject to Section 11(b) of this rule, other division cases that, in the opinion of at least three Members of this Division who are voting and present, are appropriate for transfer to the Court *en banc*;

I therefore vote to **DENY** the present petition for review on *certiorari* for lack of merit and **AFFIRM** the Decision dated January 31, 2007 and Resolution dated May 25, 2007 of the Court of Appeals in CA-G.R. SP No. 86321.

Should there be further proceedings in this case, I also vote that the same be referred to the *Banc* for appropriate action.

FIRST DIVISION

[G.R. No. 181126. June 15, 2011]

LEONARDO S. UMALE, [deceased] represented by CLARISSA VICTORIA, JOHN LEO, GEORGE LEONARD, KRISTINE, MARGUERITA ISABEL, and MICHELLE ANGELIQUE, ALL SURNAMED UMALE, *petitioners, vs.* **ASB REALTY CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PARTIES; REAL PARTY-IN-INTEREST, DEFINED. — There is no denying that ASB Realty, as the owner of the leased premises, is the real party-in-interest in the unlawful detainer suit. Real party-in-interest is defined as "the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit."

2. COMMERCIAL LAW; CORPORATION CODE; CORPORATION, DEFINED. — Corporations, such as ASB Realty, are juridical entities that exist by operation of law. As a creature of law, the powers and attributes of a corporation are those set out, expressly or impliedly, in the law. Among the general powers granted by law to a corporation is the power to sue in its own name. This power is granted to a duly-organized corporation, unless *specifically* revoked by another law.

3. ID.; ID.; 2009 RULES OF PROCEDURE ON CORPORATE REHABILITATION (A.M. NO. 00-8-10-SC); CORPORATE REHABILITATION, DEFINED; BY IMPLICATION, THE CONCEPT OF REHABILITATION DOES NOT RESTRICT THE DEBTOR CORPORATION'S RIGHT TO SUE SAVE FOR THE CAVEAT THAT ALL ITS ACTIONS ARE MONITORED CLOSELY BY THE RECEIVER. — Corporate rehabilitation is defined as "the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan more if the corporation continues as a

going concern than if it is immediately liquidated." It was first introduced in the Philippine legal system through PD 902-A, as amended. The intention of the law is "to effect a feasible and viable rehabilitation by *preserving* a floundering business as a *going concern,* because the assets of a business are often more valuable *when so maintained* than they would be when liquidated." This concept of preserving the corporation's business as a going concern while it is undergoing rehabilitation is called debtor-in-possession or debtor-in-place. This means that the debtor corporation (the corporation undergoing rehabilitation), through its Board of Directors and corporate officers, remains ***in control of its business and properties,*** subject only to the monitoring of the appointed rehabilitation receiver. The concept of debtor-in-possession, is carried out more particularly in the SEC Rules, the rule that is relevant to the instant case. It states therein that the interim rehabilitation receiver of the debtor corporation "does ***not*** take over the control and management of the debtor corporation." Likewise, the rehabilitation receiver that will replace the interim receiver is tasked only to monitor the successful implementation of the rehabilitation plan. There is nothing in the concept of corporate rehabilitation that would *ipso facto* deprive the Board of Directors and corporate officers of a debtor corporation, such as ASB Realty, of control such that it can no longer enforce its right to recover its property from an errant lessee. To be sure, corporate rehabilitation imposes several restrictions on the debtor corporation. The rules enumerate the prohibited corporate actions and transactions (most of which involve some kind of disposition or encumbrance of the corporation's assets) during the pendency of the rehabilitation proceedings but none of which touch on the debtor corporation's right to sue. The implication therefore is that our concept of rehabilitation does not restrict this particular power, save for the caveat that all its actions are monitored closely by the receiver, who can seek an annulment of any prohibited or anomalous transaction or agreement entered into by the officers of the debtor corporation.

4. ID.; PD 902-A (REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWERS, AS AMENDED); RULES OF PROCEDURE ON CORPORATE RECOVERY; REHABILITATION RECEIVER; POWERS DISTINGUISHED FROM THE POWERS OF RECEIVER UNDER

RULE 59 OF THE RULES OF COURT; APPLICATION IN CASE AT BAR. — Indeed, PD 902-A, as amended, provides that the receiver shall have the powers enumerated under Rule 59 of the Rules of Court. But Rule 59 is a rule of general application. It applies to different kinds of receivers – rehabilitation receivers, receivers of entities under management, ordinary receivers, receivers in liquidation – and for different kinds of situations. While the SEC has the discretion to authorize the rehabilitation receiver, as the case may warrant, to exercise the powers in Rule 59, the SEC's exercise of such discretion cannot simply be assumed. There is no allegation whatsoever in this case that the SEC gave ASB Realty's rehabilitation receiver the exclusive right to sue. x x x While the Court rules that ASB Realty and its corporate officers retain their power to sue to recover its property and the back rentals from Umale, the necessity of keeping the receiver apprised of the proceedings and its results is not lost upon this Court. Tasked to closely monitor the assets of ASB Realty, the rehabilitation receiver has to be notified of the developments in the case, so that these assets would be managed in accordance with the approved rehabilitation plan.

5. CIVIL LAW; LEASE; PERIOD OF LEASE; WHEN EXTENSION THEREOF UNDER ARTICLE 1687 OF THE CIVIL CODE MAY NOT BE AVAILED OF BY THE LESSEE; PRESENT IN CASE AT BAR. — In arguing for an extension of lease under Article 1687, petitioners lost sight of the restriction provided in Article 1675 of the Civil Code. It states that a lessee that commits any of the grounds for ejectment cited in Article 1673, including non-payment of lease rentals and devoting the leased premises to uses other than those stipulated, cannot avail of the periods established in Article 1687. Moreover, the extension in Article 1687 is granted only as a matter of equity. The law simply recognizes that there are instances when it would be unfair to abruptly end the lease contract causing the eviction of the lessee. It is only for these clearly unjust situations that Article 1687 grants the court the discretion to extend the lease. The particular circumstances of the instant case however, do not inspire granting equitable relief. Petitioners have not paid, much less offered to pay, the rent for 14 months and even had the temerity to disregard the pay-and-vacate notice served on them. An extension will only benefit the wrongdoer and punish the long-suffering property owner.

APPEARANCES OF COUNSEL

Rivera Santos & Maranan for petitioners.
Javier Jose Mendoza and Associates for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Being placed under corporate rehabilitation and having a receiver appointed to carry out the rehabilitation plan do not *ipso facto* deprive a corporation and its corporate officers of the power to recover its unlawfully detained property.

Petitioners filed this Petition for Review on *Certiorari*[1] assailing the October 15, 2007 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 91096, as well as its January 2, 2008 Resolution.[3] The dispositive portion of the assailed Decision reads:

> WHEREFORE, the Decision dated March 28, 2005 of the trial court is affirmed *in toto.*
>
> SO ORDERED.[4]

Factual Antecedents

This case involves a parcel of land identified as Lot 7, Block 5, Amethyst Street, Ortigas Center, Pasig City which was originally owned by Amethyst Pearl Corporation (Amethyst Pearl), a company that is, in turn, wholly-owned by respondent ASB Realty Corporation (ASB Realty).

In 1996, Amethyst Pearl executed a Deed of Assignment in Liquidation of the subject premises in favor of ASB Realty in

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[1] *Rollo*, pp. 32-58.

[2] *Id.* at 60-75; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Edgardo P. Cruz and Normandie B. Pizarro.

[3] *Id.* at 77.

[4] CA Decision, p. 16; *id.* at 75.

consideration of the full redemption of Amethyst Pearl's outstanding capital stock from ASB Realty.[5] Thus, ASB Realty became the owner of the subject premises and obtained in its name Transfer Certificate of Title No. PT-105797,[6] which was registered in 1997 with the Registry of Deeds of Pasig City.

Sometime in 2003, ASB Realty commenced an action in the Metropolitan Trial Court (MTC) of Pasig City for unlawful detainer[7] of the subject premises against petitioner Leonardo S. Umale (Umale). ASB Realty alleged that it entered into a lease contract[8] with Umale for the period June 1, 1999-May 31, 2000. Their agreement was for Umale to conduct a pay-parking business on the property and pay a monthly rent of ₱60,720.00 to ASB Realty.

Upon the contract's expiration on May 31, 2000, Umale continued occupying the premises and paying rentals albeit at an increased monthly rent of ₱100,000.00. The last rental payment made by Umale to ASB Realty was for the June 2001 to May 2002 period, as evidenced by the Official Receipt No. 56511[9] dated November 19, 2001.

On June 23, 2003, ASB Realty served on Umale a Notice of Termination of Lease and Demand to Vacate and Pay.[10] ASB Realty stated that it was terminating the lease effective midnight of June 30, 2003; that Umale should vacate the premises, and pay to ASB Realty the rental arrears amounting to ₱1.3 million by July 15, 2003. Umale failed to comply with ASB Realty's

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

[6] *Id.* at 124-129.

[7] The original complaint was filed on September 3, 2003 (CA *rollo*, pp. 83-86) but was amended on October 1, 2003 (*Id.* at 89-92). The complaint was docketed as Civil Case No. 10427 and raffled off to Branch 70 of the MTC Pasig.

[8] *Rollo*, pp. 175-179.

[9] *Id.* at 181.

[10] *Id.* at 180.

demands and continued in possession of the subject premises, even constructing commercial establishments thereon.

Umale admitted occupying the property since 1999 by virtue of a verbal lease contract but vehemently denied that ASB Realty was his lessor. He was adamant that his lessor was the original owner, Amethyst Pearl. Since there was no contract between himself and ASB Realty, the latter had no cause of action to file the unlawful detainer complaint against him.

In asserting his right to remain on the property based on the oral lease contract with Amethyst Pearl, Umale interposed that the lease period agreed upon was "for a long period of time."[11] He then allegedly paid ₱1.2 million in 1999 as one year advance rentals to Amethyst Pearl.[12]

Umale further claimed that when his oral lease contract with Amethyst Pearl ended in May 2000, they both agreed on an oral contract to sell. They agreed that Umale did not have to pay rentals until the sale over the subject property had been perfected between them.[13] Despite such agreement with Amethyst Pearl regarding the waiver of rent payments, Umale maintained that he continued paying the annual rent of ₱1.2 million. He was thus surprised when he received the Notice of Termination of Lease from ASB Realty.[14]

Umale also challenged ASB Realty's personality to recover the subject premises considering that ASB Realty had been placed under receivership by the Securities and Exchange Commission (SEC) and a rehabilitation receiver had been duly appointed. Under Section 14(s), Rule 4 of the Administrative Memorandum No. 00-8-10SC, otherwise known as the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules), it is the rehabilitation receiver that has the

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[11] Defendant's Position Paper, p. 3; CA *rollo*, p. 148.

[12] *Id.*

[13] *Id.* at 4-5; *id.* at 149-150.

[14] *Id.* at 5; *id.* at 150.

power to "take possession, control and custody of the debtor's assets." Since ASB Realty claims that it owns the subject premises, it is its duly-appointed receiver that should sue to recover possession of the same.[15]

ASB Realty replied that it was impossible for Umale to have entered into a Contract of Lease with Amethyst Pearl in 1999 because Amethyst Pearl had been liquidated in 1996. ASB Realty insisted that, as evidenced by the written lease contract, Umale contracted with ASB Realty, not with Amethyst Pearl. As further proof thereof, ASB Realty cited the official receipt evidencing the rent payments made by Umale to ASB Realty.

Ruling of the Metropolitan Trial Court

In its August 20, 2004 Decision,[16] the MTC dismissed ASB Realty's complaint against Umale without prejudice. It held that ASB Realty had no cause to seek Umale's ouster from the subject property because it was not Umale's lessor. The trial court noted an inconsistency in the written lease contract that was presented by ASB Realty as basis for its complaint. Its whereas clauses cited ASB Realty, with Eden C. Lin as its representative, as Umale's lessor; but its signatory page contained Eden C. Lin's name under the heading Amethyst Pearl. The MTC then concluded from such inconsistency that Amethyst Pearl was the real lessor, who can seek Umale's ejectment from the subject property.[17]

Likewise, the MTC agreed with Umale that only the rehabilitation receiver could file suit to recover ASB Realty's property.[18] Having been placed under receivership, ASB Realty had no more personality to file the complaint for unlawful detainer.

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[15] *Id.* at 13-14; *id.* at 158-159.

[16] *Rollo*, pp. 226-241; penned by Presiding Judge Jose P. Morallos.

[17] MTC Decision, p. 14; *rollo*, p. 239.

[18] *Id.* at 13-14; *id.* at 238-239.

Ruling of the Regional Trial Court

ASB Realty appealed the adverse MTC Decision to the Regional Trial Court (RTC),[19] which then reversed[20] the MTC ruling.

The RTC held that the MTC erred in dismissing ASB Realty's complaint for lack of cause of action. It found sufficient evidence to support the conclusion that it was indeed ASB Realty that entered into a lease contract with Umale, hence, the proper party who can assert the corresponding right to seek Umale's ouster from the leased premises for violations of the lease terms. In addition to the written lease contract, the official receipt evidencing Umale's rental payments for the period June 2001 to May 2002 to ASB Realty adequately established that Umale was aware that his lessor, the one entitled to receive his rent payments, was ASB Realty, not Amethyst Pearl.

ASB Realty's positive assertions, supported as they are by credible evidence, are more compelling than Umale's bare negative assertions. The RTC found Umale's version of the facts incredible. It was implausible that a businessman such as Umale would enter into several transactions with his alleged lessor – a lease contract, payment of lease rentals, acceptance of an offer to sell from his alleged lessor, and an agreement to waive rentals – *sans* a sliver of evidence.

With the lease contract between Umale and ASB Realty duly established and Umale's failure to pay the monthly rentals since June 2002 despite due demands from ASB Realty, the latter had the right to terminate the lease contract and seek his eviction from the leased premises. Thus, when the contract expired on June 30, 2003 (as stated in the Notice of Termination of Lease), Umale lost his right to remain on the premises and his continued refusal to vacate the same constituted sufficient cause of action for his ejectment.[21]

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[19] The appeal was docketed as SCA No. 2724 and raffled off to Branch 161 of the RTC Pasig.

[20] *Rollo*, pp. 307-319; penned by Pairing Judge Amelia A. Fabros.

[21] RTC Decision, pp. 9-11; *rollo*, pp. 315-317.

With respect to ASB Realty's personality to file the unlawful detainer suit, the RTC ruled that ASB Realty retained all its corporate powers, including the power to sue, despite the appointment of a rehabilitation receiver. Citing the Interim Rules, the RTC noted that the rehabilitation receiver was not granted therein the power to file complaints on behalf of the corporation.[22]

Moreover, the retention of its corporate powers by the corporation under rehabilitation will advance the objective of corporate rehabilitation, which is to conserve and administer the assets of the corporation in the hope that it may eventually be able to go from financial distress to solvency. The suit filed by ASB Realty to recover its property and back rentals from Umale could only benefit ASB Realty.[23]

The dispositive portion of the RTC Decision reads as follows:

> WHEREFORE, premises considered, the appealed decision is hereby reversed and set aside. Accordingly, judgment is hereby rendered in favor of the plaintiff-appellant ordering defendant-appellee and all persons claiming rights under him:
>
> 1) To immediately vacate the subject leased premises located at Lot 7, Block 5, Amethyst St., Pearl Drive, Ortigas Center, Pasig City and deliver possession thereof to the plaintiff-appellant;
>
> 2) To pay plaintiff-appellant the sum of ₱1,300,000.00 representing rentals in arrears from June 2002 to June 2003;
>
> 3) To pay plaintiff-appellant the amount of ₱100,000.00 a month starting from July 2003 and every month thereafter until they finally vacate the subject premises as reasonable compensation for the continued use and occupancy of the same;
>
> 4) To pay plaintiff-appellant the sum of ₱200,000.00 as and by way of attorney's fees; and the costs of suit.
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> SO ORDERED.[24]

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[22] *Id.* at 8-9; *id.* at 314-315.

[23] *Id.* at 8; *id.* at 314.

[24] *Id.* at 12-13; *id.* at 318-319.

Umale filed a Motion for Reconsideration[25] while ASB Realty moved for the issuance of a writ of execution pursuant to Section 21 of the 1991 Revised Rules on Summary Procedure.[26]

In its July 26, 2005 Order, the RTC denied reconsideration of its Decision and granted ASB Realty's Motion for Issuance of a Writ of Execution.[27]

Umale then filed his appeal[28] with the CA insisting that the parties did not enter into a lease contract.[29] Assuming that there was a lease, it was at most an implied lease. Hence its period depended on the rent payments. Since Umale paid rent annually, ASB Realty had to respect his lease for the entire year. It cannot terminate the lease at the end of the month, as it did in its Notice of Termination of Lease.[30] Lastly, Umale insisted that it was the rehabilitation receiver, not ASB Realty, that was the real party-in-interest.[31]

Pending the resolution thereof, Umale died and was substituted by his widow and legal heirs, per CA Resolution dated August 14, 2006.[32]

Ruling of the Court of Appeals

The CA affirmed the RTC Decision *in toto*.[33]

According to the appellate court, ASB Realty fully discharged its burden to prove the existence of a lease contract between

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[25] *Rollo*, pp. 320-340.

[26] *Id.* at 341-344.

[27] *Id.* at 353-357.

[28] The appeal was docketed as CA-G.R. CV No. 91096. CA *rollo*, pp. 2-41.

[29] Petition for Review, pp. 25-30; *id.* at 26-31.

[30] *Id.* at 31-33; *id.* at 32-34.

[31] *Id.* at 12-16; *id.* at 13-17.

[32] *Rollo*, pp. 589-590.

[33] CA Decision, p. 16; CA *rollo*, p. 666.

ASB Realty and Umale,[34] as well as the grounds for eviction.[35] The veracity of the terms of the lease contract presented by ASB Realty was further bolstered, instead of demolished, by Umale's admission that he paid monthly rents in accordance therewith.[36]

The CA found no merit in Umale's claim that in light of Article 1687 of the Civil Code the lease should be extended until the end of the year. The said provision stated that in cases where the lease period was not fixed by the parties, the lease period depended on the payment periods. In the case at bar, the rent payments were made on a monthly basis, not annually; thus, Umale's failure to pay the monthly rent gave ASB Realty the corresponding right to terminate the lease at the end of the month.[37]

The CA then upheld ASB Realty's, as well as its corporate officers', personality to recover an unlawfully withheld corporate property. As expressly stated in Section 14 of Rule 4 of the Interim Rules, the rehabilitation receiver does not take over the functions of the corporate officers.[38]

Petitioners filed a Motion for Reconsideration,[39] which was denied in the assailed January 2, 2008 Resolution.[40]

Issues

The petitioners raise the following issues for resolution:[41]

1. Can a corporate officer of ASB Realty (duly authorized by the Board of Directors) file suit to recover an unlawfully

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[34] *Id.* at 11; *id.* at 661.

[35] *Id.* at 13; *id.* at 663.

[36] *Id.* at 11; *id.* at 661.

[37] *Id.* at 11-13; *id.* at 661-663.

[38] *Id.* at 7-10; *id.* at 657-660.

[39] CA *rollo*, pp. 667-678.

[40] *Id.* at 708.

[41] Petitioners' Memorandum, p. 11; *rollo*, p. 651.

detained corporate property despite the fact that the corporation had already been placed under rehabilitation?

2. Whether a contract of lease exists between ASB Realty and Umale; and

3. Whether Umale is entitled to avail of the lease periods provided in Article 1687 of the Civil Code.

Our Ruling

Petitioners ask for the dismissal of the complaint for unlawful detainer on the ground that it was not brought by the real party-in-interest.[42] Petitioners maintain that the appointment of a rehabilitation receiver for ASB Realty deprived its corporate officers of the power to recover corporate property and transferred such power to the rehabilitation receiver. Section 6, Rule 59 of the Rules of Court states that a receiver has the power to bring actions in his own name and to collect debts due to the corporation. Under Presidential Decree (PD) No. 902-A and the Interim Rules, the rehabilitation receiver has the power to take custody and control of the assets of the corporation. Since the receiver for ASB Realty did not file the complaint for unlawful detainer, the trial court did not acquire jurisdiction over the subject property.[43]

Petitioners cite *Villanueva v. Court of Appeals*,[44] *Yam v. Court of Appeals*,[45] and *Abacus Real Estate Development Center, Inc. v. The Manila Banking Corporation*,[46] as authorities for the rule that the appointment of a receiver suspends the authority of the corporation and its officers over its property and effects.[47]

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[42] *Id.* at 12; *id.* at 652.

[43] *Id.* at 12-13; *id.* at 652-653.

[44] 314 Phil. 297 (1995).

[45] 362 Phil. 344 (1999).

[46] 495 Phil. 86 (2005).

[47] Petitioners' Memorandum, pp. 13-15; *rollo*, pp. 653-655.

ASB Realty counters that there is no provision in PD 902-A, the Interim Rules, or in Rule 59 of the Rules of Court that divests corporate officers of their power to sue upon the appointment of a rehabilitation receiver.[48] In fact, Section 14, Rule 4 of the Interim Rules expressly limits the receiver's power by providing that the rehabilitation receiver does not take over the management and control of the corporation but shall closely oversee and monitor the operations of the debtor.[49] Further, the SEC Rules of Procedure on Corporate Recovery (SEC Rules), the rules applicable to the instant case, do not include among the receiver's powers the exclusive right to file suits for the corporation.[50]

The Court resolves the issue in favor of ASB Realty and its officers.

There is no denying that ASB Realty, as the owner of the leased premises, is the real party-in-interest in the unlawful detainer suit.[51] Real party-in-interest is defined as "the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit."[52]

What petitioners argue is that the corporate officer of ASB Realty is incapacitated to file this suit to recover a corporate property because ASB Realty has a duly-appointed rehabilitation receiver. Allegedly, this rehabilitation receiver is the only one that can file the instant suit.

Corporations, such as ASB Realty, are juridical entities that exist by operation of law.[53] As a creature of law, the powers and attributes of a corporation are those set out, expressly or impliedly, in the law. Among the general powers granted by

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[48] Respondent's Memorandum, p. 9; *id.* at 673.

[49] *Id.* at 7; *id.* at 671.

[50] *Id.* at 6; *id.* at 670.

[51] *Consumido v. Ros*, G.R. No. 166875, July 31, 2007, 528 SCRA 696, 702.

[52] RULES OF COURT, Rule 3, Section 2.

[53] CORPORATION CODE, Section 2.

law to a corporation is the power to sue in its own name.[54] This power is granted to a duly-organized corporation, unless *specifically* revoked by another law. The question becomes: Do the laws on corporate rehabilitation – particularly PD 902-A, as amended,[55] and its corresponding rules of procedure – forfeit the power to sue from the corporate officers and Board of Directors?

Corporate rehabilitation is defined as "the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan more if the corporation continues as a going concern than if it is immediately liquidated."[56] It was first introduced in the Philippine legal system through PD 902-A, as amended.[57] The intention of the law is "to effect a feasible and viable rehabilitation by *preserving* a floundering business as a *going concern*, because the assets of a business are often more valuable *when so maintained* than they would be when liquidated."[58] This concept of preserving the corporation's business as a going concern while it is undergoing rehabilitation is called debtor-in-possession or debtor-in-place. This means that the debtor corporation (the corporation undergoing rehabilitation), through its Board of Directors and corporate officers, remains ***in control of its business and properties,*** subject only to the monitoring of the appointed

[54] CORPORATION CODE, Section 36(1).

[55] On July 18, 2010, a new law on rehabilitation was enacted – Republic Act No. 10142 or the Financial Rehabilitation and Insolvency Act (FRIA) of 2010. Section 146 thereof states that the new law governs rehabilitation petitions filed *after* FRIA has taken effect.

[56] 2009 RULES OF PROCEDURE ON CORPORATE REHABILITATION, Rule 2, Section 1.

[57] Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the Said Agency Under the Administrative Supervision of the Office of the President.

[58] *China Banking Corporation v. ASB Holdings*, G.R. No. 172192, December 23, 2008, 575 SCRA 247, 260.

rehabilitation receiver.[59] The concept of debtor-in-possession, is carried out more particularly in the SEC Rules, the rule that is relevant to the instant case.[60] It states therein that the interim rehabilitation receiver of the debtor corporation "does ***not*** take over the control and management of the debtor corporation."[61] Likewise, the rehabilitation receiver that will replace the interim receiver is tasked only to monitor the successful implementation of the rehabilitation plan.[62] There is nothing in the concept of corporate rehabilitation that would *ipso facto* deprive[63] the Board of Directors and corporate officers of a debtor corporation, such as ASB Realty, of control such that it can no longer enforce its right to recover its property from an errant lessee.

To be sure, corporate rehabilitation imposes several restrictions on the debtor corporation. The rules enumerate the prohibited corporate actions and transactions[64] (most of which involve some kind of disposition or encumbrance of the corporation's

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[59] Catindig, *NOTES ON SELECTED COMMERCIAL LAWS*, 161 (2003).

[60] While The Securities Regulation Code (Republic Act No. 8799), transferred SEC's jurisdiction over corporate rehabilitation proceedings to the regular courts, it retained within SEC's jurisdiction all pending rehabilitation cases as of June 30, 2000 until finally disposed. ASB Realty's petition for rehabilitation was filed on May 2, 2000 and remained pending as of June 30, 2000, such that it remained within the SEC jurisdiction.

[61] SEC RULES OF PROCEDURE ON CORPORATE RECOVERY, Section 4-12.

[62] SEC RULES OF PROCEDURE ON CORPORATE RECOVERY, Section 4-25.

[63] All of this is not to say that a corporation under rehabilitation cannot be deprived of control and management at all. To be sure, in warranted cases, the SEC is authorized to place the corporation under a management committee that would replace its corporate management and board of directors and assume their powers over the corporation (Presidential Decree No. 902-A, as amended, Section 6(d); SEC Rules of Procedure on Corporate Recovery, Rule V, Sections 5-1 and 5-3). This instance however is not the case before us. There is no allegation whatsoever that ASB Realty had been placed under a management committee.

[64] According to Section 2-12 of the SEC Rules of Procedure on Corporate Recovery, the following acts are prohibited and, if done, may be nullified by the SEC:

assets) during the pendency of the rehabilitation proceedings but none of which touch on the debtor corporation's right to sue. The implication therefore is that our concept of rehabilitation does not restrict this particular power, save for the caveat that all its actions are monitored closely by the receiver, who can seek an annulment of any prohibited or anomalous transaction or agreement entered into by the officers of the debtor corporation.

Petitioners insist that the rehabilitation receiver has the power to bring and defend actions in his own name as this power is provided in Section 6 of Rule 59 of the Rules of Court.

Indeed, PD 902-A, as amended, provides that the receiver shall have the powers enumerated under Rule 59 of the Rules of Court. But Rule 59 is a rule of general application. It applies to different kinds of receivers – rehabilitation receivers, receivers of entities under management, ordinary receivers, receivers in liquidation – and for different kinds of situations. While the SEC has the discretion[65] to authorize the rehabilitation receiver, as the case may warrant, to exercise the powers in Rule 59, the SEC's exercise of such discretion cannot simply be assumed. There is no allegation whatsoever in this case that the SEC gave ASB Realty's rehabilitation receiver the exclusive right to sue.

Petitioners cite *Villanueva,*[66] *Yam,*[67] and *Abacus Real Estate*[68] as authorities for their theory that the corporate officers

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1. any sale, encumbrance, transfer, or disposition of the debtor's property outside the normal course of business in which the corporation is engaged (Section 4-4 (c), SEC Rules of Procedure on Corporate Recovery); and

2. any payments of the debtor corporation's outstanding liabilities (Section 4-4(d), SEC Rules of Procedure on Corporate Recovery).

[65] PRESIDENTIAL DECREE NO. 902-A, as amended, Section 6(m); SEC RULES OF PROCEDURE ON CORPORATE RECOVERY, Section 4-25 (f).

[66] *Supra* note 44.

[67] *Supra* note 45.

[68] *Supra* note 46.

of a corporation under rehabilitation is incapacitated to act. In *Villanueva*,[69] the Court nullified the sale contract entered into by the Philippine Veterans Bank on the ground that the bank's insolvency restricted its capacity to act. *Yam*,[70] on the other hand, nullified the compromise agreement that Manphil Investment Corporation entered into while it was under receivership by the Central Bank. In *Abacus Real Estate*,[71] it was held that Manila Bank's president had no authority to execute an "option to purchase" contract while the bank was under liquidation.

These jurisprudence are inapplicable to the case at bar because they involve banking and financial institutions that are governed by different laws.[72] In the cited cases, the applicable banking law was Section 29[73] of the Central Bank Act.[74] In stark contrast to rehabilitation where the corporation retains control and

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[69] *Supra* note 44 at 309-311.

[70] *Supra* note 45 at 351.

[71] *Supra* note 46 at 97-98.

[72] The prevailing law is Republic Act No. 8791 or the General Banking Law of 2000. Section 69 thereof (in relation to Section 30 of Republic Act No. 7653, entitled The New Central Bank Act) continues to forbid banks or non-bank financial corporations from doing business upon a finding of insolvency.

[73] Sec. 29. *Proceedings upon insolvency*. – Whenever, upon examination by the head of the appropriate supervising or examining department or his examiners or agents into the condition of any bank or non-bank financial intermediary performing quasi-banking functions, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the department head concerned forthwith, in writing, to inform the Monetary Board of the facts, and the Board may, upon finding the statements of the department head to be true, ***forbid the institution to do business in the Philippines*** x x x

The Monetary Board shall thereupon ***determine*** within sixty days whether the institution may be reorganized or otherwise placed in such a condition so that it ***may be permitted to resume business*** with safety to its depositors and creditors and the general public and shall prescribe the conditions under which such resumption of business shall take place as well as the time for fulfillment of such conditions. x x x (Emphasis supplied.)

[74] REPUBLIC ACT NO. 265, as amended.

management of its affairs, Section 29 of the Central Bank Act, as amended, expressly forbids the bank or the quasi-bank from doing business in the Philippines.

Moreover, the nullified transactions in the cited cases involve *dispositions* of assets and claims, which are prohibited transactions even for corporate rehabilitation[75] because these may be prejudicial to creditors and contrary to the rehabilitation plan. The instant case, however, involves the recovery of assets and collection of receivables, for which there is no prohibition in PD 902-A.

While the Court rules that ASB Realty and its corporate officers retain their power to sue to recover its property and the back rentals from Umale, the necessity of keeping the receiver apprised of the proceedings and its results is not lost upon this Court. Tasked to closely monitor the assets of ASB Realty, the rehabilitation receiver has to be notified of the developments in the case, so that these assets would be managed in accordance with the approved rehabilitation plan.

Coming to the second issue, petitioners maintain that ASB Realty has no cause of action against them because it is not their lessor. They insist that Umale entered into a verbal lease agreement with Amethyst Pearl only. As proof of this verbal agreement, petitioners cite their possession of the premises, and construction of buildings thereon, *sans* protest from Amethyst Pearl or ASB Realty.[76]

Petitioners concede that they may have raised questions of fact but insist nevertheless on their review as the appellate court's ruling is allegedly grounded entirely on speculations, surmises, and conjectures and its conclusions regarding the termination of the lease contract are manifestly absurd, mistaken, and impossible.[77]

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[75] SEC RULES OF PROCEDURE ON CORPORATE RECOVERY, Section 4-4.

[76] Petitioners' Memorandum, pp. 17-20; *rollo*, pp. 657-660.

[77] *Id.* at 7-8; *id.* at 647-648.

Petitioners' arguments have no merit. Ineluctably, the errors they raised involve factual findings,[78] the review of which is not within the purview of the Court's functions under Rule 45, particularly when there is adequate evidentiary support on record.

While petitioners assail the authenticity of the written lease contract by pointing out the inconsistency in the name of the lessor in two separate pages, they fail to account for Umale's actions which are consistent with the terms of the contract – the payment of lease rentals to ASB Realty (instead of his alleged lessor Amethyst Pearl) for a 12-month period. These matters cannot simply be brushed off as sheer happenstance especially when weighed against Umale's incredible version of the facts – that he entered into a verbal lease contract with Amethyst Pearl; that the term of the lease is for a "very long period of time"; that Amethyst Pearl offered to sell the leased premises and Umale had accepted the offer, with both parties not demanding any written documentation of the transaction and without any mention of the purchase price; and that finally, Amethyst Pearl agreed that Umale need not pay rentals until the perfection of the sale. The Court is of the same mind as the appellate court that it is simply inconceivable that a businessman, such as petitioners' predecessor-in-interest, would enter into commercial transactions with and pay substantial rentals to a corporation nary a single documentation.

Petitioners then try to turn the table on ASB Realty with their third argument. They say that under Article 1687 of the New Civil Code, the period for rent payments determines the lease period. Judging by the official receipt presented by ASB Realty, which covers the 12-month period from June 2001 to May 2002, the lease period should be annual because of the annual rent payments.[79] Petitioners then conclude that ASB

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[78] *U-bix Corporation v. Milliken & Company,* G.R. No. 173318, September 23, 2008, 566 SCRA 284, 288; *Solar Harvest Inc. v. Davao Corrugated Carton Corporation,* G.R. No. 176868, July 26, 2010, 625 SCRA 448, 457.

[79] Petitioners' Memorandum, pp. 21-22; *rollo,* pp. 661-662.

Realty violated Article 1687 of the New Civil Code when it terminated the lease on June 30, 2003, at the beginning of the new period. They then implore the Court to extend the lease to the end of the annual period, meaning until May 2004, in accordance with the annual rent payments.[80]

In arguing for an extension of lease under Article 1687, petitioners lost sight of the restriction provided in Article 1675 of the Civil Code. It states that a lessee that commits any of the grounds for ejectment cited in Article 1673, including non-payment of lease rentals and devoting the leased premises to uses other than those stipulated, cannot avail of the periods established in Article 1687.[81]

Moreover, the extension in Article 1687 is granted only as a matter of equity. The law simply recognizes that there are instances when it would be unfair to abruptly end the lease contract causing the eviction of the lessee. It is only for these clearly unjust situations that Article 1687 grants the court the discretion to extend the lease.[82]

The particular circumstances of the instant case however, do not inspire granting equitable relief. Petitioners have not paid, much less offered to pay, the rent for 14 months and even had the temerity to disregard the pay-and-vacate notice served on them. An extension will only benefit the wrongdoer and punish the long-suffering property owner.[83]

WHEREFORE, the petition is *DENIED*. The October 15, 2007 Decision and January 2, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 91096 are hereby *AFFIRMED*. ASB Realty Corporation is ordered to *FURNISH* a copy of the Decision on its incumbent

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[80] *Id.* at 22; *id.* at 662.

[81] *LL and Company Development & Agro-Industrial Corporation v. Huang Chao Chun,* 428 Phil. 665, 674-675 (2002).

[82] *Id.*

[83] *Lo Chua v. Court of Appeals,* 408 Phil. 877, 893 (2001); *Guiang v. Samano,* G.R. No. 50501, April 22, 1991, 196 SCRA 114, 120.

Rehabilitation Receiver and to *INFORM* the Court of its compliance therewith within 10 days.

SO ORDERED.

Velasco, Jr. (Acting Chairperson), Leonardo-de Castro, Bersamin,[*] and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 183122. June 15, 2011]

GENERAL MILLING CORPORATION-INDEPENDENT LABOR UNION (GMC-ILU), *petitioner, vs.* **GENERAL MILLING CORPORATION,** *respondent.*

[G.R. No. 183889. June 15, 2011]

GENERAL MILLING CORPORATION, *petitioner, vs.* **GENERAL MILLING CORPORATION-INDEPENDENT LABOR UNION (GMC-ILU), *ET AL.,*** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; ORDER OF EXECUTION WHICH VARIES THE TENOR OF JUDGMENT OR EXCEEDS THE TERMS THEREOF IS A NULLITY. — The rule is, after all, settled that an order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity. Since execution not in harmony with the judgment is bereft of validity, it must conform, more particularly, to that ordained or

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[*] In lieu of Chief Justice Renato C. Corona, per Special Order No. 1000 dated June 8, 2011.

decreed in the dispositive portion of the decision sought to be enforced.

2. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; IN AN ADMINISTRATIVE PROCEEDING, THE STANDARD OF PROOF IS SUBSTANTIAL EVIDENCE; ELUCIDATED. — Inasmuch as mere allegation is not evidence, the basic evidentiary rule is to the effect that the burden of evidence lies with the party who asserts the affirmative of an issue has the burden of proving the same with such quantum of evidence required by law. In administrative or quasi-judicial proceedings like those conducted before the NLRC, the standard of proof is substantial evidence which is understood to be more than just a scintilla or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Since it does not mean just any evidence in the record of the case for, otherwise, no finding of fact would be wanting in basis, the test to be applied is whether a reasonable mind, after considering all the relevant evidence in the record of a case, would accept the findings of fact as adequate.

3. LABOR AND SOCIAL LEGISLATION; COLLECTIVE BARGAINING AGREEMENT (CBA); BENEFITS AFTER THE EXPIRATION OF THE TERM OF THE PARTIES' ORIGINAL CBA SHOULD BE THRESHED OUT BY THE PARTIES IN ACCORDANCE WITH THE GRIEVANCE PROCEDURE IN THE CBA; RATIONALE. — As for the benefits after the expiration of the term of the parties' original CBA, we find that the extent thereof as well as identity of the employees entitled thereto will be better and more thoroughly threshed out by the parties themselves in accordance with the grievance procedure outlined in Article XII of the imposed CBA. Aside from being already beyond the scope of the decision sought to be enforced, these matters will not be accurately ascertained from the summaries of claims the parties have been wont to submit at the pre-execution conference conducted *a quo*. Taking into consideration such factors as hiring of new employees, personnel movement and/or promotions as well as separations from employment which may have, in the meantime, occurred after the expiration of the remaining term of the original CBA, the identity of the covered employees as well as the extent of the benefits due them should clearly be reckoned from acquisition and/or until loss of their status as regular monthly

paid GMC employees. Since the computation must likewise necessarily take into consideration the increases in salaries and benefits that may have been given in the intervening period, both GMC and the Union are enjoined to make the pertinent employment and company records available to each other, to facilitate the expeditious and accurate determination of said benefits.

APPEARANCES OF COUNSEL

Armando M. Alforque for GMC-ILU and R. Mangubat.
Baduel Espina and Associates and *Balgos and Perez* for GMC.

D E C I S I O N

PEREZ, *J.*:

Assailed in these petitions for review on *certiorari* filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure* are the Court of Appeals'(CA) resolution of the separate petitions for *certiorari* questioning the 20 July 2006 Decision[1] rendered and the 23 August 2006 Resolution[2] issued by the Fourth Division of the National Labor Relations Commission (NLRC), Cebu City, in NLRC Case No. V-000632-2005. In G.R. No. 183122, petitioner General Milling Corporation-Independent Labor Union (the Union) seeks the reversal of the 10 October 2007 Decision rendered by the Special Twentieth Division of the CA in CA-G.R. CEB-SP No. 02226,[3] the dispositive portion of which states:

WHEREFORE, all the foregoing premises considered, the instant Petition is hereby PARTIALLY GRANTED.

The July 20, 2006 Decision of respondent NLRC in NLRC Case No. V-000632-2005 is hereby AFFIRMED insofar as it affirmed

[1] *Rollo*, G. R. No. 183122, pp. 76-86, 20, NLRC's July 2006 Decision in NLRC Case No. V-000632-2005.

[2] *Id.* at 87-89, NLRC's Resolution dated 23 August 2006.

[3] *Id.* at 28-52, CA's 10 October 2007 Decision in CA-G.R. CEB-SP No. 02226.

the October 27, 2005 Order of Executive Labor Arbiter Ortiz in RAB Case No. VII-06-0475-1992 with the modification of: a) excluding the vacation leave salary rate differentials, sick leave salary rate differentials, b) excluding employees who have executed quitclaims which are hereby declared valid, and c) deducting salary increases and other employment benefits voluntarily given by respondent GMC in the computation of benefits.

Accordingly, the instant case is hereby REFERRED to the GRIEVANCE MACHINERY under the imposed CBA for the recomputation of benefits claimed by petitioner GMC-ILU under the said imposed CBA taking into consideration the guidelines laid down by the Court in this Decision as well as the validity of the subject quitclaims hereinbefore discussed.

SO ORDERED.[4]

In G.R. No. 183889, petitioner General Milling Corporation (GMC) prays for the setting aside of the 16 November 2007 Decision rendered by the Eighteenth Division of the CA in CA-G.R. CEB-SP No. 02232,[5] the decretal portion of which states:

WHEREFORE, the Decision dated July 20, 2006 and the Resolution dated August 23, 2006 of public respondent NLRC are hereby AFFIRMED *IN TOTO* and the instant petition is DISMISSED.

SO ORDERED.[6]

The Facts

On 28 April 1989, GMC and the Union entered into a collective bargaining agreement (CBA) which provided, among other terms, the latter's representation of the collective bargaining unit for a three-year term made to retroact to 1 December 1988. On 29 November 1991 or one day before the expiration of the subject CBA, the Union sent a draft CBA proposal to GMC, with a request for counter-proposals from the latter, for the purpose of renegotiating the existing CBA between the parties. In view

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[4] *Id.* at 51.

[5] *Rollo*, G.R. No. 183889, pp. 40-53, CA's 16 November 2007 Decision in CA-G.R. CEB-SP No. 02232.

[6] *Id.* at 53.

of GMC's failure to comply with said request, the Union commenced the complaint for unfair labor practice which, under docket of RAB Case No. VII-06-0475-92, was dismissed for lack of merit in a decision dated 21 December 1993 issued by the Regional Arbitration Branch-VII (RAB-VII) of the National Labor Relations Commission (NLRC).[7] On appeal, however, said dismissal was reversed and set aside in the 30 January 1998 decision rendered by the Fourth Division of the NLRC in NLRC Case No. V-0112-94,[8] the dispositive portion of which states:

> WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The Decision dated December 21, 1993 is hereby VACATED and SET ASIDE and a new one issued ordering the imposition upon the respondent company of the complainant union['s] draft CBA proposal for the remaining two years duration of the original CBA which is from December 1, 1991 to November 30, 1993; and for the respondent to pay attorney's fees.
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> SO ORDERED.[9]

With the reconsideration and setting aside of the foregoing decision in the NLRC's resolution dated 6 October 1998,[10] the Union filed the petitions for *certiorari* docketed before the CA as CA-G.R. SP Nos. 50383 and 51763. In a decision dated 19 July 2000, the then Fourteenth Division of the CA reversed and set aside the NLRC's 6 October 1998 resolution and reinstated the aforesaid 30 January 1998 decision, except with respect to the undetermined award of attorney's fees which was deleted for lack of statement of the basis therefor in the assailed decision.[11] Aggrieved by the CA's 26 October 2000 resolution denying its motion for reconsideration, GMC

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[7] *Rollo*, G.R. No. 183122, p. 117.

[8] Record, CA-G.R. SP No. 02226, Volume 1, pp. 36-50, NLRC's 30 January 1998 Decision in NLRC Case No. V-0112-94.

[9] *Id.* at 46.

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

[11] *Id.* at 52-59, CA's Decision dated 19 July 2000 in CA-G.R. SP Nos. 50383 and 51763.

elevated the case to this Court via the petition for review on *certiorari* docketed before this Court as G.R. No. 146728. In a decision dated 11 February 2004 rendered by the Court's then Second Division, the CA's 30 January 1998 decision and 26 October 2000 resolution were affirmed,[12] upon the following findings and conclusions, to wit:

> GMC's failure to make a timely reply to the proposals presented by the union is indicative of its utter lack of interest in bargaining with the union. Its excuse that it felt the union no longer represented the worker, was mainly dilatory as it turned out to be utterly baseless.
>
> We hold that GMC's refusal to make a counter proposal to the union's proposal for CBA negotiation is an indication of its bad faith. Where the employer did not even bother to submit an answer to the bargaining proposals of the union, there is a clear evasion of the duty to bargain collectively.
>
> Failing to comply with the mandatory obligation to submit a reply to the union's proposals, GMC violated its duty to bargain collectively, making it liable for unfair labor practice. Perforce, the Court of Appeals did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in finding that GMC is, under the circumstances, guilty of unfair labor practice.
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> x x x x x x x x x
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> x x x (I)t would be unfair to the union and its members if the terms and conditions contained in the old CBA would continue to be imposed on GMC's employees for the remaining two (2) years of the CBA's duration. We are not inclined to gratify GMC with an extended term of the old CBA after it resorted to delaying tactics to prevent negotiations. Since it was GMC which violated the duty to bargain collectively, based on *Kiok Loy* and *Divine World University of Tacloban*, it had lost its statutory right to negotiate or renegotiate the terms and conditions of the draft CBA proposed by the union.
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> x x x x x x x x x
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> Under ordinary circumstances, it is not obligatory upon either side of a labor controversy to precipitately accept or agree to the

[12] *Id.* at 61-74, SC's Decision dated 11 February 2004 in G.R. No. 146728.

proposals of the other. But an erring party should not be allowed with impunity to schemes feigning negotiations by going through empty gestures. Thus, by imposing on GMC the provisions of the draft CBA proposed by the union, in our view, the interests of equity and fair play were properly served and both the parties regained equal footing, which was lost when GMC thwarted the negotiations for new economic terms of the CBA.[13]

With the ensuing finality of the foregoing decision, the Union filed a motion for issuance of a writ of execution dated 21 March 2005, to enforce the claims of the covered employees which it computed in the sum of ₱433,786,786.36 and to require GMC to produce said employee's time cards for the purpose of computing their overtime pay, night shift differentials and labor standard benefits for work rendered on rest days, legal holidays and special holidays.[14] On 18 April 2005, however, GMC opposed said motion on the ground, among other matters, that the bargaining unit no longer exist in view of the resignation, retrenchment, retirement and separation from service of workers who have additionally executed waivers and quitclaims acknowledging full settlement of their claims; that the covered employees have already received salary increases and benefits for the period 1991 to 1993; and, that aside from the aforesaid supervening events which precluded the enforcement thereof, the decision rendered in the case simply called for the execution of a CBA incorporating the Union's proposal, not the outright computation of benefits thereunder.[15]

In a "Submission" dated 27 May 2005, GMC further manifested that the Union membership in the bargaining unit did not exceed 286 and that following employees should be excluded from the coverage of the decision sought to be enforced: (a) 47 employees who were hired after 1992; (b) 234 employees who had been separated from the service; (c) 37 employees who, as daily paid rank and file employees, were represented

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[13] *Rollo,* G.R. No. L-18322, pp. 124; 127-128.

[14] Records, CA-G.R. No. CEB SP No. 02226, Volume 1, pp. 75-77, Union's Motion for Execution dated 21 March 2005.

[15] *Id.*, Volume II, pp. 1014-1020, GMC's Opposition dated 18 April 2005.

by another union and covered by a different CBA; and, (d) 41 workers holding managerial/supervisory/confidential positions.[16] In its comment to the foregoing "Submission", however, the Union argued that the benefits derived from its proposed CBA extended to both union members and non-members; that the newly hired employees were entitled to the benefits accruing after their employment by GMC; that the employees who had, in the meantime, been separated from service could not have validly waived the benefits which were only determined with finality in the 11 February 2004 decision rendered in G.R. No. 146728; that the CBA benefits can be extended the daily paid employees upon their re-classification as monthly paid employees as well as to GMC's managerial and supervisory employees, prior to their promotion; and, that the imposition of its CBA proposals necessarily calls for the computation of the benefits therein provided.[17]

Acting on the memoranda the parties filed in support of their respective positions,[18] Executive Labor Arbiter Violeta Ortiz-Bantug issued the 27 October 2005 order, limiting the computation of the benefits of the Union's CBA proposal to the remaining two years of the duration of the original CBA or from 1 December 1991 up to 30 November 1993. The computation covered the 436 employees included in the Union's list, less the following: (a) 77 employees who were hired or regularized after 30 November 1993; (b) 36 daily paid rank and file employees who were covered by a separate CBA; (c) 41 managerial/supervisory employees; and (d) 1 employee for whom no salary-rate information was submitted in the premises.[19] As a consequence, said Executive Labor Arbiter disposed of the aforesaid pending motion and incidents in the following wise:

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[16] *Id.* at 1021-1030, GMC Submission dated 27 May 2005.

[17] *Id.* at 1274-1280, Union's Comment dated 9 June 2005.

[18] *Id.* at 1372-1385; 1386-1412. GMC & the Union's Memoranda dated 3 August and 31, 2005.

[19] *Id.* at 1421-1425, Executive Labour Arbiter's Order dated 27 October 2005.

Based on all the foregoing, computations have been made, details of which are prepared and reflected in separate pages but which still form part of this Order. By way of summary, the grand total consists of the following:

Salary Increase Differentials	₱17,575,000.00
Rest Day	4,320,148.50
Vacation Leave Differentials	920,013.42
Sick Leave Differentials	920,013.42
School Opening Bonus	5,094,044.69
13th Month Pay Differentials	1,468,999.98
Christmas Bonus	4,560,816.78
Signing Bonus	1,310,000.00
Total Money Claims	₱36,169,036.79
Sacks of Rice	6,372

Issue the appropriate writ of execution based on the foregoing computations.

SO ORDERED.[20]

Aggrieved, the Union filed a partial appeal dated 2 November 2005, on the ground that the Executive Labor Arbiter abused her discretion in: (a) confining the computation of the benefits from 1 December 1991 to 30 November 1993 in favor of only 281 employees out of the 436 included in its list; (b) computing only 10 out of the 15 benefits provided under its CBA proposal; and (c) failing to direct the GMC to produce the employees' time cards and other pertinent documents essential for the computation of the benefits due in the premises.[21] In turn, GMC filed its 17 November 2005 "Objections" to the aforesaid 22 October 2005 order, arguing that the Executive Labor Arbiter not only varied the dispositive portion of the NLRC decision

[20] *Id.* at 1424-1425.

[21] *Id.* at 1433-1444, Union's Partial Appeal dated 2 November 2005.

dated 30 January 1998 but also ignored the quitclaims executed and the benefits actually paid in the premises.[22] Reiterating the foregoing arguments in its 16 May 2006 opposition to the Union's partial appeal, GMC further maintained that its not being duly heard on the computation of the award in the subject 27 October 2005 order rendered the Union's partial appeal premature; and, that its CBA with the Union had expired on 30 November 1993, with the latter exerting no effort at all for its renewal.[23]

On 20 July 2006, the NLRC rendered a decision in NLRC Case No. V-000632-2005, affirming the aforesaid 27 October 2005 order of execution. Finding that the duty to maintain the *status quo* and to continue in full force and effect the terms of the existing agreement under Article 253 of the *Labor Code of the Philippines* applies only when the parties agreed to the terms and conditions of the CBA, the NLRC upheld the Executive Labor Arbiter's computation on the ground, among others, that the decision sought to be enforced covered only the remaining two years of the duration of the original CBA, *i.e.*, from 1 December 1991 to 30 November 1993; that like GMC's supposed grant of additional benefits during the remaining term of the original CBA, the Union's claims for payment of vacation leave salary differentials, sick leave salary rate differentials, dislocation allowance, separation pay for voluntary resignation and separation pay salary rate differentials were not sufficiently established; that required by law to preserve its records for a period of five years, GMC cannot possibly be expected to preserve employees' records for the period 1 December 1991 to 30 November 1993; and, that the claimant has the burden of proving entitlement to holiday pay, premium for holiday and rest day as well as night shift differentials. Giving short shrift to GMC's objections as aforesaid, the NLRC likewise ruled that computation of the monetary award was necessary

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[22] *Id.* at 1455-1468, GMC's Objections dated 17 November 2005.

[23] *Id.* at 1469-1496, GMC's Opposition to the Union's Partial Appeal dated 16 May 2006.

for the enforcement of this Court's 11 February 2004 decision and avoidance of multiplicity of suits.[24]

Dissatisfied with the NLRC's 23 August 2006 denial of their motions for reconsideration of the foregoing decision,[25] GMC and the Union filed separate Rule 65 petitions for *certiorari* before the CA. Docketed as CA-G.R. CEB-SP No. 02226 before the CA's Special Twentieth Division, the Union's petition was partially granted in the 10 October 2007 decision rendered in the case,[26] upon the finding that the parties' old CBA was superseded by the imposed CBA which provided a term of five years from 1 December 1991 and remained in force until a new CBA is concluded between the parties. Brushing aside the Executive Labor Arbiter's computation of the benefits as "too sweeping" and "inaccurate", the CA ruled that: (a) employees hired after the effectivity of the imposed CBA are entitled to its benefits on their first day of work; (b) daily paid employees are entitled to said benefits from the first day they became regular monthly paid employees; (c) managerial and supervisory employees are entitled to the same benefits until their promotion as such; (d) employees for whom no information as to salary rate were submitted are entitled to the CBA benefits upon submission of proof in respect thereto; and, (e) employees who signed Deeds of waiver, release and quitclaim are no longer entitled to said benefits.[27]

Rejecting the argument that the NLRC erred in upholding the Executive Labor Arbiter's computation of only 10 out of the 15 benefits provided under the imposed CBA, the CA went on to take appropriate note of the fact that no proof was submitted by the Union to justify the grant of said benefits. While ruling that the imposed CBA had the same force and effect as a

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[24] Records, CA-G.R. CEB-SP No. 02226, Volume 1, pp. 21 to 31, NLRC's 20 July 2006 Decision in NLRC Case No. V-000632-2005.

[25] *Id.* at 32-34, NLRC's 23 August 2006 Resolution.

[26] *Id.*, Volume II, pp. 1943-1966, CA's 10 October 2007 Decision in CA-G.R. CEB-SP No. 02226.

[27] *Id.* at 1955-1956.

negotiated CBA, the CA, however, faulted the Union for its "hasty" and "premature" filing of its motion for issuance of a writ of execution, instead of first demanding the enforcement of the imposed CBA from GMC and, failing the same, referring the matter to the grievance machinery or voluntary arbitration provided under the imposed CBA, in accordance with Articles 260 and 261 of the *Labor Code*. Acknowledging the difficulty of computing the benefits demanded by the Union in the absence of evidence upon which to base the same, the CA referred the case to the Grievance Machinery under the imposed CBA and directed the exclusion of the following items from said computation: (a) the Union's claims for vacation leave salary rate differentials and sick leave salary rate differentials; (b) the benefits in favor of the employees who have already executed quitclaims in favor of GMC; and (c) the salary increases and other employment benefits GMC had, in the meantime, extended its employees.[28] Discontented with the CA's 14 May 2008 resolution denying its motion for reconsideration of the foregoing decision,[29] the Union filed its Rule 45 petition currently docketed before this Court as G.R. No. 183122.[30]

On the other hand, GMC's petition for *certiorari* assailing the NLRC's 20 July 2006 decision was docketed as CA-G.R. SP No. CEB-SP No. 02232 before the CA's Eighteenth Division[31] which subsequently rendered the decision dated on 16 November 2007, dismissing the same for lack of merit. Finding that both parties were given an opportunity to present their respective positions during the pre-execution conference conducted *a quo*, the CA ruled that the Executive Labor Arbiter's 27 October 2005 order had attained finality insofar as GMC is concerned, in view of its failure to perfect an appeal therefrom by paying the required appeal fee and posting the cash or surety bond in an amount equivalent to the benefits computed. In addition to

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[28] *Id.* at 1957-1965.

[29] *Id.* at 2009-2012, CA's 14 May 2008 Resolution.

[30] *Rollo*, G.R. No. 183122, pp. 3-27, Union's Petition for Review on *Certiorari*.

[31] Record, CA-G.R. SP No. 02232, pp. 7-36, GMC's Petition for *Certiorari*.

rejecting GMC's argument that the quitclaims executed by its employees were in the nature of a supervening event which rendered execution proceedings impossible, the CA held that said quitclaims did not extend to the benefits provided under the imposed CBA and that the additional benefits supposedly received by GMC's employees should not be deducted therefrom, for lack of sufficient evidence to prove the same.[32] Aggrieved by the denial of its motion for reconsideration of the foregoing decision in the CA's resolution dated 10 July, 2008,[33] GMC filed the petition for review on *certiorari* docketed before us as G.R. No. 183889.[34]

The Issues

In G.R. No. 183122, the Union proffers the following grounds for the grant of its petition, to wit:

I. THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE ERROR IN AFFIRMING THE COMPUTATION OF THE NLRC IN ITS DECISION DATED JULY 20, 2006 AND DISTORTING THE APPLICATION OF ARTICLE 253 OF THE LABOR CODE IN THE EXECUTION OF THE DECISION OF THIS HONORABLE COURT IN G.R. NO. 146728.

II. THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE ERROR IN EXCLUDING FROM THE COMPUTATION THE EMPLOYEES WHO HAVE EXECUTED QUITCLAIMS, IN EXCLUDING FROM THE COMPUTATION VACATION AND SICK LEAVE SALARY DIFFERENTIALS, AND IN DEDUCTING ALLEGED SALARY INCREASES AND OTHER BENEFITS GIVEN BY [GMC].

III. THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE ERROR

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[32] *Id.* at 1244-1257, CA's 16 November 2007 Decision in CA-G.R. SP No. CEB-SP No. 02232.

[33] *Id.* at 1443-1454, CA's Resolution dated 10 July 2008.

[34] *Rollo*, G.R. No. 183889, pp. 3-37, GMC's Petition for Review on *Certiorari*.

IN REFERRING THE INSTANT CASE TO THE GRIEVANCE MACHINERY FOR COMPUTATION OF THE BENEFITS DUE UNDER THE IMPOSED CBA.

IV. THE DECISION IN THE INSTANT CASE IS IN DIRECT CONFLICT WITH THE DECISION OF ANOTHER DIVISION OF THE COURT OF APPEALS INVOLVING THE SAME ISSUES.[35]

In G.R. No. 183889, GMC prays for the setting aside of the CA's 16 November 2007 decision in CA-G.R. CEB-SP No. 02232, on the following grounds, to wit:

A. THE DECISION OF NOVEMBER 16, 2007 AND THE RESOLUTION OF JULY 10, 2008 OF THE COURT OF APPEALS ARE CONTRARY TO LAW.

B. THE DECISION OF NOVEMBER 16, 2007 AND THE RESOLUTION OF JULY 10, 2008 OF THE COURT OF APPEALS ARE NOT IN ACCORD WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT.

C. THE DECISION OF NOVEMBER 16, 2007 AND THE RESOLUTION OF JULY 10, 2008 OF THE COURT OF APPEALS ARE CONTRARY TO THE ESTABLISHED FACTS.

D. THE DECISION OF NOVEMBER 16, 2007 AND THE RESOLUTION OF JULY 10, 2008 OF THE COURT OF APPEALS VIOLATE THE LAW OF THE CASE.

E. THE DECISION OF NOVEMBER 16, 2007 AND THE RESOLUTION OF JULY 10, 2008 OF THE COURT OF APPEALS CONTRAVENE THEIR OWN DECISION IN AN EXACTLY SIMILAR CASE INVOLVING THE SAME PARTIES.[36]

As may be gleaned from the grounds GMC and the Union interpose in support of their respective petitions, it is evident that we are called upon to determine the following matters:

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[35] *Rollo*, G.R. No. 183122, p. 12.

[36] *Rollo*, G.R. No. 183889, pp. 12-13.

(a) the period of effectivity of the imposed CBA; (b) the employees covered by the imposed CBA; and, (c) the benefits to be included in the execution of the 11 February 2004 decision rendered in G.R. No. 146728. Preliminary to the foregoing considerations is the effect of the rendition of diametrically opposed decisions in CA-G.R. CEB. SP Nos. 02226 and 02232 by the CA's Special Twentieth and Eighteenth Divisions on the parties' conflicting claims.

The Court's Ruling

We find the reversal of the assailed decisions in order.

Both GMC and the Union call our attention to the fact that the 10 October 2007 decision rendered by the CA's Special Twentieth Division in CA-G.R. CEB-SP No. 02226 is in conflict with the 16 November 2007 decision rendered by the same court's Eighteenth Division in CA-G.R. CEB-SP No. 02232. In G.R. No. 183122, the Union argues that, given the identity of parties and issues raised in said cases, the 16 November 2007 decision in CA-G.R. CEB-SP No. 02232 should have been taken considered and adopted by the CA's Special Twentieth Division in resolving its motion for reconsideration of the 10 October 2007 decision in CA-G.R. CEB-SP No. 02226.[37] In G.R. No. 183889, on the other hand, GMC maintains that, having been rendered ahead of the 16 November 2007 decision in CA-G.R. CEB-SP No. 02232, the CA's Special Twentieth Division's 10 October 2007 in CA-G.R. CEB-SP No. 02226 is the law of the case which the Eighteenth Division erroneously contravened when it dismissed its petition for *certiorari*.[38]

The conflicting decisions in CA-G.R. CEB-SP Nos. 02226 and 02232 would have been, in the first place, avoided had the CA consolidated said cases pursuant to Section 3, Rule III of its 2002 Internal Rules (IRCA).[39] Being intimately and

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[37] *Rollo*, G.R. No. 183122, pp. 19-23.

[38] *Id.*, G.R. No. 183889, pp. 15-19.

[39] Sec. 3. *Consolidation of Cases*. – When related cases are assigned to different Justices, they may be consolidated and assigned to one Justice.

substantially related cases, their consolidation should have been ordered to avert the possibility of conflicting decisions in the two cases.[40] Although rendered on the merits by a court of competent jurisdiction acting within its authority, neither one of said decisions can, however, be invoked as law of the case insofar as the other case is concerned. The doctrine of "law of the case" means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not,[41] so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[42] Considering that a decision becomes the law of the case once it attains finality,[43] it is evident that, without having achieved said status, the herein assailed decisions cannot be invoked as the law of the case by either GMC or the Union.

(a) At the instance of a party with notice to the other party; or at the instance of the Justice to whom the case is assigned, and with the conformity of the Justice to whom the cases shall be consolidated, upon notice to the parties, consolidation may be allowed when the cases involve the same parties and/or related questions of fact and/or law.

(b) Consolidated cases shall pertain to the Justice –

(1) To whom the case with the lowest docket number is assigned, if they are of the same kind;

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(c) Notice of consolidation and replacement shall be given to the raffle staff and the Judicial Records Division.

[40] *Chemphil Export and Import Corporation v. Court of Appeals*, G.R. No. 97217, 10 April 1992, 208 SCRA 95, 100 citing *Benguet Corporation, Inc. v. Court of Appeals*, 165 SCRA 265 (1988).

[41] *Padillo v. Court of Appeals*, 422 Phil. 334, 351 (2001) citing *Ducat v. Court of Appeals*, 322 SCRA 695, 706-707 (2000) citing further *Zebra Security Agency and Allied Services v. NLRC*, 270 SCRA 476, 485 (1997), *People v. Pinuila, et al.*, 103 Phil. 992, 999 (1958).

[42] *Sim v. Ofiana*, G.R. No. 54362, 28 February 1985, 135 SCRA 124, 127, citing *Reyes v. Commission on Elections*, 129 SCRA 286, 290-291.

[43] *Enriquez v. Court of Appeals*, G.R. No. 83720, 4 October 1991, 202 SCRA 487, 492.

Anent its period of effectivity, Article XIV of the imposed CBA provides that "(t)his Agreement shall be in full force and effect for a period of five (5) years from 1 December 1991, provided that sixty (60) days prior to the lapse of the third year of effectivity hereof, the parties shall open negotiations on economic aspect for the fourth and fifth years effectivity of this Agreement."[44] Considering that no new CBA had been, in the meantime, agreed upon by GMC and the Union, we find that the CA's Special Twentieth Division correctly ruled in CA-G.R. CEB-SP No. 02226 that, pursuant to Article 253 of the *Labor Code*,[45] the provisions of the imposed CBA continues to have full force and effect until a new CBA has been entered into by the parties. Article 253 mandates the parties to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period prior to the expiration of the old CBA and/or until a new agreement is reached by the parties.[46] In the same manner that it does not provide for any exception nor qualification on which economic provisions of the existing agreement are to retain its force and effect,[47] the law does not distinguish between a CBA duly agreed upon by the parties and an imposed CBA like the one under consideration.

The foregoing disquisition notwithstanding, it bears emphasizing, however, that the dispositive portion of the 30 January 1998 decision rendered by the Fourth Division of the

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[44] Record, CA-G.R. SP No. 02226, Volume I, p. 96, Imposed CBA.

[45] Art. 253. *Duty to bargain collectively when there exists a collective bargaining agreement.* - When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.

[46] *Union of Filipro Employees v. National Labor Relations Commission*, G.R. No. 91025, 19 December 1990, 192 SCRA 414, 427.

[47] *Faculty Association of Mapua Institute of Technology (FAMIT) v. Court of Appeals*, G.R. No. 164060, 15 June 2007, 524 SCRA 709, 716.

NLRC in NLRC Case No. V-0112-94 specifically ordered "the imposition upon [GMC] of the [Union's] draft CBA proposal for the remaining two years duration of the original CBA which is from 1 December 1991 to 30 November 1993."[48] Initially set aside in the 6 October 1998 resolution issued in the same case by the NLRC[49] and reinstated in the 19 July 2000 decision rendered by the CA's then Fourteenth Division in CA-G.R. SP Nos. 50383 and 51763,[50] said 30 January 1998 decision was upheld in the 11 February 2004 decision rendered by this Court in G.R. No. 146728 which, in turn, affirmed the CA's 19 July 2000 decision as aforesaid.[51] Considering that the 30 January 1998 decision sought to be enforced confined the application of the imposed CBA to the remaining two-year duration of the original CBA, we find that the computation of the benefits due GMC's covered employees was correctly limited to the period 1 December 1991 to 30 November 1993 in the 27 October 2005 order issued by Executive Labor Arbiter Violeta Ortiz-Bantug and the 20 July 2006 decision rendered by the NLRC in NLRC Case No. V-000632-2005.

Consequently, insofar as the execution of the 30 January 1998 decision is concerned, the Union is out on a limb in espousing a computation which extends the benefits of the imposed CBA beyond the remaining two-year duration of the original CBA. The rule is, after all, settled that an order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity.[52] Since execution not in harmony with the judgment is bereft of validity,[53] it must conform, more particularly, to

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[48] Record, CA-G.R. SP No. 02226, Volume 1, p. 46.

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

[50] *Id.* at 52-59.

[51] *Id.* at 61-74.

[52] *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*, 387 Phil. 885, 895 (2000) citing *Philippine Bank of Communications v. Court of Appeals*, 279 SCRA 364 (1997).

[53] *Solidbank Corporation v. Court of Appeals*, 428 Phil. 949, 958 (2002) citing *Government Service Insurance System v. Court of Appeals*, 218 SCRA 233, 250, (1993).

that ordained or decreed in the dispositive portion of the decision sought to be enforced. Considering that the decision sought to be enforced pertains to the period 1 December 1991 to 30 November 1993, it necessarily follows that the computation of benefits under the imposed CBA should be limited to covered employees who were in GMC's employ during said period of time. While it is true that the provisions of the imposed CBA extend beyond said remaining two-year duration of the original CBA in view of the parties' admitted failure to conclude a new CBA, the corresponding computation of the benefits accruing in favor of GMC's covered employees after the term of the original CBA was correctly excluded in the aforesaid 27 October 2005 order issued in RAB VII-06-0475-1992. Rather than the abbreviated pre-execution proceedings before Executive Labor Arbiter Violeta Ortiz-Bantug, the computation of the same benefits beyond 30 November 1993 should, instead, be threshed out by GMC and the Union in accordance with the *Grievance Procedure* outlined as follows under Article XII of the imposed CBA, to wit:

Article XII
GRIEVANCE PROCEDURE

Section 1. Whenever an employee covered by the terms of this Agreement believes that the COMPANY has violated the express terms thereof, or is aggrieved on the enforcement or application of the COMPANY's personnel policies, he/she shall be required to follow the procedure hereinafter set forth in processing the grievance. The COMPANY will not be required to consider a grievance unless it is presented within 7 days from the alleged breach of the express terms of this Agreement or the COMPANY personnel policies,

STEP I. The employee, through the UNION Steward, shall present the alleged grievance in writing to the immediate superior and they shall endeavor to settle the grievance within ten (10) days.

STEP II. Failing the settlement in Step I, the UNION President and the Personnel Officer shall meet and adjust the grievance within fifteen (15) days.

STEP III. Any unresolved grievance shall be referred to the Arbitration Committee provided hereunder.

Section 2. Procedure before the Grievance Committee.

A. In the event a dispute arises concerning the application or interpretation of the terms of this Agreement or enforcement/ application of the COMPANY personnel policies which cannot be settled pursuant to Section I and II, Section 1 hereof, an Arbitration Committee shall be formed for the purpose of settling that particular dispute only. The Grievance Committee shall be composed of three (3) members, one to be appointed by the COMPANY as its representative, another to be appointed by the UNION, and the third to be appointed by common agreement of the two representatives selected from among the list of accredited voluntary arbitrators in the Province of Cebu, or from government officials or civic leaders and responsible citizens in the community.

B. In all meetings of the Grievance Committee organized for the purpose of resolving a particular dispute, all members must be present and no business shall be deliberated upon if any member thereof is absent. However, if any member is unable to attend the meeting, he/she shall immediately appoint one to represent him/ her, but if the one appointed by agreement of both representatives of the COMPANY and the UNION is the one absent, the two representatives present shall agree between themselves on any person to take the place of the absent member. Any business or matter shall be considered as passed and approved by the Committee when there is a vote thereo[n] by at least two (2) members present and the same shall be final and binding on the parties concerned.

C. All decisions of the Committee shall be final: provided, however, that all decisions of the Committee shall be limited to the terms and provisions of this Agreement and in no event may the terms and provisions of this Agreement be altered, amended or modified by the Committee.[54]

Article II of the imposed CBA, relatedly, provides that "(t)he employees covered by this Agreement are those employed as regular monthly paid employees at the [GMC] offices in Cebu City and Lapulapu City, including cadet engineers, salesmen, veterinarians, field and laboratory workers, with the exception of managerial employees, supervisory employees, executive and

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[54] Record, CA-G.R. CEB SP No. 02226, Volume I, pp. 91-93, Imposed CBA.

confidential secretaries, probationary employees and the employees covered by a separate Collective Bargaining Agreement at the Company's Mill in Lapulapu City."[55] Gauged from the express language of the foregoing provision, we find that Executive Labor Arbiter Violeta Ortiz-Bantug correctly excluded the following employees from the list of 436 employees submitted by the Union[56] and the computation of the benefits for the period 1 December 1991 to 30 November 1993, to wit: (a) 77 employees who were hired or regularized after 30 November 1993; (b) 36 daily paid rank and file employees who were covered by a separate CBA; (c) 41 managerial/ supervisory employees; and, (d) 1 employee for whom no salary-rate information was submitted in the premises.[57] However, we find that the 234 employees who had already been separated from GMC's employ by the time of the rendition of the 11 February 2004 decision in G.R. No. 146728 should further be added to these excluded employees.

The record shows that said 234 employees were union members whose employment with GMC ceased as a consequence of death, termination due to redundancy, termination due to closure of plant, termination for cause, voluntary resignation, separation or dismissal from service as well as retirement.[58] Upon compliance with GMC's clearance requirements[59] and in consideration of sums ranging from ₱38,980.12 to ₱631,898.72, due payment and receipt of which were duly acknowledged, it appears that said employees executed deeds of waiver, release and quitclaim[60] which uniformly stated as follows:

THAT, for and in consideration of the said payment, I have remised, released and do hereby discharge, and by these presents do for myself, my heirs, executors and administrators, remise, release and forever

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[55] *Id.* at 80.

[56] *Id.* at 98-112.

[57] *Id.*, Volume II, pp. 1421-1425.

[58] *Id.* at 1024-1027.

[59] *Id.* at 1121-1258.

[60] *Id.* at 1031-1121.

discharge said GENERAL MILLING CORPORATION, its successors and assigns, and/or any of its officers or employees of and from any and all manner of actions, cause or causes of actions, sum or sums of money, account damages, claims and demands whatsoever by way of separation pay, benefits, bonuses, and all other rights to compensation, salary, wage, emolument, reimbursement, or monetary benefits, which I ever had, now have or which my heirs , executors and administrators hereafter can, shall or may have, upon or by reason of any matter, cause or things whatsoever in connection with my former employment in and retirement from the said GENERAL MILLING CORPORATION.

THAT, I have signed this Deed of Waiver, Release and Quitclaim after I have read the contents thereof and understood the same and its legal effects.

In its assailed 16 November 2007 decision in CA-G.R. CEB-SP No. 02232, the CA's then Eighteenth Division brushed aside said deeds of waiver, release and quitclaim on the ground, among other matters, that the same only covered the employees' separation pay and retirement benefits but did not extend to the benefits which had accrued in their favor under the imposed CBA; and, that to be valid, the waiver "should be couched in clear and unequivocal terms leaving no doubt as to the intention of those giving up a right or a benefit that legally pertains to them."[61] In so doing, however, the CA's Eighteenth Division egregiously disregarded the clear intent on the part of the employees who executed said deeds of waiver, release and quitclaim to relinquish all present and future claims arising out of their employment with GMC. Although generally looked upon with disfavor,[62] it cannot be gainsaid that legitimate waivers that represent a voluntary and reasonable settlement of laborers' claims should be so respected by the Court as the law between the parties.[63] It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the

[61] *Rollo*, G.R. No. 183899, p. 51.

[62] *Philippine Carpet Employees Association v. Philippine Carpet Manufacturing Corporation*, 394 Phil. 716, 726 (2000).

[63] *Magsalin v. National Organization of Working Men*, 451 Phil. 254, 263, (2003) citing *Alcosero v. NLRC*, 288 SCRA 129 (1998).

terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction.[64] The absence of showing of these factors in the case at bench impels us to uphold the validity of said deeds of waiver, release and quitclaim and, to exclude the employees who executed the same from those still entitled to the benefits under the imposed CBA both before and after the remaining term of the original CBA. The waiver was all inclusive. There was not even a hint of a limitation of coverage.

Inasmuch as mere allegation is not evidence, the basic evidentiary rule is to the effect that the burden of evidence lies with the party who asserts the affirmative of an issue has the burden of proving the same[65] with such quantum of evidence required by law. In administrative or quasi-judicial proceedings like those conducted before the NLRC, the standard of proof is substantial evidence which is understood to be more than just a scintilla or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[66] Since it does not mean just any evidence in the record of the case for, otherwise, no finding of fact would be wanting in basis, the test to be applied is whether a reasonable mind, after considering all the relevant evidence in the record of a case, would accept the findings of fact as adequate.[67] Viewed in the light of Union's failure to prove the factual bases for the computation of the same, we find that the NLRC correctly affirmed Executive Labor Arbiter Violeta Ortiz-Bantug's exclusion of the following benefits from the order dated 27 October, 2005, to wit: (a) vacation leave salary rate differentials; (b) sick leave salary rate differentials; (c) dislocation allowance; (d) separation

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[64] *Coats Manila Bay, Inc. v. Ortega*, G.R. No. 172628, 13 February 2009, 579 SCRA 300, 311-312, citing *Bogo Medellin Sugarcane Planters Asso., Inc. v. National Labor Relations Commission*, 357 Phil. 110, 126 (1998).

[65] *Aklan Electric Cooperative, Inc. v. NLRC*, 380 Phil. 225, 245 (2000).

[66] *Salvador v. Philippine Mining Service Corporation*, 443 Phil. 878, 888-889 (2003).

[67] *Greenfield v. Cardama*, 380 Phil. 246, 256-257, citing Moreno, *The Philippine Law Dictionary*, 1982 Ed., p. 596.

pay for voluntary resignation; and (e) separation pay salary rate differentials.[68] For want of substantial evidence to prove the same, the CA's Eighteenth Division also correctly brushed aside GMC's insistence on the deduction of the additional benefits it purportedly extended to its employees from 1 December 1991 to 30 November 1993.[69]

As for the benefits after the expiration of the term of the parties' original CBA, we find that the extent thereof as well as identity of the employees entitled thereto will be better and more thoroughly threshed out by the parties themselves in accordance with the grievance procedure outlined in Article XII of the imposed CBA. Aside from being already beyond the scope of the decision sought to be enforced, these matters will not be accurately ascertained from the summaries of claims the parties have been wont to submit at the pre-execution conference conducted *a quo*. Taking into consideration such factors as hiring of new employees, personnel movement and/or promotions as well as separations from employment which may have, in the meantime, occurred after the expiration of the remaining term of the original CBA, the identity of the covered employees as well as the extent of the benefits due them should clearly be reckoned from acquisition and/or until loss of their status as regular monthly paid GMC employees. Since the computation must likewise necessarily take into consideration the increases in salaries and benefits that may have been given in the intervening period, both GMC and the Union are enjoined to make the pertinent employment and company records available to each other, to facilitate the expeditious and accurate determination of said benefits.

WHEREFORE, premises considered the assailed decisions dated 10 October 2007 and 16 November 2007 are *REVERSED* and *SET ASIDE*. In lieu thereof, the 27 October 2005 order issued by Labor Arbiter Violeta Ortiz-Bantug is ordered

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[68] Record, CA-G.R. CEB-SP No. 02226, pp. 29-30, NLRC Decision dated 20 July 2006.

[69] *Rollo*, G.R. No. 183889, pp. 51-52, CA Decision dated 16 November 2007.

REINSTATED and *MODIFIED* to further exclude the 234 employees who have executed deeds of waiver, release and quitclaim from the computation of the benefits for the remaining term of the original CBA.

SO ORDERED.

Velasco, Jr. (Acting Chairperson),[*] *Leonardo-de Castro, Bersamin,*[**] and *del Castillo, JJ.*, concur.

SECOND DIVISION

[G.R. No. 184925. June 15, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPH MOSTRALES *y* ABAD,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS. — In this case, the prosecution was able to prove all the elements of kidnapping: **(1) The offender is a private individual; not either of the parents of the victim or a public officer who has a duty under the law to detain a person; (2) He kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) The act of detention or kidnapping must be illegal; and (4) In the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days;** (b) it is committed by simulating public authority; (c) any serious

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[*] Per Special Order No. 1003, Justice Presbitero J. Velasco, Jr., is designated as Acting Chairperson of the First Division, in lieu of the official trip of Chief Justice Renato C. Corona.

[**] Per Special Order No. 1000, Associate Justice Lucas P. Bersamin is designated additional member.

physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made or **(d) the person kidnapped or detained is a minor, female or a public official.** The essence of the crime of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect the same. Moreover, if the victim is a minor, or the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention becomes inconsequential. Ransom here means money, price or consideration paid or demanded for the redemption of a captured person that will release him from captivity.

2. REMEDIAL LAW; EVIDENCE; ALIBI AND DENIAL, AS DEFENSES; INHERENTLY WEAK; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED. — Alibi and denial are inherently weak defenses and should be received with caution, because they can be easily fabricated, and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. The positive identification of the accused, when categorical and consistent, and without any showing of ill motive on the part of the eyewitnesses testifying, should prevail over the alibi and denial of the accused, whose testimony is unsubstantiated by clear and convincing evidence.

3. ID.; ID.; ALIBI, AS A DEFENSE; TO SUCCEED THE ACCUSED MUST ESTABLISH CLEAR AND CONVINCING EVIDENCE; EXPLAINED. — For alibi to succeed as a defense, the accused must establish by clear and convincing evidence, *first*, his presence at another place at the time of the perpetration of the offense, and *second*, the physical impossibility of his presence at the scene of the crime. The concept of physical impossibility refers not only to the distance between the place where the accused was when the crime transpired and the place where it was committed, but also to the facility of access between the two places. The excuse must be so airtight that it would admit of no exception. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.

4. ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONIAL EVIDENCE SHOULD NOT ONLY BE GIVEN BY A CREDIBLE

WITNESS BUT IT SHOULD ALSO BE CREDIBLE, REASONABLE AND IN ACCORD WITH HUMAN EXPERIENCE; NOT PRESENT IN CASE AT BAR. — Juxtaposing the testimonies offered by the prosecution witnesses and the defense witnesses, the latter's recollection appears unreliable and tailor-made for the accused. This clearly militates against their credibility. Testimonial evidence should not only be given by a credible witness; it should also be credible, reasonable and in accord with human experience. x x x The Court gives less probative weight to a defense of alibi when it is corroborated by friends and relatives, as in this case, where both corroborating witnesses are close friends of the accused. One can easily fabricate an alibi and ask friends and relatives to corroborate it.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9346 (AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES); DOWNGRADING OF THE SENTENCE FROM DEATH PENALTY TO *RECLUSION PERPETUA*, AFFIRMED; SUSTAINED. — The Court also affirms the downgrading of the sentence from death to *reclusion perpetua* in light of the passage of R.A. No. 9346, *An Act Prohibiting the Imposition of the Death Penalty in the Philippines*.

6. ID.; CIVIL LIABILITY; MORAL DAMAGES; AWARD THEREOF MODIFIED IN LIGHT OF RECENT JURISPRUDENCE. — [O]n the matter of damages, the CA reduced the award of ₱2 million granted by the RTC as moral damages to ₱100,000.00, citing the 2004 case of *People v. Castillo* and the 2007 case of *People v. Rodrigo*. More recent cases, however, dictate that moral damages in the amount of ₱200,000.00 be awarded. The award of ₱100,000.00 as exemplary damages is sustained.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the March 27, 2008 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. CR-H.C. No. 00068 which affirmed with modification the September 9, 2003 Decision[2] of the Regional Trial Court, Branch 213, Mandaluyong City *(RTC)*, in Criminal Case No. MC-02-587-FC-H.

The records show that on April 18, 2002, the accused Joseph Mostrales, Diosdado Santos, Ronnie Tan, and ten (10) John Does were charged with kidnapping for ransom, defined and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act *(R.A.)* No. 7659, in an Information[3] which reads:

> That on or about the 12th day of November, 2001, in the City of Mandaluyong, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being then private individuals, conspiring and confederating together with @ JOHN-JOHN, @ KUMANDER AGUILA, @ KUMANDER KIDLAT AND TEN (10) JOHN DOES, whose true identities and present whereabouts are still unknown and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously, for the purpose of extorting ransom from one MA. ANGELA VINA DEE PINEDA and her parents, threatening to kill the said MA. ANGELA VINA DEE PINEDA if the desired amount of money could not be given, kidnap, carry away, detain and deprive the said MA. ANGELA VINA DEE PINEDA, a minor and a female, of her liberty without authority of law, against her will and consent, which kidnapping or detention lasted for more than five (5) days, and with the ransom payment in the total amount of Eleven Million Pesos (₱11,000,000.00), given and delivered to the accused.
>
> CONTRARY TO LAW.

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[1] *Rollo*, pp. 3-30. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Rodrigo V. Cosico and Mariflor P. Punzalan Castillo, concurring.

[2] CA *rollo*, pp. 34-71.

[3] *Id.* at 14.

Upon arraignment on July 30, 2002, Joseph Mostrales *(Mostrales)* pleaded not guilty to the charge. Both his co-accused, Diosdado Santos *(Santos)* and Ronnie Tan *(Tan)*, remained at-large as of the date of promulgation of the CA Decision.[4]

After the pre-trial conference held on August 22, 2002, trial ensued. The prosecution presented eleven (11) witnesses: *Herminio Altarejos (Herminio)*, the Pinedas' family driver; Elsie Bisagas *(Elsie)*, the victim's nanny; *Alex Afable (Alex)*, another family driver of the Pinedas; *Antonio Piodena (Antonio)*, company driver of Dermparma, Inc.; *Police Officer 2 Rossel Dejas (PO2 Dejas)*, Police Anti-Crime and Emergency Response *(PACER*) case investigator, Camp Crame; *Senior Police Officer 2 Roy Michael Malixi (SPO2 Malixi)*, PACER case investigator, Camp Crame; *Ma. Angela Vina Dee Pineda (Ma. Angela)*, the kidnap victim; *Ma. Aurora Dee Pineda (Ma. Aurora)*, the victim's mother; *Dr. Vinzon Pineda (Dr. Pineda)*, the victim's father; *Ana Navarra (Ana)*, the victim's former private nurse; and *Major Patricia Arumin (Major Arumin)*, PACER, Camp Crame.

The defense, on the other hand, presented Mostrales, Jaime Cesista *(Cesista)*, Rudy Hombrebueno *(Hombrebueno)*, and Isagani Nerez *(Nerez)*.

VERSION OF PROSECUTION

The evidence for the prosecution shows that on November 12, 2001 at 6:35 o'clock in the morning, Ma. Angela, the fourteen-year old daughter of Dr. Pineda and Ma. Aurora, and her three (3) minor adopted brothers, Isaac, Jacob and Samuel, left their residence in Legaspi Village, Makati City, bound for the Tabernacle of Faith Christian Academy along J. Ruiz Street, San Juan, Metro Manila where Ma. Angela was a high school sophomore.

Ma. Angela and her siblings were aboard a white Hyundai Starex van with plate number WEA 968 driven by Herminio. Alex, another driver of Dr. Pineda, rode in the passenger seat. Ma. Angela and her nanny, Elsie, were seated at the second

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[4] *Rollo*, p. 4.

row of the van, while the three boys and their nanny, Elgie Bisagas (*Elgie*), sat at the third row.

On their way to school, they passed along Paseo de Roxas to Makati Avenue and crossed the Makati-Mandaluyong Bridge. From there, they proceeded to Nueve de Febrero and turned towards Calderon Street, in the direction of San Juan. On Calderon Street, the van was following a red Toyota Revo bearing plate number WES 277.

Upon approaching the corner of Calderon and Pilar Streets, the Revo abruptly stopped. Herminio blew the van's horn, but the Revo slowly moved backward, prompting him to sound the van's horn again. As he did so, the Revo continued to move in reverse until it hit the front of the Starex. Four armed men, dressed in black and carrying long firearms, alighted from the Revo. Herminio thought that the men were police officers and that he had just committed a traffic violation. Two of the men went to Herminio's side, while the other two positioned themselves at the right side of the van near Alex.[5]

The two men at Herminio's side, one of whom was identified as Mostrales, aimed and poked their guns at the window and demanded that Herminio open the door of the van. The doors of the van opened, and the two men standing at the opposite side of the van pointed their guns at Alex, yanked him outside, forced him to face a nearby wall with his hands up, and frisked him. The men also took the keys from Herminio, opened the van's sliding door and attempted to force Ma. Angela out of the van, shouting, "*Baba, baba!*"[6] When Elsie resisted and protectively held on to Ma. Angela, one of the armed men jabbed Elsie with his gun on the right side of her torso, grabbed her feet, and pulled her out of the vehicle, causing her to fall on her back onto the ground. One of the armed men, later identified as Santos, entered the van, took Ma. Angela and brought her to the Revo. The four men boarded the Revo and sped off in the direction of Shaw Boulevard.[7]

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[5] *Id.* at 6.

[6] *Id.* at. 7 and CA *rollo*, p. 42.

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

Herminio, Alex and Elsie ran after the Revo, shouting for help, saying, "*Kinidnap yung kasama naming bata!*"[8] When they reached the Shell gasoline station on Shaw Boulevard, they could still see the Revo at Cherry Foodarama. They flagged down a man on a "*hagad*" motorcycle going in the direction of Sta. Mesa, whom they presumed to be a policeman, relayed to him what had transpired, and pointed to the Revo. The man asked Herminio for the Revo's plate number and color and pursued the vehicle. When he returned, however, he informed Herminio and his companions that he had failed to overtake the vehicle. They returned to the place of the incident, where they saw two policemen in a mobile patrol car.[9] They reported what happened and then proceeded to the Mandaluyong Police Headquarters.

From the Mandaluyong Police Headquarters, Herminio and his companions went to the National Anti-Kidnapping Task Force (*NAKTAF*) Office in Camp Crame, Quezon City. In the NAKTAF office, Herminio identified Joseph Mostrales and his co-accused Diosdado Santos from photographs shown to him. Herminio, Elsie and Alex then executed their respective sworn statements. Herminio added that he later read in a newspaper that Santos had been killed in another incident.

On that same day, a man called up the Pineda residence in Makati and identified himself to Dr. Pineda as "*Kumander Kidlat*." The caller informed Dr. Pineda that his group had Ma. Angela and warned him not to report the incident to anyone and then hung up. Thereafter, Kumander Kidlat called the Pineda residence every half hour, initially demanding ₱100 million in ransom, but which was eventually negotiated down to ₱35 million. Dr. Pineda, however, insisted that he could raise ₱3 million only. Enraged, Kumander Kidlat repeatedly cussed and directed profanities against him.[10]

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[8] *Id.* at 7 and 23, citing TSN, September 24, 2002, pp. 29-30.

[9] *Id.* at 7.

[10] *Id.* at 8.

Dr. Pineda and his ex-wife,[11] Ma. Aurora, Ma. Angela's mother, agreed to collectively raise ₱5 million as ransom money. Kumander Kidlat, however, adamantly demanded for a higher amount and threatened to kill Ma. Angela and dump her body in the creek in either the Amorsolo or Valle Verde area. Ma. Aurora testified that on November 13, 2001, while Dr. Pineda was at the bank, Kumander Kidlat let her listen to Ma. Angela's voice over the phone and told her that if they would not deliver the amount their group was demanding, they would rape and kill her daughter.

On November 16, 2001, Dr. Pineda and Kumander Kidlat finally agreed that Ma. Angela's family would pay ransom in the amount of ₱8 million. Dr. Pineda raised ₱6 million while Ma. Aurora contributed ₱2 million. Dr. Pineda personally counted the bills and, following Kumander Kidlat's instructions, arranged the money in a backpack.

On the morning of November 17, 2001, Kumander Kidlat called Dr. Pineda and told him to be ready to deliver the ransom amount. Per his instructions, Ma. Aurora was to deliver the ransom money. He also told Dr. Pineda and Ma. Aurora to have their cellphones ready to receive his instructions. Dr. Pineda's driver, Antonio, was assigned to chauffeur Ma. Aurora.[12]

At 8:00 o'clock in the morning of the same day, Kumander Kidlat called Ma. Aurora on her cellphone and instructed her to go home and wait for further instructions. After twenty minutes, he called again and instructed her to go to Pancake House in Magallanes. A few minutes after reaching the said restaurant, Kumander Kidlat ordered her to proceed to the Petron station along South Luzon Expressway, where she and Antonio waited for an hour. Kumander Kidlat then instructed her to proceed to Batangas by taking the Carmona Exit, then to turn around, proceed to C-5 and wait at the Smart Zed billboard

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[11] Both Dr. Pineda and Ma. Aurora testified that their marriage was annulled by both the Roman Catholic Church in 1995 and by a court in 1998.

[12] *Rollo*, p. 9.

area where she would give the ransom money to a man who would approach her and would mention the word "*Aguila*."[13]

As instructed, Ma. Aurora and Antonio waited in the car until a man in a white shirt and jeans approached Ma. Aurora's side of the vehicle and told her, "*[P]inagutusan lang po, Aguila.*" Then, she handed over the blue bag containing the ransom money to the man, who took it and her cellphone, and told them, "*Umalis na kayo*."[14]

Notwithstanding the payoff, the kidnappers did not release Ma. Angela. Two days later, on November 19, 2001**,** Kumander Kidlat called up Dr. Pineda at his Makati residence. When the latter asked why Ma. Angela was not released, Kumander Kidlat responded with invectives and demanded more money, saying, "*Huwag ka na magcomplain, magbigay ka pa*."[15] Dr. Pineda said that his family could not give any more than what had already been given. Kumander Kidlat told him that he would call again. Literally sick with fear and worry for his daughter, Dr. Pineda had to be confined at the Makati Medical Center. Upon further negotiations, the kidnappers again demanded that Dr. Pineda and Ma. Aurora pay an additional ransom of ₱35 million.

For a week, the Pinedas were not allowed to speak with their daughter. The family, thus, sought the assistance of Teresita Ang See *(Ang See)*, who introduced them to NAKTAF operatives.

Under the direction of Col. Allan Purisima, Ma. Aurora again negotiated with the kidnappers for Ma. Angela's release in exchange for the payment of a second ransom. For security reasons, during the course of their negotiations, the Pinedas had to constantly relocate and stay at various hotels and condominium units. After several rounds of negotiation, the kidnappers agreed to reduce the amount of the second ransom from ₱35 million to ₱3 million. Dr. Pineda raised ₱2 million

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[13] *Id.* at 10.

[14] *Id.*

[15] *Id.*

while Ma. Aurora contributed ₱1 million. Following Kumander Kidlat's instructions, Ma. Aurora placed the ransom money in a backpack.

In the meantime, Ana, Ma. Angela's private nurse from birth until she was six years old, testified that she spoke with Ma. Aurora after she learned that Ma. Angela had been kidnapped. On November 20, 2001, Ana met with Ma. Aurora at the Makati Medical Center where Dr. Pineda was confined. Ana was with Ma. Aurora on December 8, 2001, while the latter spoke with Kumander Kidlat on the phone about the delivery of the second ransom. Ana related that Ma. Aurora was crying so hard she could hardly speak. Thus, she took the cellphone from Ma. Aurora and talked to Kumander Kidlat herself. She pleaded with him to allow her to deliver the ransom money to them. Kumander Kidlat acceded and instructed her to proceed to Batangas where his group would receive the money. Thus, Ma. Aurora handed over to Ana the black backpack containing the ₱3 million ransom money.

Thereafter, Ana and Major Arumin of the NAKTAF left the Pineda residence in Makati for Batangas via South Luzon Expressway. As instructed by Kumander Kidlat, Ana and Major Arumin stopped at the Petron gas station. Ana spoke with Kumander Kidlat on the phone and was instructed ten minutes later to exit at Southwoods and proceed back to Manila. They were then directed to head to the Centennial Building along C-5 and to stop below the Hi-Nulac billboard at the end of the road. Shortly thereafter, a man approached the car and identified himself to them as "*Kumander Aguila*." After the man took the bag containing the ₱3 million ransom money and Ana's phone, she and Major Arumin drove back to Makati.

On December 8, 2001, after twenty seven (27) days in captivity, Ma. Angela was taken by the kidnappers to a place where a taxicab was waiting. Following the instructions given to her, Ma. Angela boarded the cab and gave the driver her address. Upon arrival at the building where their family lived, the security guard stationed at the ground floor accompanied her to their unit where she was reunited with her family.

VERSION OF THE ACCUSED

Mostrales denied having participated in Ma. Angela's abduction and claimed that at the time she was kidnapped and immediately prior thereto, he was at his hometown in Barangay Lauren, Umingan, Pangasinan. To vouch for his character, he drew on his having served as a member of the Philippine Marines from April 16, 1984 to March 2002 and his having been assigned as close-in security to Former President Joseph Ejercito Estrada.

The accused related that on October 31, 2001, he and his family visited his father's grave in Barangay Lauren, and that he stayed in Pangasinan for seventeen (17) days thereafter, or until November 17, 2001.

He recalled that on November 12, 2001, he stayed at home with his mother, his siblings and some of their neighbors who were visiting them at that time.

He further testified that in April 2002, he underwent surgery after having been injured in a vehicular accident in Mambungan, Antipolo City. Thereafter he returned to Pangasinan to recuperate. Several days later, however, on May 12, 2002, several NAKTAF operatives arrested him for his alleged involvement in the abduction of Ma. Angela.

Cesista, a farmer and allegedly a *barangay tanod* in Barangay Lauren, Umingan, Pangasinan, testified that he was a good friend of the Mostrales family and had known the accused since the latter was in elementary school. They were neighbors in Barangay Lauren, his house being situated approximately five meters away from the Mostrales residence. He also claimed that he saw Mostrales from November 1 to 17, 2001, particularly at 6:00 o'clock in the morning and in the afternoon of November 12, 2001, when the kidnapping took place. The next time he saw Mostrales in Pangasinan was on May 12, 2002.

Hombrebueno, a tricycle driver and a member of the Civilian Volunteer Organization of Barangay Lauren, testified that

Mostrales was his childhood friend and neighbor, and that he had known him since he was in grade school. Hombrebueno recalled that he saw the accused sometime in the morning of November 12, 2001 while he was driving his tricycle.

RULING OF THE REGIONAL TRIAL COURT

In its Decision dated September 9, 2003, the RTC held that the prosecution had duly proved the elements of Kidnapping for Ransom and found Mostrales guilty of violation of Article 267 of the Revised Penal Code, as amended by R.A. No. 7659. The dispositive portion of the decision reads:

> WHEREFORE, the prosecution having successfully proved beyond per adventure of doubt the guilt of the accused JOSEPH MOSTRALES *Y* ABAD for Violation of Article 267 of the Revised Penal Code as amended by Republic Act 7659, he is hereby sentenced to suffer the penalty of DEATH, the intent or purpose of kidnapping being to extort ransom in addition to the justifying circumstances that said kidnapping had lasted for more than three (3) days and that the person kidnapped is a minor while the accused is neither the parents, female, nor public officer.
>
> Further, said accused JOSEPH MOSTRALES *Y* ABAD is hereby ordered to pay the private complainants the following amount:
>
> 1. ELEVEN MILLION PESOS (₱11,000,000.00), Philippine Currency; representing the unrecovered ransom money;
> 2. TWO MILLION PESOS (₱2,000,000.00) Philippine currency, for and as moral damages to enable the injured parties to obtain means, diversion or amusements that will serve to alleviate the moral suffering they have undergone by reason of the accused's culpable action;
> 3. TWO HUNDRED [SIXTY] EIGHT THOUSAND, NINETY THREE PESOS AND THIRTY SEVEN CENTAVOS (₱268,093.37) as compensatory damages representing the actual pecuniary loss suffered by the private complainants from transportation, security, hospital, telephone and safe houses expenses.
>
> The Branch Clerk of Court is hereby directed to transmit the entire records of this case pursuant to the provisions of Section 10, Rule 122 of the Revised Rules of Criminal Procedure.

SO ORDERED.[16]

RULING OF THE COURT OF APPEALS

The CA agreed with the RTC and found the arguments of the accused to be without merit. In its March 27, 2008 Decision, the CA affirmed with modification the decision of the RTC, downgrading the penalty from death to *reclusion perpetua*. The dispositive portion thereof states:

> WHEREFORE, the decision dated September 29 [9], 2003 in Criminal Case No. MC-02-587-FC-H of the RTC, Branch 213, Mandaluyong City, is **AFFIRMED** with the **MODIFICATION** that accused-appellant is sentenced to *reclusion perpetua* without eligibility for parole and is ordered to pay to private complainant and her parents the amounts of ₱11,198,642.84 as actual damages, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages.
>
> SO ORDERED.[17]

Hence, this appeal.

Before this Court, the accused adopts the arguments contained in his Appellant's Brief[18] filed before the CA as his supplemental brief, as all the arguments pertinent to his defense have already been adequately raised therein. In his brief, he presented the following:

ASSIGNMENT OF ERRORS

I.

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO ACCUSED-APPELLANT'S ALIBI; *and*

II.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF KIDNAPPING FOR RANSOM WHEN THE

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[16] CA *rollo*, p. 71.

[17] *Rollo*, p. 29.

[18] CA *rollo*, pp. 98-115.

LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

The Office of the Solicitor General (*OSG*) likewise adopts the issues raised in its Brief for the Appellee[19] where it argued that the guilt of the accused was proven beyond reasonable doubt and, accordingly, recommended that the appealed decision, being in conformity with the law and the evidence presented, be affirmed *in toto*.

RULING OF THE COURT

The Court agrees with the findings of the CA and affirms its decision with the sole modification that the amount of moral damages awarded be increased to ₱200,000.00 in light of recent jurisprudence.

All the elements of kidnapping under Article 267 of the Revised Penal Code were proven in this case.

Article 267 of the Revised Penal Code, as amended by R.A. No. 7659,[20] provides:

Art. 267. ***Kidnapping and serious illegal detention.*** - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

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[19] *Id.* at 157-176.

[20] An Act To Impose The Death Penalty On Certain Heinous Crimes, Amending For That Purpose The Revised Penal Laws, As Amended, Other Special Penal Laws, And For Other Purposes.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

In this case, the prosecution was able to prove all the elements of kidnapping:

(1) The offender is a private individual; not either of the parents of the victim or a public officer who has a duty under the law to detain a person;

(2) He kidnaps or detains another, or in any manner deprives the latter of his liberty;

(3) The act of detention or kidnapping must be illegal; and

(4) In the commission of the offense, any of the following circumstances is present:

(a) the kidnapping or detention lasts for more than three days;

(b) it is committed by simulating public authority;

(c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made or

(d) the person kidnapped or detained is a minor, female or a public official.[21] [Emphases supplied]

The essence of the crime of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect the same. Moreover, if the victim

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[21] *People v. Bringas*, G.R. No. 189093, April 23, 2010, 619 SCRA 481, 509, citing *People v. Mamantak*, G.R. No. 174659, July 28, 2008, 560 SCRA 306, 307.

is a minor, or the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention becomes inconsequential. Ransom here means money, price or consideration paid or demanded for the redemption of a captured person that will release him from captivity.[22]

As the CA correctly stated, although the accused testified that he was a member of the Philippine Marines on November 12, 2001, he had no duty under the law to detain Ma. Angela. Her kidnapping was clearly illegal and undertaken for the purpose of extorting ransom from her family.

Positive Identification of the Accused

Mostrales was positively identified by two prosecution witnesses, Herminio and Alex, as one of the four men who abducted Ma. Angela on November 12, 2001. Herminio, in particular, narrated in explicit details how he and his co-accused kidnapped Ma. Angela:

Q: As a family driver, you said, what is the nature of your duties?
A: Fetching their child, Angela Pineda, from home to her school, sir.

x x x x x x x x x

Q: On November 12, 2001, what did you do, if any?
A: I drove her to school.

Q: When you said you drove her to school, [to] what school are you referring to?
A: Tabernacle of Faith, sir, Christian Academy in San Juan.

Q: What vehicle did you use then?
A: A Starex Van, color white, with Plate No. WEA 968.

Q: And who were with you, if any?
A: With me is another driver, Alex Afable…

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[22] *Id.*, citing *People v. Jatulan*, G.R. No. 171653, April 24, 2007, 522 SCRA 174, 187.

COURT:

Q: What is the first name of Afable?
A: Alex Afable, your honor, together with Angela Pineda, her *Yaya*, Elsie Bisagas, and three (3) adopted male children of Dr. Pineda.

x x x x x x x x x

Q: What happened along the way while you were along Calderon Street, by the way, this Calderon Street, what place is this?
A: In Mandaluyong City, sir.

Q: What happened when you were along Calderon Street?
A: We were tailing a Revo red car, when we approached the corners of Calderon and Pilar Streets, said car stopped.

Q: Do you know the plate number of that Toyota Revo vehicle?
A: Yes, sir.

Q: What?
A: WES 277.

Q: What happened next, if any, when the Revo stopped in front of you, at the corner of Pilar Street?
A: When the Revo stopped, because we are in a hurry, because we are chasing the time (*sic*), I blew my horn and after that, instead of them moving forward, they slowly moved backward.

Q: So, what did you do?
A: So, what I did is that I blew my horn again, sir.

Q: What happened after you blew your horn for the second time?
A: While I was blowing my again (*sic*) horn, we were bumped backward by the said vehicle and the front of the car was hit, sir.

Q: What else happened?
A: After having bumped our car, the four (4) suspects got off from the said vehicle.

Q: These four (4) suspects, who alighted from the car, were they holding anything or none at all?
A: They were armed with long firearms, sir.

Q: What followed next after they alighted with long firearms, the four (4) suspects?

A: After they alighted with long firearms, they ran towards us, the two (2) suspects went to my position and the other two (2) positioned themselves at the right side, near Alex.

Q: Those two (2) persons that positioned themselves near you, what did they do, if any, when they were near you?
A: They "*tinumbok*" their gun at the driver's window of the car on my side.

x x x x x x x x x

ATTY. PAMARAN

Q: What followed next?
A: What happened next is that the door at Alex's side suddenly opened.

Q: And what followed thereafter?
A: Thereafter, the suspects pointed the gun to (*sic*) Alex, brought him to the wall and frisked him.

x x x x x x x x x

COURT:

Q: What followed next, after Alex was told to face the wall with hands up?
A: One of the suspects had already opened (the) sliding door, the passenger's door of the van.

Q: And then, what followed?
A: Thereafter, they attempted forcibly to take away Angela Pineda but they cannot because she was embraced by her *Yaya*, namely Elsie Bisagas.

x x x x x x x x x

Q: What happened when Elsie was embracing Pineda?
A: Because of the difficulty of taking away Angela Pineda, one of the suspects hit Elsie with the point of a gun to her right side.

x x x x x x x x x

ATTY. PAMARAN

Q: What followed next, when the suspect thrust the end of his rifle or his long firearm on the side of Elsie?

A: Since they cannot get Angela, what the suspect d[id], they took the feet of Elsie and pulled her outside.

x x x x x x x x x

ATTY. PAMARAN:

Q: After Elsie was pulled outside of the vehicle, what happened next to Elsie?
A: She fell on the street.

Q: What was her position when she fell on the street?
A: She fell on the ground on her back.

Q: And then what followed next?
A: After that, the suspect immediately went inside of the vehicle and took away Angela.

Q: How did they take Angela?
A: With his single hand, he put his arm around her.

Q: And then after putting the arm around her, what did they do?
A: They run (*sic*) Angela inside their vehicle.

Q: Where was their vehicle then?
A: In front of our vehicle.

Q: What followed next after they rushed Angela to their vehicle?
A: All of them boarded their vehicle, they proceeded to Shaw Boulevard, sir.

x x x x x x x x x

Q: And how about you, what did you do?
A: And then, I immediately alighted from our vehicle and run (*sic*) after them and shouted for help, "*kinidnap 'yung kasama naming bata.*"

Q: How about your other companions, what did they do?
A: They ran after me, Elsie Bisagas and Alex Afable, but I ran first.

x x x x x x x x x

Q: Do you know the accused or do you know any of the accused or any of the suspects?
A: Yes, sir.

Q: If any of the suspects, as you remember, is in court, will you point him out?
A: Yes, sir.

Q: Please do so.
A: (*sic*) There he is, sir.

x x x x x x x x x

INTERPRETER:

The witness pointed to the person seated at the third row and identified himself as Joseph Abad Mostrales.

x x x x x x x x x x x x

(Emphases supplied.)[23]

Alex similarly identified the accused as one of Angela's abductors and corroborated Herminio's testimony:

Q: What did you notice in the T.V. News?
A: I saw one of the kidnappers of the daughter of Dr. Pineda, sir.

Q: Is that one of the kidnappers (sic) that you saw in court now?
A: Yes, sir.

Q: Please point to him, if any? (sic)

COURT:

Q: Where is he sitting?
A: Second row, Your Honor.

x x x x x x x x x

INTERPRETER:

Witness is pointing to a person [i]nside the court room [who] when asked to identify himself answered to the name of JOSEPH MOSTRALES *Y* ABAD.

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[23] *Rollo*, pp. 20-23, citing TSN, September 24, 2002, pp. 11-17, 19-21, 24-26, 29-30.

ATTY. PAMARAN:

Why did you say that the person you pointed at was one of the kidnappers?

A: Because I saw him when he alighted [f]rom the Revo car, sir.

Q: In that particular happening of the incident, do you know if he perform[ed] anything?

A: I don't know what he did but I [s]aw him when he went to the left [s]ide of the Starex Van, sir.

x x x x x x x x x

Q: Now, may I ask you again why you remember or why are you sure that he was one of the kidnappers?

A: Because I actually saw him and [c]annot forget his face, sir.

x x x x x x x x x

(Emphasis supplied.)[24]

There was no doubt in the identification of the accused by Herminio and Alex. Both witnesses positively identified him in their testimony and pointed at him in the court room. Herminio was even able to identify him from a photograph shown to him at the NAKTAF headquarters and described his physical appearance to the NAKTAF operatives in his sworn statement even before the photos were shown to him.

The accused's defense of alibi is not credible.

As the CA emphatically stated, "the defense of alibi may not be successfully invoked where the identity of the assailant has been established by the witnesses."[25] Alibi and denial are inherently weak defenses[26] and should be received with caution,

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[24] *Id.* at 24-25, citing TSN, November 26, 2002, pp. 27-30.

[25] *Id.* at 25, citing *People v. Santos*, 464 Phil. 941, 952 (2004), citing *People v. Manzano*, 422 Phil. 97, 110 (2001), and *People v. Medios*, 422 Phil. 431, 441 (2001).

[26] *People v. Ebet*, G.R. No. 181635, November 15, 2010.

because they can be easily fabricated,[27] and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused.[28]

The positive identification of the accused, when categorical and consistent, and without any showing of ill motive on the part of the eyewitnesses testifying, should prevail over the alibi and denial of the accused, whose testimony is unsubstantiated by clear and convincing evidence.[29]

For alibi to succeed as a defense, the accused must establish by clear and convincing evidence, *first*, his presence at another place at the time of the perpetration of the offense, and *second*, the physical impossibility of his presence at the scene of the crime.[30] The concept of physical impossibility refers not only to the distance between the place where the accused was when the crime transpired and the place where it was committed, but also to the facility of access between the two places.[31] The excuse must be so airtight that it would admit of no exception.[32] Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.[33]

In the case at bench, the accused failed to sufficiently prove that it was physically impossible for him to have been present at the place where the crime was committed. The accused himself testified that if traffic was light, it would only take three to four hours to commute from Umingan, Pangasinan to Manila. Travel time may even be reduced significantly to less than three hours

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[27] *People v. Tamolon and Cabagan*, G.R. No. 180169, February 27, 2009, 580 SCRA 384, 395, citing *People v. Penaso*, 383 Phil. 200, 210 (2000).

[28] *People v. Ebet*, *supra* note 26.

[29] *Rollo*, p. 25, citing *People v. Abes*, 465 Phil. 165, 185 (2004).

[30] *Id.*, citing *People v. Obrique*, 465 Phil. 221, 243 (2004).

[31] *People v. Salcedo*, G.R. No. 178272, March 14, 2011, citing *People v. Delim*, G.R. No. 175942, September 13, 2007, 533 SCRA 366, 379.

[32] *People v. Bracamonte*, 327 Phil. 160, 162 (1996).

[33] *People v. Salcedo*, *supra* note 31, citing *People v. Felipe Dela Cruz*, G.R. No. 168173, December 24, 2008, 575 SCRA 412, 439.

if one would travel using a private vehicle. Thus, as the CA concluded, it was *physically possible* for the accused to have been at the scene of the crime in Mandaluyong City in the early hours of November 12, 2001, and in Umingan, Pangasinan on the same day before noon.

The accused clearly failed to convincingly establish that he was in another place at the time of Ma. Angela's kidnapping. Both the RTC and the CA found the testimony of prosecution witnesses, Herminio and Alex, to be more credible than those of Cesista and Hombrebueno. Well-settled is the rule that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect. Having seen and heard the witnesses and having observed their behavior and manner of testifying, the trial court is deemed to have been in a better position to weigh the evidence.[34] As the accused has failed to show that the trial court misappreciated any of the facts before it, there is no reason to deviate from the established doctrine.

Juxtaposing the testimonies offered by the prosecution witnesses and the defense witnesses, the latter's recollection appears unreliable and tailor-made for the accused. This clearly militates against their credibility. Testimonial evidence should not only be given by a credible witness; it should also be credible, reasonable and in accord with human experience. As the CA observed:

> x x x Defense witness Jaime [Cesista], on the other hand, merely mentioned in passing that he saw accused-appellant at 6:00 A.M. on November 12, 2001 and in the afternoon of the same date. He did not say what made him distinctly remember seeing accused-appellant during those hours, considering that he also claimed to have seen accused-appellant everyday from November 1, 2001 to November 17, 2001. It is incredible that Rudy [Hombrebueno], the other defense witness, remembered seeing accused-appellant at 6:00 A.M. and in the afternoon of November 12, 2001 but could not recall the other persons whom he saw that day. It was only accused-appellant whom he remembered seeing for no significant

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[34] *People v. Sally*, G.R. No. 191254, October 13, 2010, citing *People v. Ofemiano*, G.R. No. 187155, February 1, 2010, 611 SCRA 250, 256.

reason, and he could not even recall any of the passengers who boarded his tricycle that day.[35]

The Court gives less probative weight to a defense of alibi when it is corroborated by friends and relatives, as in this case, where both corroborating witnesses are close friends of the accused. One can easily fabricate an alibi and ask friends and relatives to corroborate it.[36]

Thus, the prosecution having established beyond reasonable doubt the guilt of the accused, his conviction must be upheld.

The modification of the sentence from death to reclusion perpetua is affirmed.

The Court also affirms the downgrading of the sentence from death to *reclusion perpetua* in light of the passage of R.A. No. 9346, *An Act Prohibiting the Imposition of the Death Penalty in the Philippines*, the pertinent provisions of which provide:

> SECTION 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection is hereby repealed. Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659), otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.
>
> SEC. 2. In lieu of the death penalty, the following shall be imposed.
>
> (a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
>
> (b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

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[35] *Rollo*, pp. 25-26.

[36] *People v. Salcedo*, *supra* note 31, citing *People v. Sumalinog, Jr.*, 466 Phil. 637, 651 (2004).

SEC. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

x x x x x x x x x

The award of moral damages is modified in light of recent jurisprudence.

Lastly, on the matter of damages, the CA reduced the award of ₱2 million granted by the RTC as moral damages to ₱100,000.00, citing the 2004 case of *People v. Castillo*[37] and the 2007 case of *People v. Rodrigo*.[38] More recent cases,[39] however, dictate that moral damages in the amount of ₱200,000.00 be awarded. The award of ₱100,000.00 as exemplary damages is sustained.

WHEREFORE, the March 27, 2008 Decision of the Court of Appeals in CA-CR H.C.-No. 00068 is *AFFIRMED* with the sole *MODIFICATION* that the award of moral damages to private complainant and her parents is hereby ordered increased to ₱200,000.00.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Peralta,* and *Abad, JJ.,* concur.

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[37] G.R. No. 132895, March 10, 2004, 469 Phil. 87 (2004).

[38] G.R. No. 173022, January 23, 2007, 512 SCRA 360.

[39] *People v. Pepino*, G.R. No. 183479, June 29, 2010, 622 SCRA 293, 308; *People v. Bautista*, G.R. No. 188201, June 29, 2010, 622 SCRA 524, 547; and *People v. Bringas*, G.R. No. 189093, April 23, 2010, 619 SCRA 481, 516.

[*] Designated as acting member of the Second Division per Special Order No. 1006 dated June 10, 2011.

FIRST DIVISION

[G.R. No. 187047. June 15, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL CRUZ *y* CRUZ**, *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON GENERALLY ACCORDED GREAT WEIGHT AND RESPECT; RATIONALE. — Primarily, it is a well-entrenched principle that findings of fact of the trial court as to the credibility of witnesses are accorded great weight and respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The *rationale* behind this rule is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during trial. This rule finds an even more stringent application where said findings are sustained by the Court of Appeals. In the case under consideration, this Court finds no cogent reason to deviate from the findings of the trial court, which were affirmed by the appellate court.

2. ID.; ID.; DENIAL OR FRAME-UP; AS A DEFENSE, IT IS VIEWED BY THE COURT WITH DISFAVOR FOR IT CAN EASILY BE CONCOCTED; APPLICATION IN CASE AT BAR. — Denial or frame up is a standard defense ploy in most prosecutions for violation of the Dangerous Drugs Law. As such, it has been viewed by the court with disfavor for it can just as easily be concocted. It should not accord a redoubtable sanctuary to a person accused of drug dealing unless the evidence of such frame up is clear and convincing. Without proof of any intent on the part of the police officers to falsely impute appellant in the commission of a crime, the presumption of regularity in the performance of official duty and the principle that the findings of the trial court on the credibility of witnesses are entitled to great respect, deserve to prevail over the bare denials and self-serving claims of appellant that he had been framed up. Neither

can appellant's claim of alleged extortion by the police operatives be entertained. Absent any proof, appellant's assertion of extortion allegedly committed by the police officers could not be successfully interposed. It remains one of those standard, worn-out, and impotent excuses of malefactors prosecuted for drug offenses. What appellant could have done was to prove his allegation and not just casually air it. In this case, appellant failed to substantiate such defense. Other than his self-serving allegation, no other evidence whether testimonial or documentary has been adduced by him to strengthen his claim. No one was ever presented by the defense to corroborate the version of events proffered by the appellant. Hence, appellant's defense of bare denial or frame up is highly unacceptable.

3. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; PRESENT IN CASE AT BAR. — Jurisprudence clearly set the essential elements to be established in the prosecution for illegal sale of *shabu*, *viz*: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and payment therefor. Succinctly, the delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money successfully consummates the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*. In this case, the prosecution successfully established the aforesaid elements beyond moral certainty. x x x The testimonies of the prosecution witnesses and the documentary evidence offered in court gave a detailed picture of the series of events that transpired in the afternoon of 23 February 2005 in *Sitio* de Asis, *Barangay* San Martin de Pores, Parañaque City, leading to the consummation of the transaction, *i.e.*, illegal sale of *shabu*. The prosecution vividly showed how P02 Gallano, the *poseur*-buyer, was introduced by their male informant to appellant as a security guard in need of *shabu* for his personal use. The same was followed by a query from the appellant as to how much *shabu* P02 Gallano would buy. Appellant subsequently asked for P02 Gallano's money. The latter then handed to the former the marked money consisting of four (4) pieces of ₱500.00 peso bills amounting to ₱2,000.00. In exchange thereto, appellant

gave P02 Gallano one piece plastic sachet containing white crystalline substance equivalent to the money the latter gave to the former. With the foregoing, it is crystal clear that the sale transaction of illicit drug between the *poseur*-buyer and the appellant was successfully consummated.

4. ID.; ID.; ID.; AN ARREST MADE AFTER AN ENTRAPMENT OPERATION DOES NOT REQUIRE A WARRANT INASMUCH AS IT IS CONSIDERED A VALID WARRANTLESS ARREST; SUSTAINED. — On the legality of appellant's warrantless arrest, it bears stressing that he was arrested in an entrapment operation where he was caught in *flagrante delicto* selling *shabu*. An arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid warrantless arrest pursuant to Rule 113, Section 5(a) of the Rules of Court.

5. ID.; ID.; ID.; BUY BUST OPERATIONS; FAILURE TO RECORD IN THE POLICE BLOTTER THE MARKED MONEY USED IS NOT FATAL TO THE PROSECUTION'S CASE; SUSTAINED. — Granting *arguendo* that the marked money was not previously recorded in the police blotter, the same is not fatal to the prosecution's case primarily because the *poseur*-buyer testified in regards to his transaction with the appellant coupled with the presentation of the drug seized from the latter. This Court held that neither law nor jurisprudence requires the presentation of any of the money used in a buy-bust operation, much less is it required that the boodle money be marked. **The only elements necessary to consummate the crime is proof that the illicit transaction took place, coupled with the presentation in court of the *corpus delicti* or the illicit drug as evidence**. Both elements were satisfactorily proven in the present case. There is also no rule that requires the police to use only marked money in buy-bust operations. **This Court has in fact ruled that failure to use marked money or to present it in evidence is not material since the sale cannot be essentially disproved by the absence thereof**.

6. ID.; ID.; ID.; IMPOSABLE PENALTY. — *As to penalty*. The penalty for the illegal sale of dangerous drugs, like *shabu*, is explicitly provided for in Section 5, Article II of Republic Act No. 9165. x x x It is clear from the foregoing provision that

the sale of any dangerous drug, like *shabu*, regardless of 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 view, however, of the effectivity of Republic Act No. 9346, the imposition of the supreme penalty of death has been proscribed. Accordingly, the penalty applicable to appellant shall only be life imprisonment and fine without eligibility for parole. This Court, therefore, sustains the penalty of imprisonment and fine imposed upon appellant by the lower courts.

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.*:

This is an appeal from the Decision[1] dated 23 September 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02603, affirming *in toto* the Decision[2] dated 22 September 2006 of the Regional Trial Court (RTC) of Parañaque City, Branch 259, in Criminal Case No. 05-0254, finding herein appellant Manuel Cruz *y* Cruz guilty beyond reasonable doubt of illegal sale of 1.53 grams of *shabu*, a dangerous drug, in violation of Section 5,[3]

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[1] Penned by Associate Justice Sixto C. Marella, Jr. with Associate Justices Amelita G. Tolentino and Japar B. Dimaampao, concurring. *Rollo*, pp. 2-14.

[2] Penned by Judge Zosimo V. Escano. CA *rollo*, pp. 7-11.

[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 or such transactions.

Article II of Republic Act No. 9165,[4] thereby, sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

Appellant Manuel Cruz *y* Cruz was charged in two (2) separate Informations[5] both dated 24 February 2005 with violation of Sections 5 and 11,[6] Article II of Republic Act No. 9165, which were respectively docketed as Criminal Case No. 05-0254 and Criminal Case No. 05-0255. The Informations read as follows:

Criminal Case No. 05-0254

That on or about the 23rd day of February 2005 in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellant], a (sic) not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously **sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport**

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[4] Otherwise known as "Comprehensive Dangerous Drugs Act of 2002."

[5] Records, pp. 1, 10.

[6] **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

(2) 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 (P300,000.00) to Four hundred thousand pesos (P400,000.00), 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*.

Methylamphetamine Hydrochloride (*shabu*) weighing 1.53 gram, a dangerous drugs (sic).[7] [Emphasis supplied].

Criminal Case No. 05-0255

That on or about the 23rd day of February 2005, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellant], not being authorized by law to possess, did then and there willfully, unlawfully and feloniously **have in his possession and under his control and custody Methylamphetamine Hydrochloride (*shabu*) weighing 1.42 gram, a dangerous drug**.[8] [Emphasis supplied].

Upon arraignment, appellant, assisted by counsel *de oficio*, pleaded NOT GUILTY[9] to both charges. By agreement of the parties, the pre-trial conference was terminated.[10] Trial on the merits ensued thereafter.

The prosecution presented the testimony of Police Officers 2 Nemesio Gallano (PO2 Gallano) and Darwin Boiser (PO2 Boiser), both of whom are members of the Philippine National Police (PNP) assigned at the District Anti-Illegal Drugs Special Operation Team (DAID-SOT), Southern Police District, Fort Bonifacio, Taguig, Metro Manila.[11] PO2 Gallano acted as the *poseur*-buyer while PO2 Boiser served as the immediate back-up of PO2 Gallano in the buy-bust operation against appellant.

The formal taking of the testimony of Police Inspector Abraham Verde Tecson (P/Insp. Tecson) was dispensed[12] with after both parties stipulated on the following Exhibits and its sub-markings, to wit: (1) Exhibit "A", the Request for Laboratory Examination[13] of the two small heat-sealed transparent plastic sachets containing white crystalline substance seized from appellant and duly marked

[7] Records, p. 1.

[8] *Id.* at 10.

[9] Per Order dated 4 April 2005. *Id.* at 12.

[10] Per Order dated 2 June 2005. *Id.* at 16.

[11] Now Taguig City.

[12] Per Order dated 16 August 2005. Records, p. 22.

[13] *Id.* at 192.

as "NG-1-230205" and "NG-2-230205," respectively; (2) Exhibit "B", the small brown size mailing envelope that contained the two small heat-sealed transparent plastic sachets with white crystalline substance;[14] and (3) Exhibit "C", the Chemistry Report No. D-143-05.[15] The said stipulation was subject to the condition that P/Insp. Tecson has no personal knowledge of the facts and circumstances surrounding the recovery of the subject specimen; that he only made a qualitative examination of the same; and that Physical Science Report No. D-143-05 was not made under oath.[16]

As culled from the records and testimonies of the aforesaid prosecution witnesses, the factual antecedents of this case are as follows:

On 23 February 2005, at around 1:30 p.m., while Senior Police Officer 2 Rey Millari (SPO2 Millari) was at their office at DAID-SOT, Southern Police District, Fort Bonifacio, Taguig, Metro Manila, a male informant came in with an information that a certain *alias* Maning was engaged in selling illegal drugs at *Sitio* de Asis, *Barangay* San Martin de Porres, Parañaque City. SPO2 Millari immediately relayed such information to Police Chief Inspector Tito M. Oraya (P/Chief Insp. Oraya), Chief of DAID-SOT. P/Chief Insp. Oraya then directed PO2 Gallano, one of the police operatives of DAID-SOT, to verify the said information. PO2 Gallano acceded by making telephone calls to the people he knew in Sitio de Asis, *Barangay* San Martin de Porres, Parañaque City. PO2 Gallano asked each of them if they knew a certain *alias* Maning to which all positively responded and disclosed that *alias* Maning was, indeed, involved in the illegal sale of drugs in their place.[17]

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[14] CA Decision dated 23 September 2008. *Rollo*, p. 3.

[15] Records, p. 193.

[16] Per Order dated 16 August 2005. Records, p. 22. A careful perusal of the said Physical Science Report No. D-143-05 also known as Chemistry Report No. D-143-05 dated 24 February 2005 revealed that it was subscribed and sworn to before Administering Officer, Police Inspector Alejandro C. De Guzman.

[17] Testimony of PO2 Nemesio Gallano. TSN, 21 November 2005, pp. 4-17.

Thereafter, PO2 Gallano told P/Chief Insp. Oraya that the information relayed to them by the male informant was true and accurate. Accordingly, a buy-bust operation against *alias* Maning was planned and a team was formed composed of: PO2 Gallano, who was designated as the *poseur*-buyer; PO2 Boiser, who was to serve as PO2 Gallano's immediate back-up; SPO2 Millari, Police Officer 3 Sergio Delima (PO3 Delima), PO2 Gerald Marion Lagos (PO2 Lagos), PO2 Cerilo Zamora (PO2 Zamora) and the other police operatives of DAID-SOT, all of whom were assigned as perimeter back-up. P/Chief Insp. Oraya then gave four (4) pieces of ₱500.00 peso bills amounting to ₱2,000.00 to PO2 Gallano as buy-bust money, which the latter marked with "JG," representing the initials of Jose Gentiles, Chief of the District Intelligence and Investigation Branch. During the briefing, the male informant was also present. The pre-arranged signal of the buy-bust team was a missed call from PO2 Gallano to PO2 Boiser.[18]

At around 5:00 p.m., the buy-bust team, together with the male informant, proceeded to the target area on board two vehicles. Upon arrival thereat at around 5:45 p.m., the buy-bust team parked their vehicles along Tanyag Street. PO2 Gallano and the male informant alighted from their vehicle and walked towards the house of *alias* Maning while the rest of the buy-bust team followed them discreetly. Upon reaching the house of *alias* Maning, who at that time was standing on a street in front of his house, the male informant, who personally knew *alias* Maning, approached the latter and introduced PO2 Gallano as a security guard in need of *shabu* for his personal use. At this juncture, PO2 Boiser and the rest of the buy-bust team, who were all in civilian clothes, were already strategically deployed at the target area at a distance of about 10 to 15 meters away from *alias* Maning, PO2 Gallano and the male informant. The male informant likewise told *alias* Maning that PO2 Gallano is his friend. *Alias* Maning then asked PO2 Gallano how much *shabu* he would buy and where he used to buy such stuff. PO2 Gallano told

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[18] *Id.* at 18-20, 39-40 and 58; Testimony of PO2 Darwin Boiser. TSN, 31 January 2006, pp. 12, 18, 28-29 and 60.

alias Maning that he used to get it in Ususan, Taguig. *Alias* Maning then asked for PO2 Gallano's money and the latter handed to the former the marked money consisting of four (4) pieces of ₱500.00 peso bills amounting to ₱2,000.00. In exchange thereto, *alias* Maning gave PO2 Gallano one piece plastic sachet containing white crystalline substance equivalent to the money the latter gave to the former.[19]

Immediately thereafter, PO2 Gallano gave a missed call to PO2 Boiser as their pre-arranged signal signifying that the sale transaction has already been consummated. PO2 Boiser and the rest of the buy-bust team, who were just within the vicinity of the target area, proceeded, at once, to the place where PO2 Gallano, *alias* Maning and the male informant were. PO2 Gallano and the other members of the buy-bust team then introduced themselves to *alias* Maning as police officers. PO2 Gallano with the help of PO2 Boiser effected the arrest of *alias* Maning. In the course thereof, another plastic sachet containing white crystalline substance was recovered by PO2 Gallano in the possession of *alias* Maning. The marked money consisting of four (4) pieces of ₱500 peso bills amounting to ₱2,000.00 was also recovered from *alias* Maning. PO2 Gallano then marked the one piece plastic sachet containing white crystalline substance subject of the sale with "NG-1-230205" while the other plastic sachet also containing white crystalline substance found in the possession of *alias* Maning on the occasion of his arrest was marked with "NG-2-230205."[20]

Thereafter, appellant was brought to the office of DAID-SOT, Southern Police District, Fort Bonifacio, Taguig, Metro Manila, for investigation and proper documentation. In the course thereof, *alias* Maning was later on identified to be Manuel Cruz *y* Cruz, the herein appellant. A request for the drug testing of the appellant and for the laboratory examination of the two (2) plastic sachets containing white crystalline substance seized from him were likewise made. The said two (2) plastic sachets

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[19] *Id.* at 21-38; *Id.* at 15-28.

[20] *Id.* at 39-43 and 54; *Id.* at 27-31 and 41-44.

containing white crystalline substance were subsequently brought to the PNP Crime Laboratory in Camp Crame, Quezon City, for examination. The examination conducted thereon yielded positive result to the tests for the presence of methylamphetamine hydrochloride or *shabu*, a dangerous drug,[21] as evidenced by Chemistry Report No. D-143-05.[22]

The defense, on the other hand, presented the lone testimony of herein appellant, who denied all the accusations against him.

Appellant claimed that, on 23 February 2005, he was working as a dispatcher of passenger jeepneys in Tanyag Street, *Sitio* de Asis, *Barangay* San Martin de Porres, Parañaque City. At around 3:00 p.m., he went home to answer the call of nature and to take a bath. From his workplace to his house, there is a distance of about 100 meters. Upon arrival thereat, he found out that somebody was still using the comfort room so he opted to stay in the garage and watched the children playing video games.[23]

After a while, four to five male persons in civilian clothes, who introduced themselves to be policemen, entered the gate of his house and immediately arrested and handcuffed him for his alleged refusal to cooperate and to give them "*tong*." He was then pulled outside and was forcefully boarded inside a vehicle. He was, thereafter, brought to Fort Bonifacio, Taguig, Metro Manila, and was detained thereat for the alleged recovery of *shabu* in his possession. The following day, he was brought to the Parañaque City Hall for inquest. The fiscal informed him that he was charged with the illegal sale of *shabu*. He was later on detained at the Parañaque City Jail.[24]

The trial court, convinced on the merits of the prosecution's case, rendered a Decision dated 22 September 2006 finding

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[21] *Id.* at 43-48; *Id.* at 32-39.

[22] Records, p. 22.

[23] Testimony of appellant. TSN, 9 August 2006, pp. 4-6.

[24] *Id.* at 6-19.

appellant guilty beyond reasonable doubt in Criminal Case No. 05-0254 for the crime of illegal sale of *shabu*, a dangerous drug, in violation of Section 5, Article II of Republic Act No. 9165 and sentenced him to suffer the penalty of life imprisonment and a fine of ₱500,000.00. The trial court, however, ordered the dismissal of Criminal Case No. 05-0255 for the crime of illegal possession of *shabu*, a dangerous drug, in violation of Section 11, Article II of Republic Act No. 9165, elucidating that appellant's possession of small quantity of *shabu* can be considered as part and parcel of his nefarious trade. The trial court, thus, decreed:

> WHEREFORE, **PREMISES CONSIDERED**, finding **MANUEL CRUZ [*y*] CRUZ GUILTY** beyond reasonable doubt for **Violation of Section 5, Art. II, [Republic Act No.] 9165**, he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. **Criminal Case No. 05-0255** against Manuel Cruz Cruz for alleged **violation of Section 11, Art. II, [Republic Act No.] 9165 is ordered dismissed said possession of small quantity of *shabu* being considered as part and parcel of his nefarious trade**.
>
> The Clerk of Court is directed to prepare the *Mittimus* for the immediate transfer of MANUEL CRUZ [*y*] CRUZ from Parañaque City Jail to New Bilibid Prisons, Muntinlupa City, and to forward the specimen subject of these cases to the Philippine Drug Enforcement Agency [PDEA] for proper disposition.[25] [Emphasis supplied].

Appellant appealed the aforesaid trial court's Decision to the Court of Appeals *via* Notice of Appeal.[26]

In his Brief, appellant assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE [APPELLANT]'S SEARCH AND ARREST AS ILLEGAL.

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[25] CA *rollo*, p. 11.

[26] *Id.* at 12.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE [APPELLANT] OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[27]

After a thorough study of the records, the Court of Appeals rendered the assailed Decision dated 23 September 2008, affirming *in toto* appellant's conviction for violation of Section 5, Article II of Republic Act No. 9165. The Court of Appeals ratiocinated as follows:

Sufficient evidence was presented by the prosecution to show that **appellant was caught in *flagrante delicto* in a legitimate entrapment operation** conducted by the police.

x x x x x x x x x

The passing of *shabu* from appellant's hand to PO2 [Gallano] in exchange for ₱2,000.00 constituted a violation of Republic Act No. 9165. The police officers were, therefore, justified in arresting appellant without any warrant and in seizing the plastic sachets containing white crystalline substance as *corpus delicti* of the crime. x x x

Appellant argues that he was framed up. The police officers planted the evidence against him and records do not show that the marked money was recorded in the police blotter.

Appellant's defense of denial and frame up is without basis. The testimony of PO2 [Gallano] was corroborated by the testimony of PO2 [Boiser]. **Their testimonies are supported by other evidence which are – (a) the sachets containing illegal substance seized from the appellant and (b) the marked money**. x x x

xxx x x x x x x

The Court is convinced that the guilt of the appellant was proven beyond reasonable doubt. He was caught in *flagrante delicto* in a buy-bust operation. A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution

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[27] Brief for the Accused-Appellant. CA *rollo*, p. 23.

of their criminal plan. Unless there is a convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimony on the operation deserves full faith and credit.[28] [Emphasis supplied].

Not satisfied, appellant comes to this Court contending that his warrantless arrest was illegal as he was not committing any crime at the time of his arrest. Neither can it be said that he was about nor has just committed a crime as he was merely standing in the garage of his house waiting for his turn to use the bathroom.

Appellant further insists that the police officers merely planted the *shabu* seized from him so he can be prosecuted for the illegal sale of dangerous drugs, *i.e.*, *shabu*, in retaliation for their failure to extort money from him.

In front of the established circumstances leading to the warrantless arrest, appellant's contentions fail to persuade.

Primarily, it is a well-entrenched principle that findings of fact of the trial court as to the credibility of witnesses are accorded great weight and respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The *rationale* behind this rule is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during trial. This rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[29] In the case under consideration, this Court finds no cogent reason to deviate from the findings of the trial court, which were affirmed by the appellate court.

Jurisprudence clearly set the essential elements to be established in the prosecution for illegal sale of *shabu, viz*: (1) the identity of the buyer and the seller, the object of the sale and the

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[28] *Rollo*, pp. 7-9 and pp. 13-14.

[29] *People v. Andres*, G.R. No. 193184, 7 February 2011.

consideration; and (2) the delivery of the thing sold and payment therefor. Succinctly, the delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money successfully consummates the buy-bust transaction.[30] What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.[31] In this case, the prosecution successfully established the aforesaid elements beyond moral certainty.

To note, appellant was caught in *flagrante delicto* delivering one piece plastic sachet containing white crystalline substance weighing 1.53 grams to PO2 Gallano, the *poseur*-buyer, for a consideration of ₱2,000.00. The white crystalline substance contained in the said one piece plastic sachet handed by appellant to PO2 Gallano was later on confirmed to be methamphetamine hydrochloride or *shabu* per Chemistry Report No. D-143-05 dated 24 February 2005 issued by the PNP Crime Laboratory. During trial, PO2 Gallano positively identified appellant as the same person who sold and handed him the one piece plastic sachet containing white crystalline substance, proven to be *shabu*, in exchange for ₱2,000.00.[32] When the said one piece plastic sachet containing white crystalline substance confirmed to be *shabu* was presented in court, PO2 Gallano identified it to be the same object sold to him by appellant because of the markings found thereon, *i.e.*, "NG-1-230205," which he, himself, has written at the place where appellant was arrested. PO2 Gallano similarly identified in court the recovered buy-bust money from appellant consisting of four (4) pieces of ₱500 peso bills amounting to ₱2,000.00 with markings "JG," representing the initials of Jose Gentiles, the Chief of the District Intelligence and Investigation Branch.

More so, the testimonies of the prosecution witnesses and the documentary evidence offered in court gave a detailed picture

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[30] *People v. Gonzales*, 430 Phil. 504, 513 (2002).

[31] *People v. Requiz*, G.R. No. 130922, 19 November 1999, 318 SCRA 635, 647.

[32] Testimony of PO2 Nemesio Gallano. TSN, 21 November 2005, p. 45.

of the series of events that transpired in the afternoon of 23 February 2005 in *Sitio* de Asis, *Barangay* San Martin de Porres, Parañaque City, leading to the consummation of the transaction, *i.e.*, illegal sale of *shabu*. The prosecution vividly showed how PO2 Gallano, the *poseur*-buyer, was introduced by their male informant to appellant as a security guard in need of *shabu* for his personal use. The same was followed by a query from the appellant as to how much *shabu* PO2 Gallano would buy. Appellant subsequently asked for PO2 Gallano's money. The latter then handed to the former the marked money consisting of four (4) pieces of ₱500.00 peso bills amounting to ₱2,000.00. In exchange thereto, appellant gave PO2 Gallano one piece plastic sachet containing white crystalline substance equivalent to the money the latter gave to the former.

With the foregoing, it is crystal clear that the sale transaction of illicit drug between the *poseur*-buyer and the appellant was successfully consummated. Accordingly, whatever doubt in connection with appellant's culpability can no longer be questioned after being caught in a buy-bust operation conducted by the police operatives of the DAID-SOT, Southern Police District, Fort Bonifacio, Taguig, Metro Manila.

On the legality of appellant's warrantless arrest, it bears stressing that he was arrested in an entrapment operation where he was caught in *flagrante delicto* selling *shabu*. An arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid warrantless arrest pursuant to Rule 113, Section 5(a) of the Rules of Court,[33] which specifically provides that:

SEC. 5. *Arrest without warrant; when lawful*. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

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[33] *Teodosio v. Court of Appeals*, G.R. No. 124346, 8 June 2004, 431 SCRA 194, 207.

In *People v. Sembrano*[34] citing *People v. Agulay*,[35] this Court held that a buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation, as in this case, deserves judicial sanction.[36] Moreover, **in a buy-bust operation, the violator is caught in *flagrante delicto* and the police officers conducting the same are not only authorized but also duty-bound to apprehend the violator and consequently search him for anything that may have been part of or used in the commission of the crime**.[37]

In the case at bench, after the police operatives of DAID-SOT, Southern Police District, Fort Bonifacio, Taguig, Metro Manila, received information from their male informant regarding appellant's criminal activity, an entrapment plan was then set up. The same was made specifically to test the veracity of the informant's tip and to subsequently arrest the malefactor if the report is found to be true.[38] The prosecution's evidence positively showed that appellant agreed to sell *shabu* to the *poseur*-buyer, who was introduced to him by the male informant. He was, in fact, caught red-handed plying his illegal trade. Thus, the warrantless arrest of the appellant was legal and within the confines of law. In the same breath, it cannot be doubted that the sachet of *shabu* seized from him during the legitimate buy-bust operation is admissible and was properly admitted in evidence against him.

Appellant's assertion that he was just framed up as the *shabu* seized from him was planted evidence so he can be prosecuted for the illegal sale thereof finds no support in evidence.

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[34] G.R. No. 185848, 16 August 2010, 628 SCRA 328, 341.

[35] G.R. No. 181747, 26 September 2008, 566 SCRA 571, 594.

[36] *People v. Sembrano*, *supra* note 34 at 341.

[37] *People v. Juatan*, G.R. No. 104378, 20 August 1996, 260 SCRA 532, 538.

[38] *People v. Gonzales*, *supra* note 30 at 513.

Denial or frame up is a standard defense ploy in most prosecutions for violation of the Dangerous Drugs Law. As such, it has been viewed by the court with disfavor for it can just as easily be concocted.[39] It should not accord a redoubtable sanctuary to a person accused of drug dealing unless the evidence of such frame up is clear and convincing.[40] Without proof of any intent on the part of the police officers to falsely impute appellant in the commission of a crime, the presumption of regularity in the performance of official duty and the principle that the findings of the trial court on the credibility of witnesses are entitled to great respect, deserve to prevail over the bare denials and self-serving claims of appellant that he had been framed up.[41] Neither can appellant's claim of alleged extortion by the police operatives be entertained. Absent any proof, appellant's assertion of extortion allegedly committed by the police officers could not be successfully interposed. It remains one of those standard, worn-out, and impotent excuses of malefactors prosecuted for drug offenses. What appellant could have done was to prove his allegation and not just casually air it.[42]

In this case, appellant failed to substantiate such defense. Other than his self-serving allegation, no other evidence whether testimonial or documentary has been adduced by him to strengthen his claim. No one was ever presented by the defense to corroborate the version of events proffered by the appellant. Hence, appellant's defense of bare denial or frame up is highly unacceptable.

As a last ditch effort to exonerate himself, appellant even avows that the marked money used during the buy-bust operation was not shown to have been previously recorded in the police blotter, which allegedly paralyzed the cause of the prosecution.

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[39] *People v. Chua Uy*, 384 Phil. 70, 86 (2000).

[40] *People v. Lising*, G.R. No. 125510, 21 July 1997, 275 SCRA 804, 811.

[41] *People v. Chua*, G.R. No. 133789, 23 August 2001, 363 SCRA 562, 582-583.

[42] *Id*.

The case cited by appellant, *i.e.*, *People v. Fulgarillas*,[43] in support of the aforesaid allegation is not applicable in the present case. In *People v. Fulgarillas*, the *poseur*-buyer was never presented as a witness, so, the court held that the testimonies of the rest of the members of the buy-bust team are merely hearsay. There was even no testimony that when the appellant therein handed the stuff to the *poseur*-buyer, the latter in turn handed the marked money. The only evidence therein that could prove the sale transaction of illicit drug was the marked money but the records did not show that the markings thereon were previously blotted. Thus, the Court held therein that "[t]he act of blottering is the correct and regular procedure by which the regularity of the preparation of marked money may be established. Without such blotter, all attempts at establishing regularity remains dubious."[44]

Such was not the case here since the *poseur*-buyer herein, *i.e.*, PO2 Gallano, was presented by the prosecution as a witness. Accordingly, the principle enunciated in *People v. Fulgarillas* finds no application in this case. To repeat, the testimony of PO2 Gallano clearly showed how the sale transaction between him and the appellant was consummated. It started the moment PO2 Gallano was introduced by their male informant to appellant and expressed his intention to buy *shabu*, until the time appellant handed him the one piece plastic sachet containing white crystalline substance, proven to be *shabu*, in exchange to the four (4) pieces of ₱500.00 peso bills marked money amounting to ₱2,000.00 that PO2 Gallano handed to appellant.

As aptly observed by the Court of Appeals, the testimony of PO2 Gallano was corroborated by PO2 Boiser, the former's immediate back up. The testimonies of the said prosecution witnesses were likewise supported by other pieces of evidence, to wit: (1) the one piece plastic sachet containing white crystalline substance seized from appellant, which was identified in court by PO2 Gallano to be the same object sold to him by appellant; and (2) the marked money itself consisting of four (4) pieces of

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[43] G.R. No. 91160, 4 August 1992, 212 SCRA 76.

[44] *Id.* at 81.

₱500 peso bills amounting to ₱2,000.00, which was also identified by PO2 Gallano in the course of his testimony before the court *a quo*.

Granting *arguendo* that the marked money was not previously recorded in the police blotter, the same is not fatal to the prosecution's case primarily because the *poseur*-buyer testified in regards to his transaction with the appellant coupled with the presentation of the drug seized from the latter.

This Court held that neither law nor jurisprudence requires the presentation of any of the money used in a buy-bust operation, much less is it required that the boodle money be marked. **The only elements necessary to consummate the crime is proof that the illicit transaction took place, coupled with the presentation in court of the *corpus delicti* or the illicit drug as evidence**.[45] Both elements were satisfactorily proven in the present case. There is also no rule that requires the police to use only marked money in buy-bust operations. **This Court has in fact ruled that failure to use marked money or to present it in evidence is not material since the sale cannot be essentially disproved by the absence thereof**. Its non-presentation does not create a *hiatus* in the prosecution's evidence for as long as the sale of the illegal drugs is adequately established and the substance itself is presented before the court.[46]

Given the foregoing, it is with more reason that failure to previously record in the police blotter the marked money used in the buy-bust operation will neither affect nor paralyze the cause of the prosecution considering that, in this case, the *poseur*-buyer testified and the seized *shabu* was presented in evidence.

As to penalty. The penalty for the illegal sale of dangerous drugs, like *shabu*, is explicitly provided for in Section 5, Article II of Republic Act No. 9165, *viz*:

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or*

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[45] *People v. Gonzales*, *supra* note 30 at 514.

[46] *People v. Beriarmente*, 418 Phil. 229, 237 (2001).

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 broke in any of such transactions. [Emphasis supplied].

It is clear from the foregoing provision that the sale of any dangerous drug, like *shabu*, regardless of 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.[47] In view, however, of the effectivity of Republic Act No. 9346,[48] the imposition of the supreme penalty of death has been proscribed.[49] Accordingly, the penalty applicable to appellant shall only be life imprisonment and fine without eligibility for parole. This Court, therefore, sustains the penalty of imprisonment and fine imposed upon appellant by the lower courts.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02603 dated 23 September 2008, finding herein appellant guilty beyond reasonable doubt in violation of Section 5, Article II of Republic Act No. 9165 is hereby *AFFIRMED*.

SO ORDERED.

Velasco, Jr.,[*] *Leonardo-de Castro, Bersamin,*[**] and *del Castillo, JJ.,* concur.

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[47] *People v. Sembrano, supra* note 34 citing *People v. Serrano*, G.R. No. 179038, 6 May 2010, 620 SCRA 327, 345.

[48] Also known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

[49] *People v. Sembrano, supra* note 34.

[*] Per Special Order No. 1003, Associate Justice Presbitero J. Velasco, Jr. is designated as Acting Chairperson of the First Division.

[**] Per Special Order No. 1000, Associate Justice Lucas P. Bersamin is designated as Additional Member in lieu of Chief Justice Renato C. Corona who is on official leave.

SECOND DIVISION

[G.R. No. 187326. June 15, 2011]

PHILIPPINE ARMY, 5th Infantry Division, through GEN. ALEXANDER YAPSING, LT. COL. NICANOR PENULIAR, and LT. COL. FERNANDO PASION, *petitioners, vs.* **SPOUSES MAJOR CONSTANCIO PAMITTAN (Ret.) and LEONOR PAMITTAN, SPOUSES ALBERTO TALINIO and MARIA CHONA P. TALINIO, SPOUSES T/SGT. MELCHOR BACULI and LAARNI BACULI, SPOUSES S/SGT. JUAN PALASIGUE and MARILOU PALASIGUE, SPOUSES GRANT PAJARILLO and FRANCES PAJARILLO, SPOUSES M/SGT. EDGAR ANOG and ZORAIDA ANOG, and SPOUSES 2LT. MELITO PAPA and PINKY PAPA, for Themselves and for Other Occupants of Sitio San Carlos, Upi, Gamu, Isabela, by Way of Class Suit,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOTION TO DISMISS; FAILURE TO STATE CAUSE OF ACTION, AS A GROUND; GENERALLY ADMITS THE TRUTH OF THE ALLEGATIONS IN THE COMPLAINT; EXCEPTION. — Generally, a motion to dismiss based on failure to state a cause of action hypothetically admits the truth of the allegations in the complaint and in order to sustain a dismissal based on lack of cause of action, the insufficiency of the cause of action must appear on the face of the complaint. However, this rule is not without exception. Thus, a motion to dismiss "does not admit allegations of which the court will take judicial notice are not true, nor does the rule apply to legally impossible facts, nor to facts inadmissible in evidence, **nor to facts which appear by record or document included in the pleadings to be unfounded**." Indeed, in some cases, the court may also consider, in addition to the complaint, other pleadings submitted by the parties and the annexes or documents appended to it.

2. ID.; ID.; ID.; ID.; ID.; PRESENT WHEN THE ACT DONE IS IN CONNECTION WITH THE OFFICIAL DUTY. — The RTC dismissed the complaint for lack of cause of action considering that the State as the owner has the right to use the subject property. Citing *Custodio v. Court of Appeals*, the RTC held that there is no cause of action for lawful acts done by the owner on his property although such acts may cause incidental damage or loss to another. Besides, the RTC also held that petitioners cannot be held personally accountable for the demolition of the dwellings since such act was done in connection with their official duties in carrying out the AFP program "Oplan Linis." The RTC noted that the demolition was done only after previous demands to vacate were ignored by respondents. There was no showing that such acts constitute *ultra vires* acts nor was there a showing of bad faith on the part of petitioners. Clearly, as found by the RTC, the evidence on record sufficiently defeats respondents' claim that they are entitled to damages and thus, have no cause of action against petitioners.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Ramorella P. Lodriguito-Caranay for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 15 January 2009 Decision[2] and the 10 March 2009 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 89862. The Court of Appeals set aside the

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

[2] *Rollo*, pp. 9-20. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Jose C. Reyes, Jr. and Normandie B. Pizarro, concurring.

[3] *Id.* at 22-23.

Orders dated 11 April 2007 and 19 June 2007 of the Regional Trial Court (RTC), Branch 18, Ilagan, Isabela in Civil Case No. 1377, and remanded the case to the RTC for further proceedings.

The Facts

On 7 July 2006, respondents filed a complaint for Damages, Injunction with Prayer for a Writ of Preliminary Mandatory Injunction, and Temporary Restraining Order against petitioners. Petitioners Gen. Yapsing, Lt. Col. Penuliar and Lt. Col. Pasion were the Commanding General of the 5th Infantry Division, Philippine Army, Task Force Bantay Commander, and Camp Commander of Camp Melchor F. dela Cruz, 5th Infantry Division, PA, Headquarters in Upi, Gamu, Isabela, respectively.

Respondents averred that they have been occupying and residing on the land which is part of the Breeding Station of the Department of Agriculture (DA), located in Sitio San Carlos, Barangay Upi in Gamu, Isabela for the past twenty (20) to thirty (30) years. Their occupation of the land was allegedly pursuant to a prior arrangement between the DA and the then higher authorities in Camp Melchor F. dela Cruz, on the condition that the DA retains ownership over the land. Respondents averred that on 3 July 2006, upon orders of petitioners, active elements of the 5th Infantry Division, PA, tore down, demolished, and dismantled their houses. Respondents, through their counsel, demanded in writing that petitioners and their subordinates cease and desist from further demolishing their dwellings; otherwise, they would sue for damages. On 4 July 2006, the demolition crew continued tearing down other houses despite the respondents' demand letter claiming that the demolition was illegal because of lack of a court order.

On 12 July 2006, the RTC issued a temporary restraining order, enjoining and restraining for seventy two (72) hours petitioners and their agents or representatives from further continuing with the demolition.

The Office of the Solicitor General (OSG) moved to dismiss the complaint, arguing that: (1) the complaint states no cause

of action; (2) the RTC has no jurisdiction to hear the case; and (3) plaintiffs (respondents herein) are not entitled to a writ of preliminary injunction and/or temporary restraining order.[4]

On 7 November 2006, the OSG filed its Memorandum[5] alleging that:

1. On 8 June 1990, the Armed Forces of the Philippines (AFP) laid down its policy against squatting and unauthorized construction of residential houses and facilities inside military reservations. Major Service Commanders and Area Commanders of all military reservations were directed to implement the said policy within their respective commands.

2. Sometime in 1994, the Commanding Officer, 5th Infantry Division, Camp Melchor dela Cruz, Upi, Gamu Isabela entered into a Construction Agreement with herein plaintiffs most of whom were in active service of the military. (Annexes "1" to "4")

3. By virtue of the said agreement, plaintiffs were granted construction permits subject to certain conditions stated therein, one of which is:

> The applicant shall be mandated to vacate the residential unit upon retirement from the military service;
>
> The area subject of this permit shall be returned to the control of the Camp Commander in case the same is needed for military use in line with the base development plan thirty (30) days from notice of the Camp Commander.

4. On August 12, 2004, Commanding Officer Lt. Col. Felix F. Calinag, in compliance with the directive of the AFP General Headquarters on squatting, otherwise known to as "Oplan Linis," ordered all military personnel and civilians unlawfully residing inside Camp dela Cruz to vacate their residences within the soonest possible time;

5. As a result of the aforementioned directive, a large number of military personnel and civilians who had built their houses within the camp, voluntarily demolished the same and left the camp;

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[4] *Id.* at 96-102.

[5] *Id.* at 125-132.

6. On April 7, 2006, demands were again made on those parties, including herein plaintiffs, who refused to vacate their premises. These demands were reiterated in June 26, 2006 on all the plaintiffs (Annexes "5" to "11")

7. On July 3, 2006, or after more than three (3) months from receipt of plaintiff's notice to vacate, the command effected the demolition of the structures in the subject property. Manifestly, defendants effected the demolition in accord with the terms and conditions agreed upon by plaintiffs and the government under the subject construction permits. Such demolition was effected only after reasonable time was given to all plaintiffs to remove their existing structures.[6]

On 11 April 2007, the RTC issued an order[7] granting the motion to dismiss. Respondents moved for reconsideration, which the RTC denied in its order[8] dated 19 June 2007.

Respondents appealed to the Court of Appeals.

The Ruling of the Court of Appeals

On 15 January 2009, the Court of Appeals promulgated its decision, reversing and setting aside the assailed orders of the RTC. The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, premises considered, the appealed Orders dated April 11, 2007 and June 19, 2007 of the RTC, Branch 18, Ilagan, Isabela in Civil Case No. 1377 [are] REVERSED and SET ASIDE. This case is REMANDED to the RTC, Branch 18, Ilagan, Isabela for further proceedings. In order to maintain the status quo in this case, let a writ of preliminary injunction be issued enjoining defendants-appellants Ge. (sic) Yapsing, Lt. Col. Penuliar and Lt. Col. Pasion and/or their agents and/or representatives from committing further acts of demolition and/or dispossession. A bond is hereby fixed in the amount of ₱880,000.00 to be executed by plaintiffs-appellants to defendants-appellees to the effect that the former will pay the latter

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[6] *Id.* at 126-127.

[7] *Id.* at 155-159.

[8] *Id.* at 160-161.

all damages which the latter may sustain by reason of this writ should the court finally decide that the former are not entitled thereto.

SO ORDERED.[9]

The Court of Appeals ruled that to determine whether petitioners acted within the scope of their military authority in ordering the demolition of respondents' houses on the subject property and whether the RTC has jurisdiction over the subject matter of the case requires the resolution of the issue of ownership of the subject property. Furthermore, the Court of Appeals held that the determination of whether the subject property belongs to the DA or the Armed Forces of the Philippines could be best resolved in a full blown hearing on the merits before the lower court.

Petitioners filed a motion for reconsideration, which the Court of Appeals denied in its Resolution dated 10 March 2009.

Hence, this petition.

The Issue

The sole issue for resolution is whether the Court of Appeals erred in setting aside the orders of the RTC and remanding the case to the RTC for a full-blown trial.

The Ruling of the Court

We find the petition meritorious.

Generally, a motion to dismiss based on failure to state a cause of action hypothetically admits the truth of the allegations in the complaint and in order to sustain a dismissal based on lack of cause of action, the insufficiency of the cause of action must appear on the face of the complaint.[10] However, this rule is not without exception. Thus, a motion to dismiss "does not admit allegations of which the court will take judicial notice are not true, nor does the rule apply to legally impossible facts, nor

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[9] *Id.* at 19-20.

[10] *East Asia Traders, Inc. v. Republic*, G.R. No. 152947, 7 July 2004, 433 SCRA 716.

to facts inadmissible in evidence, **nor to facts which appear by record or document included in the pleadings to be unfounded**."[11] Indeed, in some cases, the court may also consider, in addition to the complaint, other pleadings submitted by the parties and the annexes or documents appended to it.[12]

In this case, the RTC considered other pleadings, aside from the complaint, filed by both parties, including the annexes in determining the sufficiency of the cause of action.[13]

It is undisputed that respondents neither own nor lease the land on which they constructed their houses. Nevertheless,

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[11] *Tan v. Director of Forestry*, 210 Phil. 244, 255 (1983).

[12] *Jimenez, Jr. v. Jordana*, 486 Phil. 452 (2004); *City of Cebu v. CA*, 327 Phil. 799 (1996); *Santiago v. Pioneer Savings & Loan Bank*, 241 Phil. 113 (1988).

[13] *Rollo*, pp. 160-161; In its Order dated 19 June 2007, denying respondent's motion for reconsideration, the RTC explained:

> The rule on a motion to dismiss cited by the plaintiff while correct as a general rule is [not] without exceptions. In *Marcopper Mining Corporation vs. Garcia, 143 SCRA 178*, the Supreme Court ruled that the trial court can consider all the pleadings filed, including answers, motions and evidence then on record for purposes of resolving a motion to dismiss based on lack of cause of action.
>
> In the case at bar, the Court had the opportunity to examine the merits of the complaint, the Motion to Dismiss, the Opposition to the Motion to Dismiss, the Memoranda of both parties and the annexes thereto. It is therefore logical for the Court to consider all the aforesaid pleadings in determining whether or not there was a sufficient cause of action in the plaintiffs' complaint.
>
> In another case, the Supreme Court ruled that where a motion to dismiss was heard with the submission of evidence, the Court cannot be limited by the rule that such motion admits the truth of the allegation in the complaint *(Tan vs. Director of Forestry, 125 SCRA 302)*. It must be noted that in the case at bar, the motion to dismiss was set for hearing wherein answers/opposition were interposed and evidence introduced. In the course of the proceedings, the plaintiffs had the opportunity to present evidence in support of their allegations in their complaint. As a consequence, the plaintiffs are estopped from invoking the rule that to determine the sufficiency of a cause of action, only the facts alleged in the complaint must be considered.

respondents insist that the demolition of their houses upon orders of petitioners was illegal because their houses stood on property which forms part of the DA Breeding Station and not within the military reservation. However, as found by the RTC, respondents' contention is belied by the survey report of the Department of Environment and Natural Resources (DENR). In its Order dated 11 April 2007, the RTC found that contrary to respondents' allegations in their complaint, the land occupied by respondents is within the military reservation based on the survey conducted by the DENR. In the Memorandum[14] dated 7 June 2005 of the Assistant Chief of the Surveys Division addressed to the Regional Technical Director for Lands of the DENR, it was stated that on 18 May 2005, the Survey Team proceeded to Upi, Gamu, Isabela to conduct a verification survey of the boundary of the military reservation and the DA Stock Farm to determine the exact location of the 82 household dwellers who were occupying the area subject of the verification survey. The Assistant Chief of the Surveys Division reported that the Survey Team found that the area occupied by the 82 household dwellers with an area of about 27,251 square meters is within the perimeter of the military reservation. The report stated:

Below is our findings:

1. Facts gathered

a. Research of references in the DENR-LMS Records Unit are the following:

a.1 Certified Blue Print copy of PLS 965 approved February 18, 1916

a.2 Certified Blue print copy of SK-al-02-000361 approved May 23, 2000

a.3 Certified Blue print copy of NR 122 approved December 15, 1958

b. The team started the survey and recovered four (4) old monuments identified as BBM No. 2 equals to corner 7of Lot 467 and corner 1 of Lot 468 both of PLS 965 and old

[14] *Id.* at 144-145.

> B1 identified also as corners 11, 12, and 13 of Lot 1 NR 122 equivalent to corners 5, 6, and 7 of Lot 468 of PLS 965 respectively. BBM No. 2 is the most possible corners for us to start running a traverse going to the boundary between Isabela stock farm and the Military reservation. Corners 1 and 2 of Lot 467 PLS 965 to (Lot 1, NR 122) identical to corners 37 and 36 of Lot 1, Ir 425 Proclamation No. 100 respectively.
>
> After running our traverse we set the boundaries with the presence of DA representatives, Military representatives and also representatives from the household dwellers. As a result of our verification survey, there is a little discrepancy compared to existing boundaries but within allowable error. **However, when we set boundaries between Military Reservation and DA Stock Farm, it was found that the area occupied by the 82 household dwellers with an area of 27,251 square meters more or less is within the perimeter of the Military Reservation.** Attached herewith is a prepared blue print plan of the area surveyed together with the relative location occupied by dwellers which is attached for ready reference.[15] (Emphasis supplied)

More importantly, respondents cannot deny that in 1994, they signed a "Construction Permit"[16] giving them permission "to construct a residential house of semi-strong materials on a portion of the military reservation at Camp Melchor F. Dela Cruz, Upi, Gamu, Isabela" subject to certain conditions such as:

> That the residential unit shall not be transferred to any other person without the consent of the Camp Commander/CO, HHSBn, 5ID, PA;
>
> That the applicant shall be mandated to vacate the residential unit upon retirement from the military service;
>
> **That the area subject of this permit shall be returned to the control of the Camp Commander in case the same is needed for the military use in line with the base development plan thirty (30) days from notice of the Camp Commander**.[17] (Emphasis supplied)

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[15] *Id.*

[16] *Id.* at 78-81.

[17] *Id.*

Thus, the RTC dismissed the complaint for lack of cause of action considering that the State as the owner has the right to use the subject property. Citing *Custodio v. Court of Appeals*,[18] the RTC held that there is no cause of action for lawful acts done by the owner on his property although such acts may cause incidental damage or loss to another.

Besides, the RTC also held that petitioners cannot be held personally accountable for the demolition of the dwellings since such act was done in connection with their official duties in carrying out the AFP program "Oplan Linis." The RTC noted that the demolition was done only after previous demands to vacate were ignored by respondents. There was no showing that such acts constitute *ultra vires* acts nor was there a showing of bad faith on the part of petitioners.

Clearly, as found by the RTC, the evidence on record sufficiently defeats respondents' claim that they are entitled to damages and thus, have no cause of action against petitioners.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 15 January 2009 Decision and the 10 March 2009 Resolution of the Court of Appeals in CA-G.R. CV No. 89862. We *REINSTATE* the Orders dated 11 April 2007 and 19 June 2007 of the Regional Trial Court, Branch 18, Ilagan, Isabela in Civil Case No. 1377.

SO ORDERED.

Leonardo-de Castro,[*] *Peralta, Abad,* and *Mendoza, JJ.,* concur.

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[18] 323 Phil. 575 (1996).

[*] Designated additional member per Special Order No. 1006 dated 10 June 2011.

FIRST DIVISION

[G.R. No. 187640. June 15, 2011]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **THE SPS. ANGELITO PEREZ and JOCELYN PEREZ,** *respondents.*

[G.R. No. 187687. June 15, 2011]

SPS. ANGELITO PEREZ and JOCELYN PEREZ, *petitioners, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN REMEDY IS AVAILABLE; PURPOSE. — A special petition for *certiorari* under Rule 65 of the Rules of Court is availed of when a "tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or *with grave abuse of discretion amounting to lack or excess of jurisdiction*, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law." It is intended to correct errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its primary purpose is to keep an inferior court within the parameters of its jurisdiction or to prevent it from committing such grave abuse of discretion amounting to lack or excess of jurisdiction. x x x Moreover, it is a basic tenet that a petition for *certiorari* under Rule 65 is an original and independent action. It is not a part or a continuation of the trial which resulted in the rendition of the judgment complained of. Neither does it "interrupt the course of the principal action nor the running of the reglementary periods involved in the proceedings, unless an application for a restraining order or a writ of preliminary injunction to the appellate court is granted."

2. ID.; ID.; ID.; ESSENTIAL REQUISITES. — The essential requisites for a petition for *certiorari* under Rule 65 are: (1) the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or

officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. x x x

3. ID.; ID.; ID.; EXCESS OF JURISDICTION, WITHOUT JURISDICTION, AND GRAVE ABUSE OF DISCRETION, DISTINGUISHED. — In *Chamber of Real Estate and Builders Associations, Inc. v. The Secretary of Agrarian Reform*, the Court discussed the differences between "excess of jurisdiction," "without jurisdiction" and "grave abuse of discretion," *to wit*: Excess of jurisdiction as distinguished from absence of jurisdiction means that an act, though within the general power of a tribunal, board or officer, is not authorized and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. Without jurisdiction means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. In *Agulto v. Tecson*, We likewise discussed that an order by the trial court allowing a party to present his evidence *ex-parte* without due notice of pre-trial to the other party constitutes grave abuse of discretion.

4. ID.; CIVIL PROCEDURE; PRE-TRIAL; FAILURE TO SEND NOTICE OF PRE-TRIAL TO THE PARTIES SHALL RENDER THE PRE-TRIAL AND ALL SUBSEQUENT PROCEEDINGS NULL AND VOID; SUSTAINED. — Section 3, Rule 18 of the 1997 Rules on Civil Procedure unequivocally requires that "[t]he notice of pre-trial **shall** be served on counsel, or on the party who has no counsel." It is elementary in statutory construction that the word "shall" denotes the mandatory character of the rule. Thus, it is without question that the language of the rule undoubtedly requires the trial court to send a notice of pre-trial to the parties. More importantly, the notice of pre-trial

seeks to notify the parties of the date, time and place of the pre-trial and to require them to file their respective pre-trial briefs within the time prescribed by the rules. Its absence, therefore, renders the pre-trial and all subsequent proceedings null and void.

5. ID.; ID.; JUDGMENT; ALL ACTS PERFORMED PURSUANT TO A VOID JUDGMENT AND ALL CLAIMS EMANATING FROM IT HAVE NO LEGAL EFFECT; APPLICATION IN CASE AT BAR. — In *Padre v. Badillo*, it was held that "[a] void judgment is no judgment at all. It cannot be the source of any right nor the creator of any obligation. **All acts performed pursuant to it and all claims emanating from it have no legal effect**." Necessarily, it follows that the nullity of the *Writ of Execution* carries with it the nullity of all acts done which implemented the writ. This includes the garnishment of Php 2,676,140.70 from PNB's account. Its return to PNB's account is but a necessary consequence of the void writ. Similarly, the nullity of the *Order* dated August 17, 2006, which cancelled PNB's fourteen (14) titles and directed the issuance of new titles to Spouses Perez, has the effect of annulling all the fourteen (14) titles issued in the name of Spouses Perez. The titles should revert back to PNB.

6. REMEDIAL LAW; APPEALS; ISSUES THAT CAN BE RAISED IN A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 ARE LIMITED ONLY TO QUESTIONS OF LAW. — Time and again, this Court has pronounced that the issues that can be raised in a petition for review on *certiorari* under Rule 45 are limited only to questions of law. The test of whether the question is one of law or of fact is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.

7. ID.; ID.; ISSUES NOT RAISED BEFORE THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL. — It is settled that matters not raised in the trial court or lower courts cannot be raised for the first time on appeal. "They must be raised seasonably in the proceedings before the lower courts. Questions raised on appeal must be within the issues framed by the parties; consequently, issues not raised before the trial court cannot be raised for the first time on appeal."

APPEARANCES OF COUNSEL

Antonio M. Elicaño and *Salvador J. Ortega* for PNB.
Benedicto D. Tabaquero and *Meris Rigos Meris & Associates Law Office* for Sps. Perez.

D E C I S I O N

VELASCO, JR.,* ***J.*:**

Before Us are two Petitions for Review on *Certiorari* under Rule 45 docketed as **G.R. No. 187640** and **G.R. No. 187687**, seeking the review of the Decision and Resolution of the Court of Appeals (CA) dated October 23, 2008 and April 28, 2009, respectively, in CA-G.R. SP No. 96534. We consolidated the two cases as they involve identical parties, arose from the same facts, and raise interrelated issues.

The Facts

In 1988, spouses Angelito Perez and Jocelyn Perez (Spouses Perez) obtained a revolving credit line from Philippine National Bank's (PNB's) branch in Cauayan City, Province of Isabela. The credit line was secured by several chattel mortgages over *palay* stocks inventory and real estate mortgages over real properties.

Sometime in 2001, Spouses Perez defaulted on their financial obligations, prompting PNB to institute extra-judicial foreclosure proceedings over the aforementioned securities on November 13 of that year. On November 19, 2001, the sheriff instituted a Notice of Extra-Judicial Sale for the mortgaged properties by public auction on December 20, 2001.

Meanwhile, on November 26, 2001, Spouses Perez filed an Amended Complaint for Release or Discharge of Mortgaged Properties, Breach of Contract, Declaration of Correct Amount of Obligation, Injunction, Damages, Annulment of Sheriff's Notice

* Acting Chairperson Per Special Order No. 1003 dated June 8, 2011.

of Extra-Judicial Sale, with a Prayer for the Issuance of a Preliminary Mandatory Injunctive Writ and a Temporary Restraining Order docketed as Civil Case No. 20-1155.[1]

At the hearing of the application for the issuance of a writ of preliminary mandatory injunction on April 19, 2002, Spouses Perez and their counsel failed to appear. As a result, the prayer for injunctive relief was denied.

Similarly, at the pre-trial conference scheduled on September 19, 2002, Spouses Perez and their counsel again failed to appear. Spouses Perez alleged that they previously filed a Motion for Postponement dated August 28, 2002. On the same date, the trial court issued an Order denying the Motion for Postponement and, accordingly, dismissed the case.

Spouses Perez then filed a Motion for Reconsideration which was subsequently denied. They also filed a Second Motion for Reconsideration dated January 16, 2003 which was also denied by the trial court.

After this, Spouses Perez filed a Notice of Appeal. It was also denied by the trial court in an Order dated April 11, 2003 for being filed out of time. Spouses Perez then filed a *Motion for Reconsideration* dated April 29, 2003 seeking the reconsideration of the *Order* dismissing the appeal.

The *Motion for Reconsideration* dated April 29, 2003 was originally set for hearing on July 30, 2003. However, Spouses Perez filed five (5) motions to postpone the hearing. The trial court granted the first four (4) motions but denied the fifth one. Spouses Perez filed a *Motion for Reconsideration* of the Order denying the fifth *Motion for Postponement* which was also subsequently denied.

Consequently, Spouses Perez appealed the denial of their *Motion for Reconsideration* to the CA. The petition was docketed as CA-G.R. SP No. 85491. On January 25, 2005, the CA rendered a *Decision* denying the petition filed by Spouses Perez. It reasoned:

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[1] *Rollo* (G.R. No. 187640), pp. 102-139.

Neither did respondent court gravely abuse its discretion in resolving to dismiss Civil Case No. 20-1155 for failure of the plaintiffs and their time, allegedly because their counsel had to attend a pre-trial hearing in another case. True is it that procedural rules may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his noncompliance with the procedure required. But equally true is it that the law mandates that the appearance of parties at the pre-trial conference is mandatory. Here, as borne out by the records of this case, counsel for petitioners received the notice of pre-trial conference in another case a long while before they were notified of the pre-trial conference in the case at bench. As shown in the notice dated August 15, 2002, counsel already knew that the pre-trial conference in the present case was set for September 19, 2002. By the time he received the notice of pre-trial hearing in the case at bench on August 22, 2002, counsel thus must have seen and realized the obvious conflict in schedules between the two cases. However, instead of taking timely measures to prevent an impending snafu, it took counsel more than a week to file a motion for postponement of the pre-trial conference in Civil Case No. 20-1155. Worse, although received by respondent court on September 3, 2002, that motion did not contain any request that said motion be scheduled for hearing. Equally distressing, it is not clearly shown that the requirement on notice to the other party was likewise complied with. Counsel evidently failed to take into account the fact that, just like him, the court must need also to calendar its own cases. Further, as stressed by respondent court in its challenged order of September 19, 2002, petitioners' counsel works for a law firm staffed by several lawyers, and any of these lawyers could have represented petitioners at the pre-trial conference in this case. That counsel had to allegedly appear in another case (which purportedly explained his inability to appear in the present case) is a stale, banal, and prosaic excuse. Some such flimsy ratiocination, added to counsel's filing of an erroneous pleading (the second motion for reconsideration), which because it is a prohibited pleading, unfortunately did not toll the running of the prescriptive period for filing a notice of appeal, did prove fatal to petitioner's cause. Settled is the rule that parties are bound by the action or inaction of their counsel; this rule extends even to the mistakes and simple negligence committed by their counsel.

Simply put, petitioners trifled with the mandatory character of a pre-trial conference in the speedy disposition of cases. Petitioners should have known that pre-trial in civil actions has been peremptorily

required these many years. It is a procedural device intended to clarify and limit the basic issues between the parties and paves the way for a less cluttered trial and resolution of the case. Its main objective is to simplify, abbreviate and expedite the trial, or, propitious circumstance permitting (as when the parties can compound or compromise their differences), even to totally dispense with it altogether. Thus, it should never be taken lightly – or for granted! A party trifles with it at his peril.

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition at bench must be, as it hereby, is DENIED and consequently DISMISSED, for lack of merit. Costs shall be assessed against the petitioners.

SO ORDERED.[2]

Spouses Perez filed a *Motion for Reconsideration* of the aforementioned decision. Surprisingly, on April 14, 2005, the CA issued an *Amended Decision*[3] granting the Motion for Reconsideration citing that the higher interest of substantial justice should prevail and not mere technicality. The dispositive part of the *Amended Decision* reads:

WHEREFORE, finding merit in the motion for reconsideration, we hereby resolve, to wit:

(1) To SET ASIDE and VACATE our Decision of January 25, 2005;

(2) To GRANT this petition. Consequently we hereby direct the annulment or invalidation of the following orders issued by the respondent court, to wit:

1. The April 11, 2003 order, denying petitioners' notice of appeal; and the March 17, 2004 order, denying petitioners' motion for reconsideration thereon;

2. The September 19, 2002 order, denying petitioners' motion for postponement in Civil Case No. 20-1155 entitled "*Sps. Angelito A. Perez v. Philippine National*

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[2] *Id.* at 74-76.

[3] *Id.* at 155-166.

Bank, et al." thereby resulting in the dismissal of the said case;

3. The January 6, 2003 order, denying petitioners' motion for reconsideration in the above mentioned case; and

4. The February 7, 2003 order, denying petitioners' second motion for reconsideration in the above stated case.

(3) To REINSTATE Civil Case No. 20-1155 in the docket of respondent court, the Regional Trial Court of Cauayan City, Branch 20, which is now hereby ordered to conduct the pre-trial therein, and thereafter to proceed to try the case on the merits.

Without costs.

SO ORDERED.[4]

Accordingly, the case was remanded to the trial court. On January 20, 2006, the trial court issued an *Order* setting the case for hearing on March 8, 2006. The said *Order* reads in full:

On October 20, 2005, [Spouses Perez] filed their motion to require [PNB] to submit [its] statement of account for the period beginning 1995 to 2000.

The motion was heard on November 7, 2005 but only the counsel for [Spouses Perez] appeared. On December 9, 2005, [PNB] also filed a motion for the production or inspection of books of accounts regarding payments in the years 1997 to 2000 and thereafter, if any. The same motion was heard on December 15, 2005 but again, despite due notice, only the counsel for [Spouses Perez] appeared and reiterated his motions.

WHEREFORE, there being no opposition to the twin motion of [Spouses Perez], the same are hereby granted. Accordingly, let this case be set for hearing on March 8, 2006 at 8:30 o'clock in the morning. [PNB] is hereby directed to prepare and complete within thirty (30) days from receipt of this order a statement of account for [Spouses Perez] covering payments made for the period beginning 1995 to 2000, allowing [Spouses Perez] or their duly authorized

[4] *Rollo* (G.R. No. 187640), pp. 165-166.

representatives to inspect the same at the bank premises during regular banking hours.

SO ORDERED.[5]

PNB, however, failed to receive a copy of the aforementioned order and was, thus, unable to attend the hearing on March 8, 2006. Questionably, on said date, the trial court issued an *Order* allowing Spouses Perez to adduce evidence and considered the hearing as a pre-trial conference, *to wit*:

WHEREFORE, for failure to appear in today's pre-trial and for failure to comply with the order of this Court dated January 20, 2006, [Spouses Perez] are hereby allowed to adduce evidence before the Branch Clerk of Court and the Branch Clerk of Court is ordered to submit her report within ten (10) days.

SO ORDERED.[6]

On March 15, 2006, PNB filed a *Motion for Reconsideration*[7] of the said Order.

Nevertheless, on July 5, 2006, the trial court decided in favor of Spouses Perez. In its *Decision*, the trial court denied PNB's *Motion for Reconsideration* but failed to mention such denial in the dispositive portion of the *Decision*, *viz*:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring that due and full payments were made by [Spouses Perez] on their principal obligation to [PNB] including interest and directing the release and discharge of all the properties covered by the real estate mortgages executed by [Spouses Perez];

2. Declaring the Sheriff's Notice of Extrajudicial Sale as null and void, and enjoining defendant from foreclosing any and all of the properties mortgaged by [Spouses Perez] as collateral for the said loan obligations;

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[5] *Rollo* (G.R. No. 187640), p. 168.

[6] *Rollo* (G.R. No. 187640), p. 169.

[7] *Rollo* (G.R. No. 187640), pp. 170-171.

3. Ordering [PNB] to pay [Spouses Perez] the sum of:

   a. ONE HUNDRED FORTY FIVE MILLION ONE HUNDRED SEVENTEEN THOUSAND THREE HUNDRED SIX PESOS AND SIXTY SEVEN CENTAVOS (PHP145,117,306.67) representing the amount overpaid by [Spouses Perez] under the revolving credit loan facility and promissory notes executed between the parties;

   b. TWO MILLION PESOS (PHP2,000,000.00) as moral damages;

   c. ONE MILLION FIVE HUNDRED THOUSAND PESOS as Exemplary damages;

   [d.] ONE MILLION PESOS (PHP1,000,000.00) as Attorney's Fees and

   [e.] Costs of suit.

SO ORDERED.[8]

PNB again filed a *Motion for Reconsideration* dated July 24, 2006 but due to certain reasons, the counsel for PNB failed to send a copy of the said motion to the trial court. As a result, the trial court denied the *Motion for Reconsideration* for having been filed outside the reglementary period and concluded that the *Decision* already became "final and executory by operation of law."[9] Accordingly, the trial court issued an *Order of Execution* dated August 14, 2006.[10] The very next day, a *Writ of Execution* was issued to implement the aforesaid order and to demand payment from PNB.

On August 15, 2006, PNB filed a *Petition for Relief from Judgment/Order of Execution*[11] with a prayer for the issuance of a writ of preliminary injunction, alleging that the failure to file the *Motion for Reconsideration* was due to mistake and/or

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[8] *Rollo* (G.R. No. 187640), p. 200.

[9] *Rollo* (G.R. No. 187640), p. 207.

[10] *Rollo* (G.R. No. 187640), pp. 206-209.

[11] *Rollo* (G.R. No. 187640), pp. 212-217.

excusable negligence. Afterwards, on August 16, 2006, the trial court issued an *Order* denying the prayer for preliminary injunction. Also, on August 17, 2006, the trial court issued an *Order* annulling the certificates of title issued to PNB covering the properties subject of the case and directed the Register of Deeds of Isabela to issue new certificates of title in the names of Spouses Perez.

On October 18, 2006, PNB filed a *Petition for Certiorari (with Prayer for the Issuance of an Ex-Parte Temporary Restraining Order/Writ of Preliminary Injunction*)[12] before the CA docketed as CA-G.R. SP No. 96543 seeking the annulment of the *Order of Execution* dated August 14, 2006, the *Writ of Execution* dated August 15, 2006, *Order* dated August 16, 2006 and the *Order* dated August 17, 2006. Similarly, on October 30, 2006 and November 6, 2006, PNB filed a *Supplement to the Petition for Certiorari (with Urgent Prayer for the Issuance of an Ex-Parte Temporary Restraining Order/Writ of Preliminary Injunction)*[13] and an *Urgent Motion for the Issuance of an Ex-Parte Temporary Restraining Order with Supplement to Petition*,[14] respectively.

Consequently, the CA issued a *Resolution* dated November 7, 2006, which was received by PNB on November 8, 2006, granting the prayer for a temporary restraining order (TRO) and, likewise, issued a *Temporary Restraining Order* on the same date. The Resolution reads:

> On account of the extreme urgency of the matter and in order not to frustrate the ends of justice, or to render the issues raised herein moot and academic, this Court, pending the resolution of the instant petition, hereby resolves to GRANT [PNB's] prayer for issuance of a temporary restraining order within a period of sixty (60) days from notice hereof or until earlier terminated by this Court, thereby directing public respondent, or any person acting for and on his behalf, to CEASE and DESIST from IMPLEMENTING the

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[12] *Rollo* (G.R. No. 187640), pp. 263-318.

[13] *Rollo* (G.R. No. 187640), pp. 319-353.

[14] *Rollo* (G.R. No. 187640), pp. 354-365.

assailed Orders dated August 16 and 17, 2006 in Civil Case No. Br. 19-1155 or otherwise ENFORCING the Order of Execution dated August 14, 2006 or the Writ of Execution dated August 15, 2006 in said case.

[Spouses Perez] are, in the meantime, required to file their COMMENT (and not a motion to dismiss) on the petition within ten (10) days from notice hereof and SHOW cause within the same period why a writ of preliminary injunction should not issue.

SO ORDERED.[15]

Despite the issuance of the TRO, Spouses Perez were able to garnish Two Million Six Hundred Seventy-Six Thousand One Hundred Forty Pesos and Seventy Centavos (Php 2,676,140.70) from PNB's account with Equitable PCI Bank (EPCIB) on the same date the TRO was issued, November 7, 2006. In a letter dated November 8, 2006, from Atty. Gerardo I. Banzon, EPCIB's Head of Legal Advisory and Research Department, Legal Services Division, informed PNB regarding this, *viz*:

As much as we would like to heed to your request for the lifting and that a STOP PAYMENT ORDER of the check issued in favor of the Spouses Perez, be issued immediately, **we regret to inform you that Sheriff Asirit, together with the Spouses Perez, went to our Salcedo St. – Legaspi Village at about 10:30am yesterday to pick-up the check.** Proceeds of the said check were credited to the account of the Spouses Perez, who has an account with our Cauayan – Isabela branch, before noon yesterday. Regrettably, we were only informed of the existence of the TRO at about 4:49pm yesterday. Moreover, we only received the copy of the TRO itself at 2:07pm today. Sad to say but all matters are already moot and academic.[16] (Emphasis supplied.)

In view of this development, PNB filed a *Supplemental Petition for Certiorari (with Urgent Prayer for the Issuance of an Ex-Parte Writ of Preliminary Injunction)*[17] seeking additional reliefs for the return or reinstatement of the garnished

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[15] *Rollo* (G.R. No. 187640), pp. 367-368.

[16] *Rollo* (G.R. No. 187640), pp. 382-383.

[17] *Rollo* (G.R. No. 187640), pp. 384-406.

amount and/or the appointment of a receiver over the said funds to administer and preserve the same pending the final disposition of the case.

The Decision of the Court of Appeals

On October 23, 2008, the CA issued the assailed *Decision* in CA-G.R. SP No. 96534,[18] granting the petition of PNB. It ruled that the sending of a notice of pre-trial is mandatory and that the *Order* dated March 8, 2006 issued by the trial court cannot be considered as such. Therefore, the CA held that all orders issued subsequent to the said order are, likewise, null and void. It disposed of the case as follows:

> It is not only the Order of March 8, 2006 which allowed the presentation of [Spouses Perez's] evidence *ex parte* which is null and void. All the Orders assailed in the instant petition, as follows:
>
> a) Order of Execution dated August 14, 2006;
>
> b) Writ of Execution dated August 15, 2006;
>
> c) Order dated August 16, 2006 which denied PNB's application for TRO/preliminary injunction; and
>
> d) the Order of August 17, 2006 which annulled PNB's fourteen (14) titles and directed issuance of new titles to herein private respondents;
>
> having been issued subsequent to the pre-trial improperly conducted on March 8, 2006 are declared voided and nullified for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.
>
> WHEREFORE, in view of the foregoing, the petition is GRANTED. The assailed Orders are declared void and nullified. The trial court is directed to conduct the pre-trial therein after proper notice had been served on both parties and thereafter to proceed to try the case on the merits.
>
> SO ORDERED.[19]

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[18] *Rollo* (G.R. No. 187640), pp. 69-86.

[19] *Rollo* (G.R. No. 187640), p. 86.

The *Decision* of the CA, however, failed to address PNB's prayer for the issuance of a writ of mandatory injunction and the return/reinstatement of the Php 2,676,140.70. Thus, PNB filed a *Motion for Clarificatory Order and/or Ad Cautelam Motion for Partial Reconsideration*.[20] In support of its motion, PNB argued that considering the garnishment of the amount of money was based on the orders already voided by the CA, it is entitled to the return/reinstatement of the garnished amount. On the other hand, Spouses Perez also filed their *Motion for Reconsideration*.[21]

In a *Resolution* dated April 28, 2009, the CA denied both motions. Hence, PNB and Spouses Perez filed their separate petitions with this Court assailing both the decision and the resolution of the CA.

The Issues

In **G.R. No. 187640**, PNB raises the following arguments in support of its petition:

> Whether the [CA] has decided a question of substance in a way not in accord with law or with the applicable decisions of this Honorable Court on the following issues:
>
> I. Whether a garnishment/execution erected on the same day and date that a TRO is issued to enjoin the garnishment/ execution is valid.
>
> II. Whether an earlier garnishment effected pursuant to a writ of execution survives the subsequent annulment of the writ.
>
> III. Whether the dissipation/loss of, or inability to return/recover the property, constitutes an irreparable injury to warrant the issuance of a mandatory injunction.[22]

In **G.R. No. 187687**, Spouses Perez raise the following issues for our consideration:

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[20] *Rollo* (G.R. No. 187640), pp. 424-441.

[21] *Rollo* (G.R. No. 187640), pp. 442-507.

[22] *Rollo* (G.R. No. 187640), pp. 39-40.

I.

The Respondent Honorable [CA] committed a reversible error on [a] question of law in not dismissing the petition for *certiorari* outrightly on [the] ground that a petition for *certiorari* under Rule 65 of [the] 1997 Rules on Civil Procedure is not a substitute for [a] lost appeal[;]

II.

The Respondent Honorable [CA] committed a reversible error on [a] question of law in not dismissing the petition for *certiorari* on the ground that the decision of the lower court has already become final and executory; in fact, a writ of execution was already issued and the respondent [PNB] has already partially satisfied the money judgment at its branch of ₱10,000.00 and then at the Equitable Bank Manila in the sum of ₱2,676,140.70 and the certificates of title in the name of respondent bank was ordered cancelled and the certificates of titles of the petitioners to the subject properties were reinstated in the name of petitioners who already sold the same to innocent purchasers for value and therefore, by estoppel respondent bank is precluded to assail by petition for *certiorari* the final and executory decision, writ of execution and partial satisfaction of the money judgment[;]

III.

The Respondent Honorable [CA] committed a reversible error on [a] question of law in not dismissing [the] petition for *certiorari* outrightly on [the] ground that there are pending petition for relief from judgment and motion for [reconsideration] with the lower court[;]

IV.

The Respondent Honorable [CA] committed a reversible error on [a] question of law in not dismissing the petition for *certiorari* on [the] ground that the order of the lower court[,] although [it] did not state [the] notice of pre-trial, the respondent bank and its counsel knew that the Honorable [CA] in its Amended Decision in remanding the case to the lower court is to conduct a pre-trial and therefore, there was nothing to suppose that the scheduled hearing was anything other than pre-trial as enunciated by this Honorable Court in the case of *Bembo et al. vs. Court of Appeals, et al.* G.R. No. 116845, November 29, 1995.[23]

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[23] *Rollo* (G.R. No. 187687), pp. 22-25.

The issues presented can be summarized as follows: (1) Whether a petition for *certiorari* is a proper remedy; and (2) Whether a pre-trial notice is mandatory and, as a consequence, whether the lack of notice of pre-trial voids a subsequently issued decision.

Petition for *Certiorari* is the Proper Remedy

In their petition, Spouses Perez argue that the filing of a petition for *certiorari* by PNB before the CA was improper for two reasons: (a) a petition for *certiorari* is not a substitute for a lost appeal; and (b) there were other pending petitions for relief from judgment and a motion for reconsideration with the lower court.

The argument is bereft of merit.

A special petition for *certiorari* under Rule 65 of the Rules of Court is availed of when a "tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or *with grave abuse of discretion amounting to lack or excess of jurisdiction*, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law."[24]

It is intended to correct errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its primary purpose is to keep an inferior court within the parameters of its jurisdiction or to prevent it from committing such grave abuse of discretion amounting to lack or excess of jurisdiction.[25]

The essential requisites for a petition for *certiorari* under Rule 65 are: (1) the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any

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[24] Section 1, Rule 65, 1997 Rules of Civil Procedure.

[25] *Chamber of Real Estate and Builders Associations, Inc. v. The Secretary of Agrarian Reform*, G.R. No. 183409, June 18, 2010.

plain, speedy, and adequate remedy in the ordinary course of law.[26]

In *Chamber of Real Estate and Builders Associations, Inc. v. The Secretary of Agrarian Reform*, the Court discussed the differences between "excess of jurisdiction," "without jurisdiction" and "grave abuse of discretion," *to wit*:

> Excess of jurisdiction as distinguished from absence of jurisdiction means that an act, though within the general power of a tribunal, board or officer, is not authorized and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. Without jurisdiction means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[27]

In *Agulto v. Tecson*, We likewise discussed that an order by the trial court allowing a party to present his evidence *ex-parte* without due notice of pre-trial to the other party constitutes grave abuse of discretion.[28]

Here, the trial court failed to issue a proper notice of pre-trial to PNB. Thus, it committed grave abuse of discretion when it issued the *Order* dated March 8, 2006 allowing Spouses Perez to present their evidence *ex-parte*.

Considering that the trial court's action in issuing such order constituted grave abuse of its discretion, PNB availed of the

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[26] *Chamber of Real Estate and Builders Associations, Inc. v. The Secretary of Agrarian Reform*, G.R. No. 183409, June 18, 2010.

[27] *Chamber of Real Estate and Builders Associations, Inc. v. The Secretary of Agrarian Reform*, G.R. No. 183409, June 18, 2010.

[28] G.R. No. 145276, November 29, 2005, 476 SCRA 395, 403.

proper remedy when it filed a petition for *certiorari* with the CA.

Nevertheless, even with the existence of the remedy of appeal, this Court has, in certain cases, allowed a writ of *certiorari* where the order complained of is a patent nullity.[29] In the instant case, the lack of notice of pre-trial rendered all subsequent proceedings null and void. Hence, the CA was correct in not dismissing the petition for *certiorari*.

Moreover, it is a basic tenet that a petition for *certiorari* under Rule 65 is an original and independent action. It is not a part or a continuation of the trial which resulted in the rendition of the judgment complained of.[30] Neither does it "interrupt the course of the principal action nor the running of the reglementary periods involved in the proceedings, unless an application for a restraining order or a writ of preliminary injunction to the appellate court is granted."[31]

Evidently, the argument that the petition for *certiorari* is precluded by the motion for reconsideration and the petition for relief from judgment filed before the trial court is untenable.

Pre-trial Notice is Mandatory

Spouses Perez further contend that the *Order* dated January 8, 2006 setting the case for hearing cannot be interpreted any other way except as a notice for pre-trial. They assert that the Amended Decision of the CA dated April 14, 2005 remanded the case to the lower court to conduct a pre-trial; therefore, the hearing in question was just following the order of the CA to set the case for a pre-trial.

We do not agree.

Section 3, Rule 18 of the 1997 Rules on Civil Procedure unequivocally requires that "[t]he notice of pre-trial **shall** be

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[29] *Pearson v. Intermediate Appellate Court*, G.R. No. 74454, September 3, 1998, 295 SCRA 27.

[30] *Yasuda v. Court of Appeals*, G.R. No. 112569, April 12, 2000, 300 SCRA 385, 394; citations omitted.

[31] *Id.*

served on counsel, or on the party who has no counsel."[32] It is elementary in statutory construction that the word "shall" denotes the mandatory character of the rule. Thus, it is without question that the language of the rule undoubtedly requires the trial court to send a notice of pre-trial to the parties.

More importantly, the notice of pre-trial seeks to notify the parties of the date, time and place of the pre-trial and to require them to file their respective pre-trial briefs within the time prescribed by the rules. Its absence, therefore, renders the pre-trial and all subsequent proceedings null and void.[33]

In *Pineda v. Court of Appeals*,[34] the Court therein discussed the importance of the notice of pre-trial. It pointed out that the absence of the notice of pre-trial constitutes a violation of a person's constitutional right to due process. Further, the Court ruled that all subsequent orders, including the default judgment, are null and void and without effect, *viz*:

> Reason and justice ordain that the court *a quo* should have notified the parties in the case at bar. Otherwise, said parties without such notice would not know when to proceed or resume proceedings. With due notice of the proceedings, the fate of a party adversely affected would not be adjudged *ex parte* and without due process, and he would have the opportunity of confronting the opposing party, and the paramount public interest which calls for a proper examination of the issues in any justiciable case would be subserved. **The absence, therefore, of the requisite notice of pre-trial to private respondents through no fault or negligence on their part, nullifies the order of default issued by the petitioner Judge for denying them their day in court — a constitutional right.** In such, the order suffers from an inherent procedural defect and is null and void. Under such circumstance, the granting of relief to private respondents becomes a matter of right; and **the court proceedings starting from the order of default to the default judgment itself should be considered null and void and of no effect**. (Emphasis supplied.)

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[32] Emphasis supplied.

[33] *Pineda v. Court of Appeals*, No. L-35583, September 30, 1975, 67 SCRA 228, 234.

[34] *Id*.

More recently, in *Agulto*,[35] this Court again had the chance to rule upon the same issue and reiterated the importance of the notice of pre-trial, *to wit*:

> The failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the plaintiff, then he may be declared non-suited and his case dismissed. If it is the defendant who fails to appear, then the plaintiff may be allowed to present his evidence *ex parte* and the court to render judgment on the basis thereof.
>
> **Thus, sending a notice of pre-trial stating the date, time and place of pre-trial is mandatory. Its absence will render the pre-trial and subsequent proceedings void. This must be so as part of a party's right to due process.** (Emphasis supplied.)

In the case at bar, the order issued by the trial court merely spoke of a "hearing on March 8, 2006"[36] and required PNB "to prepare and complete x x x a statement of account."[37] The said order does not mention anything about a pre-trial to be conducted by the trial court.

In contrast, the *Notice of Pre-trial* dated August 22, 2002 issued by the trial court categorically states that a pre-trial is to be conducted, requiring the parties to submit their respective pre-trial briefs. It reads:

> NOTICE OF PRE-TRIAL
>
> **You are hereby notified that the Pre-trial of this case will be held on September 19, 2002 at 8:30 o'clock in the morning.**
>
> Pursuant to the Supreme Court Circular No. 1-89, you are requested to submit Pre-trial brief, at least three (3) days before said date, containing the following:
>
> A. Brief Statement of the parties respective claims and defenses;
>
> B. The number of witnesses to be presented;

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[35] *Supra* note 28, at 402.

[36] *Rollo* (G.R. No. 187640), p. 168.

[37] *Id*.

C. An abstract of the testimonies of witnesses to be presented by the parties and approximate number of hours that will be required for the presentation of their respective evidence;

D. Copies of all document intended to be presented;

E. Admission;

F. Applica[ble] laws and jurisprudence;

G. The parties[']' respective statement of the issues; and

H. The available trial dates of counsel for complete evidence presentation, which must be within a period of three (3) months from the first day of trial.

You are further warned that the failure to submit said brief could be a ground for non-suit or declaration of default.

Cauayan City, Isabela, this 19th day of August 2002.[38] (Emphasis supplied.)

What is more, PNB even claims that it failed to receive a copy of the said order. Clearly, no amount of reasoning will logically lead to the conclusion that the trial court issued, or that PNB received, a notice of pre-trial.

As such, We find that the CA aptly held that the *Order* dated March 8, 2006, which declared the hearing to be a pre-trial and allowed Spouses Perez to adduce evidence *ex parte*, is void. Similarly, its ruling that the *Decision* dated July 5, 2006 and all subsequent orders[39] issued pursuant to the said judgment are also null and void, is proper.

In *Padre v. Badillo*, it was held that "[a] void judgment is no judgment at all. It cannot be the source of any right nor the creator of any obligation. **All acts performed pursuant to it and all claims emanating from it have no legal effect**."[40]

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[38] *Rollo* (G.R. No. 187687), pp. 687-688.

[39] *Writ of Execution* dated August 15, 2006; *Order* dated August 16, 2006; and *Order* dated August 17, 2006.

[40] *Padre v. Badillo*, G.R. No. 165423, January 19, 2011; citing *Polystyrene Manufacturing Company, Inc. v. Privatization and Management Office*, G.R. No. 171336, October 4, 2007, 534 SCRA 640, 651.

Necessarily, it follows that the nullity of the *Writ of Execution* carries with it the nullity of all acts done which implemented the writ. This includes the garnishment of Php 2,676,140.70 from PNB's account. Its return to PNB's account is but a necessary consequence of the void writ.

Similarly, the nullity of the *Order* dated August 17, 2006,[41] which cancelled PNB's fourteen (14) titles and directed the issuance of new titles to Spouses Perez, has the effect of annulling all the fourteen (14) titles issued in the name of Spouses Perez. The titles should revert back to PNB.

The argument that the subject properties were sold to certain innocent purchasers for value cannot stand. First of all, such allegation is a question of fact, not a question of law. Time and again, this Court has pronounced that the issues that can be raised in a petition for review on *certiorari* under Rule 45 are limited only to questions of law.[42] The test of whether the question is one of law or of fact is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[43]

Furthermore, it is settled that matters not raised in the trial court or lower courts cannot be raised for the first time on appeal. "They must be raised seasonably in the proceedings before the lower courts. Questions raised on appeal must be within the issues framed by the parties; consequently, issues not raised before the trial court cannot be raised for the first time on appeal."[44] Spouses Perez never raised this issue before the CA. Hence, they cannot raise it before this Court now.

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[41] The Order annulled PNB's fourteen (14) titles and directed the issuance of new titles to Spouses Perez.

[42] *Superlines Transportation Company, Inc. v. ICC Leasing & Financing Corporation*, G.R. No. 150673, February 28, 2003, 398 SCRA 508, 517.

[43] *Goyena v. Ledesma-Gustilo*, G.R. No. 147148, January 13, 2003, 395 SCRA 117, 123.

[44] *Ayson v. Enriquez Vda. de Carpio*, G.R. No. 152438, June 17, 2004, 432 SCRA 449, 456.

WHEREFORE, the petition in *G.R. No. 187640* is *GRANTED*. The Decision of the Court of Appeals (CA) in CA-G.R. SP No. 96534 dated October 23, 2008 is *AFFIRMED* with the *MODIFICATION* that the July 5, 2006 Decision of the Regional Trial Court of Isabela in Civil Case No. 20-1155 is *NULLIFIED* and *SET ASIDE*, the titles issued to Spouses Angelito Perez and Jocelyn Perez by virtue of the aforesaid August 17, 2006 Order and all derivative titles emanating thereon are cancelled and declared null and void and directing the Register of Deeds of Isabela to issue new certificates of title in the name of the Philippine National Bank (PNB) to replace the fourteen (14) titles previously issued to Spouses Angelito and Jocelyn Perez pursuant to the August 17, 2006 Order and for Spouses Angelito and Jocelyn Perez to pay to PNB the amount of PhP 2,676,140.70 representing the amount garnished from PNB's account with Equitable PCI Bank (EPCIB) by virtue of the August 15, 2006 Writ of Execution issued pursuant to the July 5, 2006 Decision.

As modified, the CA Decision shall read:

WHEREFORE, in view of the foregoing, the petition is GRANTED. The following orders and writ issued by the Regional Trial Court of Isabela in Civil Case No. 20-1155 are declared null and void:

a. Order dated March 8, 2006 which allowed the presentation of [Spouses Perez's] evidence *ex parte*;

b. Order of Execution dated August 14, 2006;

c. Writ of Execution dated August 15, 2006;

d. Order dated August 16, 2006 which denied PNB's application for TRO/preliminary injunction; and

e. the Order of August 17, 2006 which annulled PNB's fourteen (14) titles and directed issuance of new titles to herein private respondents;

The July 5, 2006 Decision of the Isabela RTC is nullified and set aside.

The fourteen (14) new titles issued to Spouses Angelito Perez and Jocelyn Perez by virtue of the August 17, 2006 Order and all

derivative titles issued therefrom are declared null and void and cancelled. The Register of Deeds of Isabela are directed to cancel said titles issued to Spouses Perez and issue new certificates of titles in the name of Philippine National Bank (PNB) which shall contain a memorandum of the annulment of the outstanding duplicate certificates issued to said spouses.

Spouses Angelito Perez and Jocelyn Perez are ordered to pay PNB the amount of ₱2,767,140.70 representing the amount illegally garnished from PNB's account with Equitable PCI Bank (EPCIB) by virtue of the August 15, 2006 writ of execution with interest thereon at six percent (6%) per annum from August 15, 2006 up to the finality of judgment and at twelve percent (12%) per annum from the date of finality of judgment until paid.

The trial court is directed to conduct further proceedings in Civil Case No. 20-1155 with dispatch.

The petition in *G.R. No. 187687* is *DENIED* for lack of merit.

No costs.

SO ORDERED.

Leonardo-de Castro, Bersamin,[**] *del Castillo,* and *Perez, JJ.,* concur.

[**] Additional member per Special Order No. 1000 dated June 8, 2011.

FIRST DIVISION

[G.R. No. 189207. June 15, 2011]

ERIC U. YU, *petitioner, vs.* **HONORABLE JUDGE AGNES REYES-CARPIO, in her official capacity as Presiding Judge, Regional Trial Court of Pasig-Branch 261; and CAROLINE T. YU,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY IN ASSAILING THAT A JUDGE HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; GRAVE ABUSE OF DISCRETION; DEFINED AND CONSTRUED. — A Petition for *Certiorari* under Rule 65 is the proper remedy in assailing that a judge has committed grave abuse of discretion amounting to lack or excess of jurisdiction. Section 1, Rule 65 of the Rules of Court clearly sets forth when a petition for *certiorari* can be used as a proper remedy: x x x The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." 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 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." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of *certiorari* under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. But this is not the case here.

2. ID.; ID.; ID.; WHEN PROPER TO STRIKE DOWN AN INTERLOCUTORY ORDER; REQUISITES; NOT PRESENT IN CASE AT BAR. — An interlocutory order is one which "does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining

their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court." To be clear, *certiorari* under Rule 65 is appropriate to strike down an interlocutory order only when the following requisites concur: (1) when the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion; and (2) when the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief. In this case, as We have discussed earlier, petitioner failed to prove that the assailed orders were issued with grave abuse of discretion and that those were patently erroneous. Considering that the requisites that would justify *certiorari* as an appropriate remedy to assail an interlocutory order have not been complied with, the proper recourse for petitioner should have been an appeal in due course of the judgment of the trial court on the merits, incorporating the grounds for assailing the interlocutory orders.

3. ID.; RULE ON DECLARATION OF NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES (A.M. NO. 02-11-10-SC); DEFERMENT OF THE RECEPTION OF EVIDENCE ON CUSTODY, SUPPORT, AND PROPERTY RELATIONS, ALLOWED; SUSTAINED. — It must be noted that Judge Reyes-Carpio did not disallow the presentation of evidence on the incidents on custody, support, and property relations. It is clear in the assailed orders that the trial court judge merely deferred the reception of evidence relating to custody, support, and property relations. x x x And the trial judge's decision was not without basis. Judge Reyes-Carpio finds support in the Court *En Banc* Resolution in A.M. No. 02-11-10-SC or the *Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages*. Particularly, Secs. 19 and 21 of the Rule clearly allow the reception of evidence on custody, support, and property relations after the trial court renders a decision granting the petition, or upon entry of judgment granting the petition: x x x Evidently, Judge Reyes-Carpio did not deny the reception of evidence on custody, support, and property relations but merely deferred it, based on the existing rules issued by this Court, to a time when a decision granting the petition is already at hand and **before a final decree** is issued. Conversely, the trial court, or more particularly the family court, shall proceed with the liquidation,

partition and distribution, custody, support of common children, and delivery of their presumptive legitimes upon entry of judgment granting the petition.: x x x.

APPEARANCES OF COUNSEL

Britanico Sarmiento & Franco Law Offices for petitioner.
Ma. Corazon L. Leynes-Xavier for respondent.

D E C I S I O N

VELASCO, JR.,* ***J.*:**

The Case

This is a Petition for *Certiorari* under Rule 65 which seeks to annul and set aside the March 31, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 106878. The CA Decision affirmed the Orders dated August 4, 2008[2] and October 24, 2008[3] of the Regional Trial Court (RTC), Branch 261 in Pasig City.

The Facts

The instant petition stemmed from a petition for declaration of nullity of marriage filed by petitioner Eric U. Yu against private respondent Caroline T. Yu with the RTC in Pasig City. The case was initially raffled to Branch 163.

On May 30, 2006, Judge Leili Cruz Suarez of the RTC-Branch 163 issued an Order, stating that petitioner's Partial Offer of Evidence dated April 18, 2006 would already be submitted for resolution after certain exhibits of petitioner have been remarked. But the exhibits were only relative to the issue of the nullity

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* Per Special Order No. 1003 dated June 8, 2011.

1 *Rollo*, pp. 32-42. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Fernanda Lampas Peralta and Ramon R. Garcia.

2 *Id.* at 47-50.

3 *Id.* at 51-53.

of marriage of the parties.[4]

On September 12, 2006, private respondent moved to submit the incident on the declaration of nullity of marriage for resolution of the court, considering that the incidents on custody, support, and property relations were mere consequences of the declaration of nullity of the parties' marriage.[5]

On September 28, 2006, petitioner opposed private respondent's Motion, claiming that the incident on the declaration of nullity of marriage cannot be resolved without the presentation of evidence for the incidents on custody, support, and property relations.[6] Petitioner, therefore, averred that the incident on nullity of marriage, on the one hand, and the incidents on custody, support, and property relations, on the other, should both proceed and be simultaneously resolved.

On March 21, 2007, RTC-Branch 163 issued an Order in favor of petitioner's opposition. Particularly, it stated that:

> The Court agrees with the contention of the Petitioner that it would be more in accord with the rules if the Parties were first allowed to present their evidence relative to the issues of property relations, custody and support to enable the Court to issue a comprehensive decision thereon.[7]

Subsequently, private respondent was able to successfully cause the inhibition of Judge Cruz Suarez of the RTC-Branch 163. Consequently, the case was re-raffled to another branch of the Pasig RTC, particularly Branch 261, presided by Judge Agnes Reyes-Carpio.[8]

Thereafter, while the case was being heard by the RTC-Branch 261, private respondent filed an Omnibus Motion on May 21, 2008. The Omnibus Motion sought (1) the strict

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[4] *Id.* at 33.

[5] *Id.*

[6] *Id.*

[7] *Id.* at 46.

[8] *Id.* at 33.

observation by the RTC-Branch 261 of the Rule on Declaration of Absolute Nullity of Void Marriages, as codified in A.M. No. 02-11-10-SC, in the subject proceedings; and (2) that the incident on the declaration of nullity of marriage be already submitted for resolution.[9] Conversely, private respondent prayed that the incident on the declaration of nullity of marriage be resolved ahead of the incidents on custody, support, and property relations, and not simultaneously.

Quite expectedly, petitioner opposed the Omnibus Motion, arguing that the issues that were the subject of the Omnibus Motion had already been resolved in the March 21, 2007 Order. Concurrently, petitioner prayed that the incidents on nullity, custody, support, and property relations of the spouses be resolved simultaneously.[10]

In its Order dated August 4, 2008, the RTC-Branch 261 granted the Omnibus Motion. Judge Reyes-Carpio explained that:

> At the outset, the parties are reminded that the main cause of action in this case is the declaration of nullity of marriage of the parties and the issues relating to property relations, custody and support are merely ancillary incidents thereto.
>
> x x x x x x x x x
>
> Consistent, therefore, with Section 19 of A.M. No. 02-11-10-SC, the Court finds it more prudent to rule first on the petitioner's petition and respondent's counter-petition for declaration of nullity of marriage on the ground of each other's psychological incapacity to perform their respective marital obligations. If the Court eventually finds that the parties' respective petitions for declaration of nullity of marriage is indeed meritorious on the basis of either or both of the parties' psychological incapacity, then the parties shall proceed to comply with Article[s] 50 and 51 of the Family Code before a final decree of absolute nullity of marriage can be issued. Pending such ruling on the declaration of nullity of the parties' marriage, the Court finds no legal ground, at this stage, to proceed with the reception

[9] *Id.* at 34.

[10] *Id*.

of evidence in regard the issues on custody and property relations, since these are mere incidents of the nullity of the parties' marriage.[11]

On August, 28, 2008, petitioner moved for the reconsideration of the August 4, 2008 Order. On October 24, 2008, Judge Reyes-Carpio issued an Order denying petitioner's motion for reconsideration. In denying the motion, Judge Reyes-Carpio reasoned:

> x x x [I]t is very clear that what petitioner seeks to reconsider in the Court's Order dated August 4, 2008 is the procedure regarding the reception of evidence on the issues of property relations, custody and support. He opposes the fact that the main issue on declaration of nullity is submitted for decision when he has not yet presented evidence on the issues on property relations, custody and support.
>
> Considering that what he seeks to set aside is the procedural aspect of the instanct (sic) case, *i.e.* the reception of evidence which is a matter of procedure, there is no question that it is A.M. 02-11-[10]-SC which should be followed and not the procedures provided in Articles 50 and 51 of the Family Code. While it is true that the Family Code is a substantive law and rule of procedure cannot alter a substantive law, the provisions laid in Articles 50 and 51 relative to the liquidation and dissolution of properties are by nature procedural, thus there are no substantive rights which may be prejudiced or any vested rights that may be impaired.
>
> In fact, the Supreme Court in a number of cases has even held that there are some provisions of the Family Code which are procedural in nature, such as Article[s] 185 and 50 of the Family Code which may be given retroactive effect to pending suits. Adopting such rationale in the instant case, if the Court is to adopt the procedures laid down in A.M. No. 02-11-[10]-SC, no vested or substantive right will be impaired on the part of the petitioner or the respondent. Even Section 17 of A.M. No. 02-11-[10]-SC allows the reception of evidence to a commissioner in matters involving property relations of the spouses.
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> x x x x x x x x x
>
> Lastly, it is the policy of the courts to give effect to both

[11] *Id.* at 49.

procedural and substantive laws, as complementing each other, in the just and speedy resolution of the dispute between the parties. Moreover, as previously stated, the Court finds it more prudent to rule first on the petitioner's petition and respondent's counter-petition for declaration of nullity of marriage on the ground of each other's psychological incapacity to perform their respective marital obligations. **If the Court eventually finds that the parties' respective petitions for declaration of nullity of marriage is indeed meritorious on the basis of either or both of the parties' psychological incapacity, then the parties shall proceed to comply with Article[s] 50 and 51 of the Family Code before a final decree of absolute nullity of marriage can be issued**.[12]

The Ruling of the Appellate Court

On January 8, 2009, petitioner filed a Petition for *Certiorari* under Rule 65 with the CA, assailing both the RTC Orders dated August 4, 2008 and October 24, 2008. The petition impleaded Judge Reyes-Carpio as respondent and alleged that the latter committed grave abuse of discretion in the issuance of the assailed orders.

On March 31, 2009, the CA affirmed the judgment of the trial court and dismissed the petition. The dispositive portion of the CA Decision reads:

> All told, absent any arbitrary or despotic exercise of judicial power as to amount to abuse of discretion on the part of respondent Judge in issuing the assailed *Orders*, the instant petition for *certiorari* cannot prosper.
>
> WHEREFORE, the petition is hereby **DISMISSED**.
>
> SO ORDERED.[13]

The Issues

This appeal is, hence, before Us, with petitioner maintaining that the CA committed grave abuse of discretion in upholding the assailed orders issued by the trial court and dismissing the

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[12] *Id.* at 52-53. (Emphasis Ours.)

[13] *Id.* at 41.

Petition for *Certiorari*. Particularly, petitioner brings forth the following issues:

A. Whether or not the [CA] committed grave abuse of discretion amounting to lack of jurisdiction in holding that a petition for *certiorari* is not a proper remedy of the Petitioner

B. Whether or not the [CA] committed grave abuse of discretion amounting to lack [or excess] of jurisdiction in upholding the Respondent Judge in submitting the main issue of nullity of marriage for resolution ahead of the reception of evidence on custody, support, and property relations

C. Whether or not the reception of evidence on custody, support and property relations is necessary for a complete and comprehensive adjudication of the parties' respective claims and [defenses].[14]

The Court's Ruling

We find the petition without merit.

A Petition for *Certiorari* under Rule 65 is the proper remedy in assailing that a judge has committed grave abuse of discretion amounting to lack or excess of jurisdiction. Section 1, Rule 65 of the Rules of Court clearly sets forth when a petition for *certiorari* can be used as a proper remedy:

> 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 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. (Emphasis Ours.)

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious

[14] *Id.* at 8.

or whimsical exercise of judgment as is equivalent to lack of jurisdiction."[15] 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 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."[16] Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void."[17] From the foregoing definition, it is clear that the special civil action of *certiorari* under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.[18] But this is not the case here.

Nowhere in the petition was it shown that the acts being alleged to have been exercised with grave abuse of discretion—(1) the Orders of the RTC deferring the presentation of evidence on custody, support, and property relations; and (2) the appellate court's Decision of upholding the Orders—were patent and gross that would warrant striking down through a petition for *certiorari* under Rule 65.

At the very least, petitioner should prove and demonstrate that the RTC Orders and the CA Decision were done in a capricious or whimsical exercise of judgment.[19] This, however, has not been shown in the petition.

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[15] *Beluso v. Commission on Elections*, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456-457; citing *De Vera v. De Vera*, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 514-15; *Fajardo v. Court of Appeals*, G.R. No. 157707, October 29, 2008, 570 SCRA 156, 163.

[16] *Id.*; 2 JOSE Y. FERIA & MARIA CONCEPCION S. NOCHE, *CIVIL PROCEDURE ANNOTATED* 463 (2001).

[17] *J.L. Bernardo Construction v. Court of Appeals*, G.R. No. 105827, January 31, 2000, 324 SCRA 24, 34.

[18] *Beluso v. Commission on Elections*, *supra* note 15.

[19] *Id.*; *Deutsche Bank Manila v. Chua Yok See*, G.R. No. 165606, February 6, 2006, 481 SCRA 672, 692.

It appears in the records that the Orders in question, or what are alleged to have been exercised with grave abuse of discretion, are interlocutory orders. An interlocutory order is one which "does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court."[20] To be clear, *certiorari* under Rule 65 is appropriate to strike down an interlocutory order only when the following requisites concur:

(1) when the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion; and

(2) when the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief.[21]

In this case, as We have discussed earlier, petitioner failed to prove that the assailed orders were issued with grave abuse of discretion and that those were patently erroneous. Considering that the requisites that would justify *certiorari* as an appropriate remedy to assail an interlocutory order have not been complied with, the proper recourse for petitioner should have been an appeal in due course of the judgment of the trial court on the merits, incorporating the grounds for assailing the interlocutory orders.[22] The appellate court, thus, correctly cited *Triplex Enterprises, Inc. v. PNB-Republic Bank and Solid Builders, Inc.*, penned by Chief Justice Renato Corona, which held:

Certiorari as a special civil action is proper when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted

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[20] *Philippine Business Bank v. Chua*, G.R. No. 178899, November 15, 2010.

[21] *J.L. Bernardo Construction v. Court of Appeals*, *supra* note 17, at 34.

[22] *Yamaoka v. Pescarich Manufacturing Corporation*, G.R. No. 146079, July 20, 2001, 361 SCRA 672, 680-681; citing *Go v. Court of Appeals*, G.R. No. 128954, October 8, 1998, 297 SCRA 574, 581. See also *Deutsche Bank Manila v. Chua Yok See*, *supra* note 19, at 694.

without or in excess of its jurisdiction, or with grave abuse of discretion, and there is no appeal nor any plain, speedy and adequate remedy at law. **The writ may be issued only where it is convincingly proved that the lower court committed grave abuse of discretion, or an act too patent and gross as to amount to an evasion of a duty, or to a virtual refusal to perform the duty enjoined or act in contemplation of law, or that the trial court exercised its power in an arbitrary and despotic manner by reason of passion or personal hostility**.

While *certiorari* may be maintained as an appropriate remedy to assail an interlocutory order in cases where the tribunal has issued an order without or in excess of jurisdiction or with grave abuse of discretion, it does not lie to correct every controversial interlocutory ruling. In this connection, we quote with approval the pronouncement of the appellate court:

> In this jurisdiction, there is an "erroneous impression that interlocutory [orders] of trial courts on debatable legal points may be assailed by *certiorari*. To correct that impression and to avoid clogging the appellate court with future *certiorari* petitions it should be underscored that the office of the writ of *certiorari* has been reduced to the correction of defects of jurisdiction solely and cannot legally be used for any other purpose."

The writ of *certiorari* is restricted to truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void. Moreover, it is designed to correct errors of jurisdiction and not errors in judgment. The rationale of this rule is that, when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. Otherwise, every mistake made by a court will deprive it of its jurisdiction and every erroneous judgment will be a void judgment.

When the court has jurisdiction over the case and person of the defendant, any mistake in the application of the law and the appreciation of evidence committed by a court may be corrected only by appeal. The determination made by the trial court regarding the admissibility of evidence is but an exercise of its jurisdiction and whatever fault it may have perpetrated in making such a determination is an error in judgment, not of jurisdiction. Hence, settled is the rule that rulings of the trial court on procedural questions and on

admissibility of evidence during the course of a trial are interlocutory in nature and may not be the subject of a separate appeal or review on certiorari. They must be assigned as errors and reviewed in the appeal properly taken from the decision rendered by the trial court on the merits of the case.

Here, petitioner assails the order of the trial court disallowing the admission in evidence of the testimony of Roque on the opinion of the OGCC. By that fact alone, no grave abuse of discretion could be imputed to the trial court. Furthermore, the said order was not an error of jurisdiction. Even assuming that it was erroneous, the mistake was an error in judgment not correctable by the writ of *certiorari*.[23]

Be that as it may, even dwelling on the merits of the case just as the CA has already done and clearly explicated, We still find no reason to grant the petition.

It must be noted that Judge Reyes-Carpio did not disallow the presentation of evidence on the incidents on custody, support, and property relations. It is clear in the assailed orders that the trial court judge merely deferred the reception of evidence relating to custody, support, and property relations, to wit:

August 4, 2008 Order

Consistent, therefore, with Section 19 of A.M. No. 02-11-10-SC, the Court finds it more prudent to rule first on the petitioner's petition and respondent's counter-petition for declaration of nullity of marriage on the ground of each other's psychological incapacity to perform their respective marital obligations. **If the Court eventually finds that the parties' respective petitions for declaration of nullity of marriage is indeed meritorious on the basis of either or both of the parties' psychological incapacity, then the parties shall proceed to comply with Article[s] 50 and 51 of the Family Code before a final decree of absolute nullity of marriage can be issued. Pending such ruling on the declaration of nullity of the parties' marriage, the Court finds no legal ground, at this stage, to proceed with the reception of evidence in regard the issues on custody and property relations, since these are mere incidents of the nullity of the parties'**

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[23] G.R. No. 151007, July 17, 2006, 495 SCRA 362, 365-367. (Emphasis Ours.)

marriage.[24]

October 24, 2008 Order

Lastly, it is the policy of the courts to give effect to both procedural and substantive laws, as complementing each other, in the just and speedy resolution of the dispute between the parties. Moreover, as previously stated, the Court finds it more prudent to rule first on the petitioner's petition and respondent's counter-petition for declaration of nullity of marriage on the ground of each other's psychological incapacity to perform their respective marital obligations. **If the Court eventually finds that the parties' respective petitions for declaration of nullity of marriage is indeed meritorious on the basis of either or both of the parties' psychological incapacity, then the parties shall proceed to comply with Article (sic) 50 and 51 of the Family Code before a final decree of absolute nullity of marriage can be issued**.[25]

And the trial judge's decision was not without basis. Judge Reyes-Carpio finds support in the Court *En Banc* Resolution in A.M. No. 02-11-10-SC or the *Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages*. Particularly, Secs. 19 and 21 of the Rule clearly allow the reception of evidence on custody, support, and property relations after the trial court renders a decision granting the petition, or upon entry of judgment granting the petition:

Section 19. *Decision.* - (1) If the court renders a decision granting the petition, it shall declare therein that the decree of absolute nullity or decree of annulment shall be issued by the court **only after compliance with Articles 50 and 51 of the Family Code as implemented under the Rule on Liquidation, Partition and Distribution of Properties**.

x x x x x x x x x

Section 21. *Liquidation, partition and distribution, custody, support of common children and delivery of their presumptive legitimes.* - **Upon entry of the judgment granting the petition**, or, in case of appeal,

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[24] *Rollo*, p. 49. (Emphasis Ours.)

[25] *Id.* at 52-53. (Emphasis Ours.)

upon receipt of the entry of judgment of the appellate court granting the petition, the Family Court, on motion of either party, **shall proceed with the liquidation, partition and distribution of the properties of the spouses, including custody, support of common children and delivery of their presumptive legitimes pursuant to Articles 50 and 51 of the Family Code unless such matters had been adjudicated in previous judicial proceedings**.

Evidently, Judge Reyes-Carpio did not deny the reception of evidence on custody, support, and property relations but merely deferred it, based on the existing rules issued by this Court, to a time when a decision granting the petition is already at hand and **before a final decree** is issued. Conversely, the trial court, or more particularly the family court, shall proceed with the liquidation, partition and distribution, custody, support of common children, and delivery of their presumptive legitimes upon entry of judgment granting the petition. And following the pertinent provisions of the Court *En Banc* Resolution in A.M. No. 02-11-10-SC, this act is undoubtedly consistent with Articles 50 and 51 of the Family Code, contrary to what petitioner asserts. Particularly, Arts. 50 and 51 of the Family Code state:

Article 50. x x x

The **final judgment in such cases shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of their presumptive legitimes**, unless such matters had been adjudicated in the previous judicial proceedings.

x x x x x x x x x

Article 51. In said partition, the value of the presumptive legitimes of all common children, **computed as of the date of the final judgment of the trial court**, shall be delivered in cash, property or sound securities, unless the parties, by mutual agreement judicially approved, had already provided for such matters. (Emphasis Ours.)

Finally, petitioner asserts that the deferment of the reception of evidence on custody, support, and property relations would amount to an ambiguous and fragmentary judgment on the main issue.[26] This argument does not hold water. The Court *En Banc*

Resolution in A.M. No. 02-11-10-SC clearly allows the deferment of the reception of evidence on custody, support, and property relations. Conversely, the trial court may receive evidence on the subject incidents after a judgment granting the petition but before the decree of nullity or annulment of marriage is issued. And this is what Judge Reyes-Carpio sought to comply with in issuing the assailed orders. As correctly pointed out by the CA, petitioner's assertion that ruling the main issue without receiving evidence on the subject incidents would result in an ambiguous and fragmentary judgment is certainly speculative and, hence, contravenes the legal presumption that a trial judge can fairly weigh and appraise the evidence submitted by the parties.[27]

Therefore, it cannot be said at all that Judge Reyes-Carpio acted in a capricious and whimsical manner, much less in a way that is patently gross and erroneous, when she issued the assailed orders deferring the reception of evidence on custody, support, and property relations. To reiterate, this decision is left to the trial court's wisdom and legal soundness. Consequently, therefore, the CA cannot likewise be said to have committed grave abuse of discretion in upholding the Orders of Judge Reyes-Carpio and in ultimately finding an absence of grave abuse of discretion on her part.

WHEREFORE, the petition is *DISMISSED*. The CA Decision in CA-G.R. SP No. 106878 finding that Judge Agnes Reyes-Carpio did not commit grave abuse of discretion amounting to lack or excess of jurisdiction is *AFFIRMED*.

SO ORDERED.

Leonardo-de Castro, Bersamin,[**] *del Castillo,* and *Perez, JJ.,* concur.

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

[27] *Id.* at 38; citing *Jaylo v. Sandiganbayan*, G.R. Nos. 111502-04, November 22, 2001, 370 SCRA 170.

[**] Additional member per Special Order No. 1000 dated June 8, 2011.

THIRD DIVISION

[G.R. No. 189314. June 15, 2011]

MIGUEL DELA PENA BARAIRO, *petitioner, vs.* **OFFICE OF THE PRESIDENT and MST MARINE SERVICES (PHILS.), INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* THE PROPER REMEDY TO QUESTION THE DECISIONS OR ORDERS OF THE SECRETARY OF LABOR; RATIONALE. — Following settled jurisprudence, the proper remedy to question the decisions or orders of the Secretary of Labor is via Petition for *Certiorari* under Rule 65, not via an appeal to the OP. For appeals to the OP in labor cases have indeed been eliminated, except those involving national interest over which the President may assume jurisdiction. The rationale behind this development is mirrored in the OP's Resolution of June 26, 2009 the pertinent portion of which reads: . . . [T] **he assailed DOLE's Orders were both issued by Undersecretary Danilo P. Cruz under the authority of the DOLE Secretary who is the alter ego of the President**. Under the "Doctrine of Qualified Political Agency," a corollary rule to the control powers of the President, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by Constitution or law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and **the acts of the Secretaries of such departments, performed and promulgated in the regular course of business are, unless disapproved or reprobated by the Chief Executive presumptively the acts of the Chief Executive**.

2. ID.; APPEALS; THE APPEAL OF THE SECRETARY OF LABOR'S DECISION TO THE OFFICE OF THE PRESIDENT DID NOT TOLL THE RUNNING OF THE PERIOD TO APPEAL;

RATIONALE. — Petitioner's appeal of the Secretary of Labor's Decision to the Office of the President did not toll the running of the period, hence, the assailed Decisions of the Secretary of Labor are deemed to have attained finality. **Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory.** Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court - not even the Supreme Court - has the power to revise, review, change or alter the same. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Offices for petitioner.
Miguel T. Florendo for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Miguel Barairo (petitioner) was hired[1] on June 29, 2004 by respondent MST Marine Services (Phils.) Inc., (MST) for its principal, TSM International, Ltd., as Chief Mate of the vessel *Maritina*, for a contract period of six months. He boarded the vessel and discharged his duties on July 23, 2004, but was relieved[2] on August 28, 2004 ostensibly for transfer to another vessel, *Solar.* Petitioner thus disembarked in Manila on August 29, 2004.

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[1] *Vide* Contract of Employment, *rollo*, p. 110.

[2] *Id.* at 112.

Petitioner was later to claim that he was not paid the promised "stand-by fee" in lieu of salary that he was to receive while awaiting transfer to another vessel as in fact the transfer never materialized.

On October 20, 2004, petitioner signed a new Contract of Employment[3] for a six-month deployment as Chief Mate in a newly-built Japanese vessel, M/T *Haruna*. He was paid a one-month "standby fee" in connection with the *Maritina* contract.

Petitioner boarded the M/T *Haruna* on October 31, 2004 but he disembarked a week later as MST claimed that his boarding of M/T *Haruna* was a "sea trial" which, MST maintains, was priorly made known to him on a "stand-by" fee. MST soon informed petitioner that he would be redeployed to the M/T *Haruna* on November 30, 2004, but petitioner refused, prompting MST to file a complaint[4] for breach of contract against him before the Philippine Overseas Employment Administration (POEA).

Petitioner claimed, however, that he was placed on "forced vacation" when he was made to disembark from the M/T *Haruna*, and that not wanting to experience a repetition of the previous "termination" of his employment aboard the *Maritina*, he refused to be redeployed to the M/T *Haruna*.

By Order[5] of April 5, 2006, then POEA Administrator Rosalinda D. Baldoz penalized petitioner with one year suspension from overseas deployment upon a finding that his refusal to complete his contract aboard the M/T *Haruna* constituted a breach thereof.

On appeal by petitioner, the Secretary of Labor, by Order[6] of September 22, 2006, noting that it was petitioner's first offense,

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[3] *Ibid.*

[4] *Vide* Complaint-Affidavit of Captain Alfonso R. del Castillo, *id.* at 113-114.

[5] *Id.* at 132-134.

[6] *Id.* at 174-177. Penned by Undersecretary Danilo P. Cruz.

modified the POEA Order by shortening the period of suspension from one year to six months.

The Office of the President (OP), by Decision[7] of November 26, 2007, dismissed petitioner's appeal for lack of jurisdiction, citing *National Federation of Labor v. Laguesma*.[8]

The OP held that appeals to it in labor cases, except those involving national interest, have been eliminated. Petitioner's motion for partial reconsideration was denied by Resolution[9] of June 26, 2009, hence, the present petition.

Following settled jurisprudence, the proper remedy to question the decisions or orders of the Secretary of Labor is via Petition for *Certiorari* under Rule 65, not via an appeal to the OP. For appeals to the OP in labor cases have indeed been eliminated, except those involving national interest over which the President may assume jurisdiction. The rationale behind this development is mirrored in the OP's Resolution of June 26, 2009 the pertinent portion of which reads:

. . . [T] **he assailed DOLE's Orders were both issued by Undersecretary Danilo P. Cruz under the authority of the DOLE Secretary who is the alter ego of the President**. Under the "Doctrine of Qualified Political Agency," a corollary rule to the control powers of the President, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by Constitution or law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and **the acts of the Secretaries of such departments, performed and promulgated in the regular course of business are, unless**

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[7] *Id.* at 55-66. Penned by Undersecretary Pilita P. Quizon-Venturanza.

[8] G.R. No. 123426, March 10, 1999, 304 SCRA 405.

[9] *Rollo*, pp. 105-108. Penned by Undersecretary Pilita P. Quizon-Venturanza.

disapproved or reprobated by the Chief Executive presumptively the acts of the Chief Executive.[10] (emphasis and underscoring supplied)

It cannot be gainsaid that petitioner's case does not involve national interest.

Petitioner's appeal of the Secretary of Labor's Decision to the Office of the President did not toll the running of the period, hence, the assailed Decisions of the Secretary of Labor are deemed to have attained finality.

Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court - not even the Supreme Court - has the power to revise, review, change or alter the same. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.[11] (underscoring in the original, emphasis supplied)

At all events, on the merits, the petition just the same fails.

As found by the POEA Administrator and the Secretary of Labor, through Undersecretary Danilo P. Cruz, petitioner's refusal to board the M/T *Haruna* on November 30, 2004 constituted unjustified breach of his contract of employment under Section 1 (A-2) Rule II, Part VI [*sic*] of the POEA

[10] *Vide* June 26, 2009 Resolution of the Office of the President, *id.* at 105-108 at 107.

[11] *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 190660, April 11, 2011 **citing** *Zamboanga Forest Managers Corp. v. New Pacific Timber and Supply Co., et al.*, G.R. No. 143275, 399 SCRA 376, 385.

Seabased Rules and Regulations.[12] That petitioner believed that respondent company violated his rights when the period of his earlier *Maritina* contract was not followed and his "stand-by fees" were not fully paid did not justify his refusal to abide by the valid and existing *Haruna* contract requiring him to serve aboard M/T *Haruna*. For, as noted in the assailed DOLE Order, "if petitioner's rights has been violated as he claims, he has various remedies under the contract which he did not avail of."

Parenthetically, the Undersecretary of Labor declared that "the real reason [petitioner] refused to re-join *Haruna* on November 30, 2004, is that he left the Philippines on November 29, 2004 to join MT *Adriatiki*, a vessel of another manning agency," which declaration petitioner has not refuted.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

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[12] RULE II

Disciplinary Action Against Seafarers

SECTION 1. Grounds for Disciplinary Action and their Penalties. — Commission by a seafarer of any of the offenses enumerated below or of similar offenses shall be a ground for disciplinary action for which the corresponding penalty shall be imposed:

A. Pre-Employment Offenses

1. Submission/furnishing or using false information or documents or any form of misrepresentation for purpose of job application or employment.

1st Offense: One year to two years suspension from participation in the overseas employment program

2nd Offense: Two years and one day suspension from participation in the overseas employment program to Delisting from the POEA Registry

2. **Unjust refusal to join ship after all employment and travel documents have been duly approved by the appropriate government agencies.**

1st Offense: One year to two years suspension from participation in the overseas employment program

2nd offense: Two years and one day suspension from participation in the overseas employment program to Delisting from the POEA Registry (emphasis supplied)

FIRST DIVISION

[G.R. No. 189325. June 15, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TEOFILO RAGODON MARCELINO, JR.** ***alias*** **"Terence" and** ***alias*** **TEOFILO MARCELINO** ***y*** **RAGODON,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; ELEMENTS.— For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (1) the identities of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and its payment. The presence of these elements was proved by the trial court and later affirmed by the appellate court in the present case. The delivery of the illegal drug to the poseur-buyer and the receipt by the seller of marked money successfully consummate the buy-bust transaction.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN CASES INVOLVING VIOLATIONS OF THE DANGEROUS DRUGS ACT, TESTIMONIES OF PROSECUTION WITNESSES, WHO ARE POLICE OFFICERS, ARE GIVEN CREDENCE; RATIONALE. — Generally, in cases involving violations of the Dangerous Drugs Act, the testimonies of prosecution witnesses, who are police officers, are given credence for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. In the present case, the testimonies of the arresting officers as to what happened during the day the buy-bust was conducted were candid and expressed in a straightforward manner; thus, in the absence of any improper motive, said statements are given full faith and credit.

3. ID.; ID.; ID.; NOT AFFECTED BY MINOR DISCREPANCIES OR INCONSISTENCIES; APPLICATION IN CASE AT BAR. — It is doctrinally settled in a long line of cases that minor discrepancies or inconsistencies do not impair the essential

integrity of the prosecution's evidence. To note, the testimony of P/CInsp. Santos was given only on April 28, 2005 or several months after the buy-bust operation was conducted; thus, it is plausible that he could not recall all the members of the September 18, 2004 buy-bust operation. To emphasize, the number of members is not central to the issue of illegal sale of *shabu*. What is material for the prosecution in illegal sale of drugs is the proof that the transaction actually took place, together with the presentation in court of the evidence of *corpus delicti*.

4. ID.; APPEALS; FINDINGS OF THE TRIAL COURT; GENERALLY GIVEN GREAT WEIGHT; SUSTAINED. — In *People v. Antonio*, this Court consistently emphasized that the findings of the trial court, in the absence of any glaring error, gross misapprehension, arbitrary and unsupported conclusion of facts, are given great weight, because it is in a better position to observe the deportment and manner of witnesses during trial. We shall also observe this ruling here.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY, DEFINED; EXEMPLIFIED. — Sec. 1(b) of the Dangerous Drugs Board Resolution No. 1, Series of 2002, implementing RA 9165, defines "chain of custody" as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition." In *People v. Kamad*, We acknowledged that the following links must be established in the chain of custody in a buy-bust situation: "*first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory

examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court."

6. ID.; ID.; ID.; SELLING OF "*SHABU*"; PENALTY. — Under Sec. 5, RA 9165, the selling of *shabu*, regardless of the quantity and quality, is punishable by life imprisonment to death and a fine of PhP 500,000 to PhP 10,000,000. However, with the effectivity of RA 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of death penalty has been proscribed. Thus, the penalty shall be life imprisonment and fine. The penalty of life imprisonment and a fine of PhP 500,000 imposed by the Pasig City RTC and affirmed by the CA is well within the range provided by law. We find no reason to disturb such imposition.

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.*:

On appeal is the Decision[1] dated July 14, 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03172, which affirmed the September 27, 2006 Decision[2] in Criminal Case No. 13727-D of the Regional Trial Court (RTC), Branch 164 in Pasig City. The RTC found accused Teofilo Marcelino, Jr. guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

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[*] Per Special Order No. 1003 dated June 8, 2011.

[1] Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Remedios A. Salazar-Fernando and Magdangal M. De Leon.

[2] Penned by Judge Librado S. Correa.

The Facts

An Information was filed against accused, as follows:

> On or about September 18, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did there and then willfully, unlawfully and feloniously, sell, deliver and give away to PO2 Peter V. Sistemio, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing fourteen (14) decigrams (0.14 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of said law.
>
> Contrary to law.[3]

Upon arraignment, the accused pleaded "not guilty" to the charge against him. After the pre-trial conference, the trial on the merits ensued.

During the trial, the prosecution presented as evidence the testimonies of Police Officer 2 Peter V. Sistemio (PO2 Sistemio), Senior Police Officer 1 Arnold Yu (SPO1 Yu), and Police Chief Inspector Jaime O. Santos (P/CInsp. Santos), all members of the Philippine Drug Enforcement Agency (PDEA), Special Enforcement Service.

On the other hand, the defense presented, as witnesses, the accused; his sisters, Carmen and Maritess, both surnamed Marcelino; and Nelson M. Derilo.

The parties stipulated that the white crystalline substance of suspected methylamphetamine hydrochloride contained in the heat-sealed transparent plastic sachet, marked as Exhibit "A" PVS. 09/18/04, was the same specimen mentioned in Exhibits "C"[4] and "D",[5] thereby dispensing with the testimony of Police Senior Inspector Miladenia Origenes-Tapan (P/SInsp. Origenes-Tapan), Forensic Chemical Officer, Crime

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

[4] Request for laboratory examination.

[5] Initial laboratory request.

Laboratory, Philippine National Police, Camp Crame, Quezon City.[6]

The Prosecution's Version of Facts

On September 18, 2004, at around 6:00 a.m., a confidential informant arrived at the office of the PDEA, Special Enforcement Service in *Barangay* Pinyahan, NIA Road, Quezon City, and reported the illegal drug activities of a certain *alias* "Terence" in San Joaquin, Pasig City and in Taguig City. The informant told P/CInsp. Santos that *alias* "Terence" was looking for an interested buyer of *shabu*.[7]

The informant arranged a meeting with *alias* "Terence" at McDonald's restaurant in San Joaquin, Pasig City at 10:00 a.m. on the same day. P/CInsp. Santos, as team leader, formed a buy-bust team composed of PO2 Sistemio, as poseur-buyer; SPO1 Yu, as immediate back-up; and SPO3 Danny Pasamon, SPO3 Pricillo Agni, PO3 Benjamin Domingo, and PO2 Reywin Bariuad, as back-up.[8]

P/CInsp. Santos handed a PhP 100 bill to PO2 Sistemio, who then marked the upper right corner of the bill with his initials, "PVS." Thereafter, P/CInsp. Santos prepared a Pre-Operational/Coordination Report and coordinated with the Eastern Police District, Pasig City, before proceeding to the target area.[9]

The team arrived at the target place at around 9:45 a.m. Thereafter, PO2 Sistemio and the informant entered McDonald's, followed by SPO1 Yu, who sat about seven to nine meters away from PO2 Sistemio and the informant. The rest of the team positioned themselves outside the restaurant.

After about five minutes, *alias* "Terence" arrived and shook hands with the informant, who then introduced PO2 Sistemio as an interested buyer of *shabu*. PO2 Sistemio introduced himself

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[6] Records, p. 30, Order dated November 11, 2004.

[7] CA *rollo,* 13.

[8] *Id.*; *rollo,* pp. 4-5.

[9] TSN, November 18, 2004, Direct Examination of PO2 Sistemio.

as Peter and offered to buy PhP 1,000 worth of *shabu*. There and then, *alias* "Terence" brought out from his pocket a heat-sealed transparent plastic sachet of white crystalline substance. PO2 Sistemio handed *alias* "Terence" the marked PhP 100 bill tied with the boodle money. As soon as *alias* "Terence" placed the marked money in his right-hand pocket, PO2 Sistemio tapped Terence's shoulder as the pre-arranged signal that the transaction was consummated. He then introduced himself as a PDEA agent.

SPO1 Yu approached and informed *alias* "Terence" that he was under arrest. After reading *alias* "Terence" his constitutional rights, SPO1 Yu frisked him and recovered the PhP 100 marked money from his right-hand pocket. He was then brought to the PDEA Office in Quezon City and later identified as Teofilo Marcelino, Jr.

At the PDEA Office, PO2 Sistemio marked the sealed sachet subject of the buy-bust operation with the date "09/18/04" and his initials "PVS," and turned it over to the team leader, P/CInsp. Jaime O. Santos.[10]

The subject sachet was then personally delivered by P/CInsp. Santos, accompanied by PO2 Sistemio and SPO1 Yu, to the Crime Laboratory at Camp Crame, Quezon City for qualitative examination, at around 4:00 p.m. of the same day. The report of P/SInsp. Origenes-Tapan stated that the plastic sachet containing a white crystalline substance weighing 0.14 gram was positive for methylamphetamine hydrochloride or *shabu*.

Version of the Defense

Accused interposed the defense of denial.

He averred that, on September 18, 2004, accused and his siblings, Carmen and Maritess, were in the San Joaquin, Pasig City market area about 25 meters from McDonald's, looking for a cellular phone housing, when he was approached by two persons who asked if he was *alias* "Terence." Though he

[10] *Id.* at 16.

answered in the negative, he was handcuffed and forced to go with them inside a Tamaraw FX where two (2) other passengers were waiting. One of the persons frisked the accused and placed something in his pocket.

The men left with the accused onboard the Tamaraw FX, thus, prompting his sisters to go home and report the incident to their mother. Meanwhile, the accused was brought to the PDEA Office in Quezon City where he was repeatedly asked about his occupation and parents. After forcing him to admit that he was Terence, they took his fingerprints and made him sign a document.

Defense witness Nelson Derilo, a cigarette vendor at the San Joaquin, Pasig City market area, testified that around 10:00 a.m. of September 18, 2004, he noticed a commotion. He saw two women shouting in protest and another man being pulled by two persons in front of McDonald's. The man was taken on board a Tamaraw FX vehicle, leaving the two women crying.[11]

Ruling of the Trial Court

After trial, the RTC convicted the accused. The dispositive portion of its September 27, 2006 Decision reads:

> WHEREFORE, the court finds the accused Teofilo Ragodon Marcelino, Jr. *alias* 'Terence' and *alias* Teofilo Marcelino *y* Ragodon GUILTY beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 and hereby impose upon him the penalty of life imprisonment and a fine of Five Hundred Thousand (Php 500,000.00) Pesos with the accessory penalties provided for under Section 35 of the said law.
>
> The plastic sachet containing *shabu* is hereby ordered confiscated in favor of the government and turned over to the Philippine Drug Enforcement Agency for destruction.
>
> With costs against accused.
>
> SO ORDERED.[12]

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[11] TSN, August 3, 2006.

[12] CA *rollo*, pp. 17-18.

Accused appealed to the CA, arguing that the trial court failed to prove his guilt beyond reasonable doubt of the crime charged.

Ruling of the Appellate Court

On July 14, 2009, the CA affirmed the judgment of the RTC. It ruled that the prosecution was able to establish beyond reasonable doubt the elements of illegal sale of dangerous drugs.

Citing *People vs. Yang*,[13] among other cases, the CA held that in an illegal sale of drugs, the crime is committed as soon as the sale transaction is consummated. It is sufficient to show that the illicit transaction took place and that the *corpus delicti* is presented in court as evidence.

Accused-appellant timely filed a notice of appeal of the CA Decision; thus, We have this appeal. Accused-appellant puts forth the following errors:

I.

The Court of Appeals erred in giving full credence to the testimonies of the prosecution witnesses even if they were marred with inconsistencies.

II.

The Court of Appeals erred in finding the accused-appellant guilty beyond reasonable ground of the crime charged.

Accused-appellant contends that the trial court erred in convicting him beyond reasonable doubt of the crime of violation of Sec. 5 of RA 9165 despite the inconsistencies in the testimonies of prosecution witnesses. *First*, accused-appellant points out that P/CInsp. Santos testified that only four (4) team members of the buy-bust team went to McDonald's, while SPO1 Yu averred that there were more than four (4) members in the team. *Secon*d, PO2 Sistemio and SPO1 Yu maintained that the informant was with them waiting for *alias* "Terence"; while P/CInsp. Santos stated that the informant went in and out of

[13] G.R. No. 148077, February 6, 2004, 423 SCRA 82.

McDonald's, trying to get in touch with *alias* "Terence" through a mobile phone. *Third*, PO2 Sistemio testified that accused-appellant immediately approached them at the table, whereas SPO1 Yu testified that the informant first pointed out accused-appellant and the latter approached them. *Fourth*, PO2 Sistemio testified that after the transaction, he placed the subject drug in his pocket, while SPO1 Yu stated that PO2 Sistemio held the drug from the time they left the crime scene until they reached the PDEA Office in Quezon City. *Fifth*, SPO1 Yu testified that he frisked accused-appellant and recovered the buy-bust money from the latter's pocket. On the other hand, PO2 Sistemio stated that SPO1 Yu asked accused-appellant to pull out all the contents of his pocket. Furthermore, accused-appellant pointed out that SPO1 Yu was seated several meters away from the transaction and was only able to see accused-appellant handing something wrapped in newspaper but that he was not able to determine its contents.[14]

Our Ruling

The appeal is bereft of merit.

RA 9165 provides:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (1) the identities of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and its payment. The presence of

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

these elements was proved by the trial court and later affirmed by the appellate court in the present case. The delivery of the illegal drug to the poseur-buyer and the receipt by the seller of marked money successfully consummate the buy-bust transaction.[15]

PO2 Sistemio narrated the arrest in a straightforward manner. He testified that on September 18, 2004 at around 6:00 a.m., a confidential informant arrived at the PDEA Office in Quezon City and informed them of the drug activities of one *alias* "Terence." The informant was able to arrange a meeting with "Terence" at 10:00 a.m. at McDonald's, Pasig City. Based on the information, P/CInsp. Santos coordinated with the Eastern Police District and formed a buy-bust team before proceeding to McDonald's.

They arrived at the area at around 9:45 a.m. PO2 Sistemio and the informant waited inside McDonald's, while SPO1 Yu was seated about seven to nine meters away. After waiting for about five minutes, *alias* "Terence" approached their table and shook hands with the informant who then introduced him to PO2 Sistemio as the one interested in buying *shabu*. PO2 Sistemio introduced himself as Peter and offered to buy PhP 1,000 worth of *shabu*. *Alias* Terence took from his pocket a heat-sealed transparent plastic sachet and showed PO2 Sistemio its contents. Thus, PO2 Sistemio testified in court:

Q: x x x [W]hat did you do?
A: Then I said to *alias* Terence, *bakit konti yata*?

Q: What was the reply if any?
A: Then *alias* Terence replied, "*sa krisis ngayon, mataas ang presyo, kukunin mo ba ito*?" *alias* Terence told me.

Q: What did you tell him?
A: And I said, "*oo. Kukunin ko.*" Then after that *alias* Terence handed me the transparent plastic sachet containing white crystalline substance suspected *shabu*, then after that, sir, I accepted that. *Alias* Terence, sir, demanded the money.

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[15] *People v. Gonzales*, G.R. No. 143805, April 11, 2002, 380 SCRA 689.

x x x x x x x x x

Q: Now what did Terence do after you confirmed that you were buying indeed the *shabu* which was shown to you inside the transparent plastic sachet?
A: Sir, he handed to me the plastic sachet.

Q: What did you do after in return?
A: Sir, after that, *alias* Terence demanded for the payment. I handed to him the marked money together with the boodle money.

Q: And where did you place the marked buy-bust money together with the boodle money?
A: Sir, inside his pocket.

Q: Which pocket?
A: Right pocket, sir.

x x x x x x x x x

Q: Now, after you obtained one (1) plastic sachet containing white crystalline substance which was suspected as *shabu* and you gave the buy-bust money to *alias* Terence and who in turned [sic] kept it or placed it inside his right pocket, what happened next?
A: Sir, I tapped the shoulder of *alias* Terence.

Q: Which shoulder, left or right?
A: Right, sir.

Q: So what happened after you tapped his shoulder?
A: After that, SPO1 Arnold Yu rushed towards us and effect the arrest of *alias* Terence.[16]

In corroboration, police back-up and arresting officer SPO1 Yu testified[17] that the moment he saw PO2 Sistemio tap the shoulder of accused-appellant to indicate the consummation of sale, he immediately approached their table to announce the arrest and apprised accused-appellant of his constitutional rights. As he testified:

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[16] TSN, November 18, 2004, pp. 11-13.

[17] TSN, November 25, 2004, pp. 13-17.

Q: How would you know as an immediate back up of Sistemio, if the buy-bust operation was consummated already?
A: By tapping his shoulder, sir.

Q: That was the pre-arranged signal?
A: Yes, sir.

Q: Tapping the shoulder of whom?
A: Teofilo, sir.

Q: Now going back to the time you saw the three of them conversing, what happened next, or what did you see?
A: *Noong nag-uusap sila* sir, *noong medyo matagal nang nag-uusap sila, siguro mga* fifteen (15) minutes, *tinap ni Sistemio yung balikat nito kaya lumapit na ako, ineffect ko na yung* arrest.

Q: After about fifteen (15) minutes, you finally saw Sistemio tapped the shoulder of *alias* Terence?
A: Yes, sir.

Q: And after that pre-arranged signal, you immediately rushed to where they were?
A: Yes, Sir.

Q: And you announced the arrest of *alias* Terence?
A: Yes, sir.

x x x x x x x x x

Q: Where was the object of the sale at that point, if you know?
A: It was in the possession of Peter Sistemio, sir.

Q: How did you know that it was with Sistemio?
A: Terence handed it to Sistemio, sir.

Q: When for the first time did you see, Mr. Witness *yung pag* about [*sic*]
A: When we were inside, sir.

Q: You mean to say that while you were 7 to 9 meters away from them, you actually saw the transaction, the handing over of the object to Sistemio?
A: Yes, sir.

Q: What was that which you saw the accused handing over to Sistemio?

A: *Naka plastic po kasi yon,* sir, *yung inabot sa kanya*.

Q: Did you see what's inside the plastic?
A: No, sir.

x x x x x x x x x

Q: How did you know that that was a plastic sachet inside?
A: When we went to the headquarters… because the poseur buyer was examining it to determine if it was positive x x x.

x x x x x x x x x

Q: How about the money used by Sistemio in buying the object, did you see the buy-bust money?
A: Yes, sir.

Q: When did you see it?
A: In our office, sir.

Q: When you went back or prior to the operation?
A: Before, sir, *na pumunta kami sa* operation.

Q: During the operation when you went to arrest the accused, where was the buy-bust money at that point, if you know?
A: I recovered it from the right side pocket of *alias* Terence, sir.

Q: Why, how were you able to take possession of the buy-bust money from the right side pocket of the accused's pants?
A: *Noong maposasan namin siya,* sir, *ako yung naghanap*.

Q: You effected the frisking of the person?
A: Yes, sir.

Q: Did he allow you to do so or did he resist?
A: No, sir, he did not resist.

Q: And can you describe the buy-bust money which you confiscated from the possession of the accused?
A: ₱100.00 with marking PVS.

x x x x x x x x x

Q: Showing you the one ₱100.00 bill with Serial No. PR996327, examine this and tell us if that is the same buy-bust money you saw at the office and in the possession of the accused after the operation
A: Yes, sir, this is the buy-bust money given by Major Santos to Peter Sistemio.

x x x x x x x x x

Q: Do you know who brought the object of the sale from the scene of the incident or the arrest to the headquarters?

A: Peter Sistemio, sir.[18]

Generally, in cases involving violations of the Dangerous Drugs Act, the testimonies of prosecution witnesses, who are police officers, are given credence for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[19] In the present case, the testimonies of the arresting officers as to what happened during the day the buy-bust was conducted were candid and expressed in a straightforward manner; thus, in the absence of any improper motive, said statements are given full faith and credit.[20]

Accused-appellant has made much of what he perceived as inconsistencies in the testimonies of the members of the buy-bust team. It must be pointed out, however, that the alleged discrepancy is to be expected. It is doctrinally settled in a long line of cases that minor discrepancies or inconsistencies do not impair the essential integrity of the prosecution's evidence.[21] To note, the testimony of P/CInsp. Santos was given only on April 28, 2005 or several months after the buy-bust operation was conducted; thus, it is plausible that he could not recall all the members of the September 18, 2004 buy-bust operation. To emphasize, the number of members is not central to the issue of illegal sale of *shabu*. What is material for the prosecution in illegal sale of drugs is the proof that the transaction actually took place, together with the presentation in court of the evidence of *corpus delicti*.[22]

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[18] *Id.* at 12-22.

[19] *People v. Trinidad*, G.R. No. 193184, February 7, 2011.

[20] *People v. Lim*, G.R. No. 187503, September 11, 2009, 599 SCRA 712.

[21] *People v. Caco*, G.R. Nos. 94994-95, May 14, 1993, 222 SCRA 49.

[22] *People v. Pagkalinawan*, G.R. No. 184805, March 3, 2010; *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430; *People v. Mateo*, G.R. No. 179036, July 28, 2008, 560 SCRA 375.

In the present case, the prosecution was able to prove that upon seizing the white crystalline substance, PO2 Sistemio had custody of the substance until it was marked at the station with his initials and personally turned over to the crime laboratory for qualitative evaluation. Thereafter, P/SInsp. Origenes-Tapan stated in her laboratory report that the plastic sachet containing a white crystalline substance, weighing 0.14 gram, was positive for methylamphetamine hydrochloride. When the Court asked why the marking was done in the PDEA Office instead of in the crime scene, PO2 Sistemio explained that it was their standard operation procedure to mark the seized items in the PDEA Office. He further testified that he was not carrying any pen at the time the buy-bust operation was conducted.[23] Thereafter, the parties stipulated that the white crystalline substance presented in court was the same substance specified in the request for laboratory examination and report.

Sec. 1(b) of the Dangerous Drugs Board Resolution No. 1, Series of 2002, implementing RA 9165, defines "chain of custody" as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition."[24]

In *People v. Kamad*,[25] We acknowledged that the following links must be established in the chain of custody in a buy-bust situation: "*first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending

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[23] *Id.*

[24] See *People v. Capuno*, G.R. No. 185715, January 19, 2011 and *People v. Lorena*, G.R. No. 184954, January 10, 2011.

[25] G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court."

It was proved in court that at the PDEA Office, PO2 Sistemio marked the sealed sachet subject of the buy-bust operation with the date "09-18-04" and his initials PVS and turned it over to their Chief, P/CInsp. Santos. PO2 Sistemio then executed an affidavit of arrest (Exhibit "A"), and prepared a request for physical examination (Exhibit "E"), drug testing (Exhibit "G"), and crime laboratory examination of the confiscated item (Exhibit "C"). P/CInsp. Santos, along with PO2 Sistemio and SPO1 Yu, brought the subject specimen to the Crime Laboratory at Camp Crame, Quezon City for examination. Thereafter, the parties stipulated that the specimen presented before the court was the same specimen subjected to the laboratory exam.

During cross-examination, PO2 Sistemio further testified that the marking of the evidence was witnessed by the team leader, P/CInsp. Santos, and SPO1 Yu, who affixed their signatures on the documents.[26]

P/SInsp. Origenes-Tapan stated in her Chemistry Report[27] that the plastic sachet containing a white crystalline substance weighing 0.14 gram was positive for methylamphetamine hydrochloride, otherwise known as *shabu*.

As per Order dated November 11, 2004 of the RTC, P/SInsp. Origenes-Tapan's testimony was dispensed with after the parties stipulated that the heat-sealed transparent plastic sachet containing white crystalline substance of suspected methamphetamine hydrochloride was the same as the specimen presented in court as Exhibits "C" and "D". Thus, all things taken together, the PDEA officers were able to establish the chain of custody from

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[26] TSN, November 18, 2004, p. 18.

[27] Chemistry Report No. D-621-04, Exhibit "L".

the time the *shabu* was confiscated up to the time it was presented in court for identification.

In *People v. Antonio*,[28] this Court consistently emphasized that the findings of the trial court, in the absence of any glaring error, gross misapprehension, arbitrary and unsupported conclusion of facts, are given great weight, because it is in a better position to observe the deportment and manner of witnesses during trial. We shall also observe this ruling here.

Under Sec. 5, RA 9165, the selling of *shabu*, regardless of the quantity and quality, is punishable by life imprisonment to death and a fine of PhP 500,000 to PhP 10,000,000. However, with the effectivity of RA 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of death penalty has been proscribed. Thus, the penalty shall be life imprisonment and fine. The penalty of life imprisonment and a fine of PhP 500,000 imposed by the Pasig City RTC and affirmed by the CA is well within the range provided by law. We find no reason to disturb such imposition.

WHEREFORE, the appeal is hereby *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 03172 finding accused-appellant guilty of the crime charged is *AFFIRMED IN TOTO*.

SO ORDERED.

Leonardo-de Castro, Bersamin,[**] *del Castillo,* and *Perez, JJ.,* concur.

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[28] G.R. No. 128900, July 14, 2000, 335 SCRA 646.

[**] Additional member per Special Order No. 1000 dated June 8, 2011.

FIRST DIVISION

[G.R. No. 193840. June 15, 2011]

ALEXANDER S. GAISANO, *petitioner, vs.* **BENJAMIN C. AKOL,** *respondent.*

SYLLABUS

CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; COMPROMISE AGREEMENT; DEFINED; JUDGMENT VALIDLY RENDERED ON THE AGREEMENT TO TERMINATE ACTION IN CASE AT BAR.— A compromise agreement is a contract whereby the parties make reciprocal concessions, avoid litigation, or put an end to one already commenced. Its validity depends on its fulfillment of the requisites and principles of contracts dictated by law; its terms and conditions being not contrary to law, morals, good customs, public policy and public order. A scrutiny of the aforequoted agreement reveals it is a compromise agreement sanctioned under Article 2028 of the Civil Code. Its terms and conditions are not contrary to law, morals, good customs, public policy and public order. Hence, judgment can be validly rendered thereon.

APPEARANCES OF COUNSEL

Rivera Pulvera & Associates for petitioner.
Kho Roa & Partners for respondent.

R E S O L U T I O N

VELASCO, JR.,* ***J.*:**

In this Petition for Review on *Certiorari*, petitioner assails the November 24, 2009 Decision[1] and August 23, 2010 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 02271-

* Per Special Order No. 1003 dated June 8, 2011.

[1] *Rollo*, pp. 43-59. Penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Romulo V. Borja and Danton Q. Bueser.

[2] *Id.* at 60-65.

MIN, which reversed and set aside the June 24, 2008 Judgment[3] of the Regional Trial Court (RTC), Branch 17 in Cagayan de Oro City dismissing respondent's complaint for recovery of shares of stock in Civil Case No. 2006-010.

On April 14, 2011, the parties jointly filed an Agreement to Terminate Action duly signed by them and their respective counsels. It reads:

AGREEMENT TO TERMINATE ACTION

Petitioner and Respondent, assisted by their undersigned counsels, unto this Honorable Court, most respectfully state that:

1. The parties have agreed to amicably settle this case by agreeing to terminate the same, including the cases from which it originated, with herein parties waiving any and all of their claims arising out of or necessarily connected with this case and its originating cases, to wit—

a. Civil Case No. 2006-010 for recovery of shares of stock and damages where respondent was the plaintiff and which case was dismissed by the Branch 17 of the Regional Trial Court of Cagayan de Oro City.

b. CA G.R. SP No. 02271-MIN, 21st Division of the Court of Appeals filed by respondent as the petitioner in a Petition for Review from the aforementioned dismissal of his case by the Regional Trial Court. The respondent was awarded by the Court of Appeals with the contested shares of stock.

2. The parties shall bear their own litigation expenses in this case and the originating cases.

3. This settlement is for the sole purpose of buying peace, reestablishing goodwill and limiting legal expenses and costs and/or avoid further protracted, tedious and expensive litigation and is in no way an admission of fault or liability on the part of the parties for any wrongful acts.

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that the foregoing agreement be approved

[3] *Id*. at 96-104. Penned by Presiding Judge Florencia D. Sealana-Abbu.

and that a Judgment be rendered thereon expressly incorporating the foregoing terms.

Cebu City and Cagayan de Oro City, Philippines, April 1, 2011.

(sgd) ALEXANDER S. GAISANO Petitioner	(sgd) BENJAMIN C. AKOL Respondent
Assisted by:	Assisted by:
(sgd) ANNABEL G. PULVERA-PAGE	(sgd) ARMANDO S. KHO
x x x	x x x x x x
RIVERAL PULVERA & ASSOCIATES Counsel for Petitioner	KHO, ROA & PARTNERS Counsel for Respondent

A compromise agreement is a contract whereby the parties make reciprocal concessions, avoid litigation, or put an end to one already commenced.[4] Its validity depends on its fulfillment of the requisites and principles of contracts dictated by law; its terms and conditions being not contrary to law, morals, good customs, public policy and public order.[5]

A scrutiny of the aforequoted agreement reveals it is a compromise agreement sanctioned under Article 2028 of the Civil Code. Its terms and conditions are not contrary to law, morals, good customs, public policy and public order. Hence, judgment can be validly rendered thereon.

WHEREFORE, finding the Agreement to Terminate Action dated April 1, 2011 not to be contrary to law, morals, good customs, public policy and public order, it is hereby *APPROVED* and judgment is rendered based on said agreement which is final and immediately executory. The parties are enjoined to comply strictly and in good faith with the terms, conditions and stipulations contained therein. Accordingly, the complaint for

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[4] *Uy v. Chua*, G.R. No. 183965, September 18, 2009, 600 SCRA 806, 817; *California Manufacturing Company, Inc. v. The City of Las Piñas*, G.R. No. 178461, June 22, 2009, 590 SCRA 453, 457; *Tankiang v. Alaraz*, G.R. No. 181675, June 22, 2009, 590 SCRA 480, 496.

[5] *Calingin v. Civil Service Commission*, G.R. No. 183322, October 30, 2009, 604 SCRA 818, 824.

recovery of shares of stock and damages, docketed as Civil Case No. 2006-010, before the RTC, Branch 17 in Cagayan de Oro City is hereby *DISMISSED* with *PREJUDICE*.

The March 28, 2011 Motion for Reconsideration with Motion to Admit Petition for Review on *Certiorari* (Re: 12 January 2011 Resolution) of pertitioner has become moot and academic.

SO ORDERED.

Leonardo-de Castro, Bersamin,[**] *del Castillo,* and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 194367. June 15, 2011]

MARK CLEMENTE *y* MARTINEZ @ EMMANUEL DINO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; GENERALLY, TRIAL COURT'S FINDINGS ARE ACCORDED FINALITY, UNLESS THERE APPEARS IN THE RECORD SOME FACT OR CIRCUMSTANCE OF WEIGHT WHICH THE LOWER COURT HAS OVERLOOKED, MISUNDERSTOOD OR MISAPPRECIATED, AND WHICH, IF PROPERLY CONSIDERED, WOULD ALTER THE RESULT OF THE CASE; EXCEPTION APPLIES IN CASE AT BAR.— Generally, the trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court has overlooked, misunderstood or misappreciated, and which, if properly considered, would alter

[**] Additional member per Special Order No. 1000 dated June 8, 2011.

the result of the case. The exception applies when it is established that the trial court has ignored, overlooked, misconstrued or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case. Here, the Court finds that the RTC and the CA had overlooked certain substantial facts of value to warrant a reversal of its factual assessments. While petitioner's denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credence, said defense must be given credence in this case as the prosecution failed to meet its burden of proof.

2. CRIMINAL LAW; CRIMES AGAINST PUBLIC INTERESTS; ILLEGAL POSSESSION AND USE OF FALSE TREASURY OR BANK NOTES AND OTHER INSTRUMENTS OF CREDIT; ELEMENTS; POSSESSION WITH INTENT TO USE, NOT ESTABLISHED IN CASE AT BAR.— The elements of the crime charged for violation of [Article 168 of the RPC] are: (1) that any treasury or bank note or certificate or other obligation and security payable to bearer, or any instrument payable to order or other document of credit not payable to bearer is forged or falsified by another person; (2) that the offender knows that any of the said instruments is forged or falsified; and (3) that he either used or *possessed with intent to use* any of such forged or falsified instruments. As held in *People v. Digoro,* possession of false treasury or bank notes alone, without anything more, is not a criminal offense. For it to constitute an offense under Article 168 of the RPC, the possession must *be with intent to use* said false treasury or bank notes. In this case, the prosecution failed to show that petitioner used the counterfeit money or that he intended to use the counterfeit bills. Francis dela Cruz, to whom petitioner supposedly gave the fake ₱500.00 bill to buy soft drinks, was not presented in court. According to the jail officers, they were only informed by Francis dela Cruz that petitioner asked the latter to buy soft drinks at the Manila City jail bakery using a fake ₱500.00 bill. In short, the jail officers did not have personal knowledge that petitioner asked Francis dela Cruz use the ₱500.00 bill. Their account, however, is hearsay and not based on the personal knowledge.

APPEARANCES OF COUNSEL

Lucas C. Carpio, Jr. for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse the March 29, 2010 Decision[1] of the Court of Appeals (CA) which denied petitioner's appeal and affirmed the November 3, 2008 Judgment of the Regional Trial Court (RTC) of Manila, Branch 7, convicting petitioner of illegal possession and use of

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[1] *Rollo*, pp. 27-43. Penned by Justice Ramon R. Garcia with Justices Rosalinda Asuncion-Vicente and Elihu A. Ybanez concurring.

[2] *Id.* at 47-58. Penned by Judge Ma.Theresa Dolores C. Gomez-Estoesta. The dispositive portion of the RTC decision reads:

WHEREFORE, this Court finds accused Mark Clemente *y* Martinez a.k.a. Emmanuel Dino GUILTY beyond reasonable doubt of a violation of Article 168 of the Revised Penal Code for Illegal Possession and Use of False Bank Notes which is penalized under Article 168 of the same Code.

There being neither mitigating nor aggravating circumstance alleged nor proven, pursuant to the provisions of the Indeterminate Sentence Law, this Court imposes upon said Mark Clemente *y* Martinez a.k.a. Emmanuel Dino an indeterminate penalty of **EIGHT (8) YEARS and ONE (1) DAY of *prision mayor* in its medium period as minimum to TEN (10) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *prision mayor* in its medium period as maximum and to pay a FINE OF FIVE THOUSAND PESOS (₱5,000.00)**.

The preventive imprisonment accused has undertaken shall be **CREDITED** to the service of his sentence.

In contemplation of Circular No. 61, Series of 1995, issued by the Bangko Sentral ng Pilipinas, the Branch Sheriff of this Court is directed to **TRANSMIT** the twenty[-four] (24) pieces of ₱500.00 bills found to be counterfeit to the Cash Department of the Bangko Sentral ng Pilipinas for proper disposition.

With costs *de oficio* against the accused.

SO ORDERED.

false bank notes under Article 168[3] of the Revised Penal Code (RPC), as amended. Also assailed is the CA Resolution dated October 14, 2010[4] denying petitioner's motion for reconsideration.

Petitioner was charged before the RTC with violation of Article 168 of the RPC under an Information[5] which reads:

That on or about August 5, 2007, in the City of Manila, Philippines, the said accused, with intent to use, did then and there willfully, unlawfully, feloniously and knowingly have in his possession and under his custody and control twenty[-]four (24) pcs. [of] ₱500.00 bill with Markings ["] IIB-1" to "IIB-24", respectively and specifically enumerated, to wit:

SERIAL NO.	PCS.	AMOUNT	SERIAL NO.	PCS.	AMOUNT
PX626388	1	₱ 500.00	CC077337	1	₱ 500.00
CC077337	1	500.00	CC077337	1	500.00
CC077337	1	500.00	CC077337	1	500.00
BR666774	1	500.00	CC077337	1	500.00
CC077337	1	500.00	BR666774	1	500.00
BB020523	1	500.00	BR666774	1	500.00
PX626388	1	500.00	CC077337	1	500.00
BR666774	1	500.00	WW164152	1	500.00
PX626388	1	500.00	WW164152	1	500.00
BR666774	1	500.00	BR666774	1	500.00
UU710062	1	500.00	PX626388	1	500.00
CC077337	1	500.00	PX626388	1	500.00

Which are false and falsified.

Contrary to law.

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[3] **Article 168**. *Illegal possession and use of false treasury or bank notes and other instruments of credit.*—Unless the act be one of those coming under the provisions of any of the preceding articles, any person who shall knowingly use or have in his possession, with intent to use any of the false or falsified instruments referred to in this section, shall suffer the penalty next lower in degree than that prescribed in said articles.

[4] *Rollo*, pp. 45-46.

[5] *Id.* at 27 and 47-48.

Upon arraignment, petitioner entered a plea of not guilty. Trial thereafter ensued.

The version of the prosecution and the defense, as summarized by the CA, are as follows:[6]

> The prosecution presented three (3) witnesses, namely: Jail Officer 1 (JO1) Michael Michelle Passilan, the Investigator of the Manila City Jail; JO1 Domingo David, Jr.; and Loida Marcega Cruz, the Assistant Manager of the Cash Department of the *Bangko Sentral ng Pilipinas*.
>
> [Their testimonies established the following:]
>
> Appellant is a detainee at the Manila City Jail. On August 7, 2007, at around 3:30 pm, an informant in the person of inmate Francis dela Cruz approached JO1s Domingo David, Jr. and Michael Passilan. The informant narrated that he received a counterfeit ₱500.00 bill from appellant with orders to buy a bottle of soft drink from the Manila City Jail Bakery. The bakery employee, however, recognized the bill as a fake and refused to accept the same. Consequently, JO1s David and Passilan, along with the informant, proceeded to appellant's cell for a surprise inspection. Pursuant to their agreement, the informant entered the cubicle first and found appellant therein, lying in bed. The informant returned to appellant the latter's ₱500.00 bill. The jail guards then entered the cell and announced a surprise inspection. JO1 Passilan frisked appellant and recovered a black wallet from his back pocket. Inside the wallet were twenty-three (23) pieces of ₱500.00, all of which were suspected to be counterfeit. They confiscated the same and marked them sequentially with "IIB-2" to "II-B24". They likewise marked the ₱500.00 bill that was returned by informant to appellant with "IIB-1". Appellant was consequently arrested and brought out of his cell into the office of the Intelligence and Investigation Branch (IIB) of the Manila City jail for interrogation.
>
> Meanwhile, the twenty-four (24) ₱500.00 bills confiscated from appellant were turned over to the *Bangko Sentral ng Pilipinas* for analysis. Pursuant to a Certification dated August 7, 2007, Acting Assistant Manager Loida Marcega Cruz of the *Bangko Sentral ng Pilipinas* examined and found the following bills as counterfeit, *viz*:

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[6] *Id.* at 29-32.

one (1) ₱500.00 bill with Serial Number BB020523; six (6) ₱500.00 bills with Serial Number BR666774; nine (9) ₱500.00 bills with Serial Number CC077337; five (5) ₱500.00 bills with Serial Number PX626388; one (1) P500.00 bill with Serial Number UU710062; and two (2) ₱500.00 bills with Serial Number WW164152.

For the defense, appellant was the lone witness presented on the stand.

Appellant simply raised the defense of frame-up. He testified that in the afternoon of August 5, 2007, he was inside his room located at Dorm 1 of the Manila City Jail. At around 3:00 pm, JO1 Michael Passilan entered appellant's room while JO1 Domingo David, Jr. posted himself outside. Without any warning, JO1 Passilan frisked appellant and confiscated his wallet containing one (1) ₱1,000.00 bill. JO1s David and Passilan left immediately thereafter. Appellant was left with no other choice but to follow them in order to get back his wallet. Appellant followed the jail officers to the Intelligence Office of the Manila City Jail where he saw JO1 Passilan place the ₱500.00 bills inside the confiscated black wallet. Appellant was then told that the ₱500.00 bills were counterfeit and that he was being charged with illegal possession and use thereof. Appellant also added that JO1 Passilan bore a grudge against him. This was because appellant refused to extend a loan [to] JO1 Passilan because the latter cannot offer any collateral therefor. Since then, JO1 Passilan treated him severely, threatening him and, at times, putting him in isolation.

After trial, the RTC found petitioner guilty beyond reasonable doubt of the crime charged. The RTC gave credence to the prosecution's witnesses in finding that the counterfeit money were discovered in petitioner's possession during a surprise inspection, and that the possibility that the counterfeit money were planted to incriminate petitioner was almost nil considering the number of pieces involved.[7] The RTC also did not find that the jail officers were motivated by improper motive in arresting petitioner,[8] and applied in their favor the presumption of regularity in the performance of official duties considering the absence of contrary evidence. As to petitioner's defense of frame-up, the

[7] *Id.* at 53-54.

[8] *Id.* at 54.

RTC held that the purported frame-up allegedly staged by JO1 Passilan would not affect the prosecution's evidence since the testimony of JO1 David could stand by itself. The RTC likewise found that it was strange that petitioner did not remonstrate despite the fact that he was allegedly being framed.[9]

As to the elements of the crime, the RTC held that the fact that the ₱500.00 bills found in petitioner's possession were forgeries was confirmed by the certification issued by the Cash Department of the *Bangko Sentral ng Pilipinas*, which was testified into by Acting Assistant Manager Loida A. Cruz.[10] The RTC also ruled that petitioner knew the bills were counterfeit as shown by his conduct during the surprise search and his possession of the bills. As to the element of intention to use the false bank notes, the RTC ruled that the fact that petitioner intended to use the bills was confirmed by the information received by the jail officers from another inmate.[11]

Aggrieved, petitioner sought reconsideration of the judgment. Petitioner argued that the evidence used against him was obtained in violation of his constitutional right against unreasonable searches and seizures. Petitioner also argued that the prosecution failed to prove his guilt beyond reasonable doubt because of the non-presentation of the informant-inmate, Francis dela Cruz, who could have corroborated the testimonies of the jail officers.

Unconvinced, the RTC denied petitioner's motion for reconsideration. The RTC, however, only ruled that there was no violation of petitioner's constitutional right against unreasonable searches and seizures because the seizure was done pursuant to a valid arrest for violation of Article 168 of the RPC. The trial court pointed out that prior to the search, a crime was committed and the criminal responsibility pointed to petitioner.[12]

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[9] *Id.* at 55.

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

[11] *Id.* at 56.

[12] *Id.* at 59-60.

On appeal before the CA, petitioner argued that the RTC erred in finding him guilty beyond reasonable doubt for violating Article 168 of the RPC. Petitioner contended that one of the elements of the crime which is intent to use the counterfeit bills was not established because the informant Francis dela Cruz did not take the witness stand.[13]

The CA, however, found the appeal unmeritorious and denied petitioner's appeal.[14] The appellate court found that the fact the petitioner was caught in possession of twenty-four (24) pieces of fake ₱500.00 bills already casts doubt on his allegation that he was merely framed by the jail guards. The CA agreed with the RTC that even without the testimony of JO1 Passilan, the testimony of JO1 David was already sufficient to establish petitioner's guilt since petitioner did not impute any ill motive on the latter except to point out that JO1 David was JO1 Passilan's friend.[15]

Regarding the element of intent to use, the CA found that there are several circumstances which, if taken together, lead to the logical conclusion that petitioner intended to use the counterfeit bills in his possession. The CA pointed out that jail officers were informed by inmate Francis dela Cruz that he received a fake ₱500.00 bill from petitioner who told him to buy soft drinks from the Manila City jail bakery. After Francis dela Cruz identified petitioner as the person who gave him the fake money, the jail officers conducted a surprise inspection. Said inspection yielded twenty-three (23) pieces of counterfeit ₱500.00 bills inside petitioner's black wallet, which was taken from his back pocket. The CA further held that the non-presentation of Francis dela Cruz would not affect the

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

[14] The dispositive portion reads as follows:

WHEREFORE, premises considered, the appeal is hereby **DENIED**. The Judgment dated November 3, 2008 of the Regional Trial Court, Branch 7, Manila is **AFFIRMED**.

SO ORDERED.

[15] *Id.* at 38-39.

prosecution's case because even without his testimony, petitioner's intent to use the counterfeit bills was established. The CA added that the matter of which witnesses to present is a matter best left to the discretion of the prosecution.[16]

Petitioner sought reconsideration of the above ruling, but the CA denied petitioner's motion for reconsideration in the assailed Resolution dated October 14, 2010.[17] Hence, the present appeal.

Petitioner raises the following assignment of errors, to wit:

I.

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT, CONVICTING PETITIONER OF THE CRIME CHARGED, DESPITE THE FAILURE OF THE PROSECUTION TO PROVE AN ELEMENT OF THE OFFENSE.

II.

THE COURT OF APPEALS ERRED IN NOT EXCLUDING THE COUNTERFEIT BILLS SINCE THEY WERE DERIVED FROM UNREASONABLE SEARCH AND SEIZURE.[18]

The petition is meritorious.

Generally, the trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court has overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. The exception applies when it is established that the trial court has ignored, overlooked, misconstrued or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case.[19]

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[16] *Id.* at 39-40.

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

[18] *Id.* at 13.

[19] *Ortega v. People*, G.R. No. 177944, December 24, 2008, 575 SCRA 519, 529.

Here, the Court finds that the RTC and the CA had overlooked certain substantial facts of value to warrant a reversal of its factual assessments. While petitioner's denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credence, said defense must be given credence in this case as the prosecution failed to meet its burden of proof.

Article 168 of the RPC, under which petitioner was charged, provides:

> ART. 168. *Illegal possession and use of false treasury or bank notes and other instruments of credit*. — Unless the act be one of those coming under the provisions of any of the preceding articles, any person who shall knowingly use or have in his possession**, with intent to use** any of the false or falsified instruments referred to in this section, shall suffer the penalty next lower in degree than that prescribed in said articles. [Emphasis supplied.]

The elements of the crime charged for violation of said law are: (1) that any treasury or bank note or certificate or other obligation and security payable to bearer, or any instrument payable to order or other document of credit not payable to bearer is forged or falsified by another person; (2) that the offender knows that any of the said instruments is forged or falsified; and (3) that he either used or *possessed with intent to use* any of such forged or falsified instruments.[20] As held in *People v. Digoro*,[21] possession of false treasury or bank notes alone, without anything more, is not a criminal offense. For it to constitute an offense under Article 168 of the RPC, the possession must *be with intent to use* said false treasury or bank notes.[22]

In this case, the prosecution failed to show that petitioner used the counterfeit money or that he intended to use the

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[20] *Tecson v. Court of Appeals*, G.R. No. 113218, November 22, 2001, 370 SCRA 181, 188.

[21] G.R. No. L-22032, March 4, 1966, 16 SCRA 376, 378.

[22] *People v. Digoro*, G.R. No. L-22032, March 4, 1966, 16 SCRA 376, 378.

counterfeit bills. Francis dela Cruz, to whom petitioner supposedly gave the fake ₱500.00 bill to buy soft drinks, was not presented in court. According to the jail officers, they were only informed by Francis dela Cruz that petitioner asked the latter to buy soft drinks at the Manila City jail bakery using a fake ₱500.00 bill. In short, the jail officers did not have personal knowledge that petitioner asked Francis dela Cruz use the ₱500.00 bill.[23] Their account, however, is hearsay and not based on the personal knowledge.[24]

This Court, of course, is not unaware of its rulings that the matter of presentation of prosecution witnesses is not for the accused or, except in a limited sense, for the trial court to dictate. Discretion belongs to the city or provincial prosecutor as to how the prosecution should present its case.[25] However, in this case, the non-presentation of the informant as witness weakens the prosecution's evidence since he was the only one who had knowledge of the act which manifested petitioner's intent to use a counterfeit bill. The prosecution had every opportunity to present Francis dela Cruz as its witness, if in fact such person existed, but it did not present him. Hence, the trial court did not have before it evidence of an essential element of the crime. The twenty-three (23) pieces of counterfeit bills allegedly seized on petitioner is not sufficient to show intent, which is a state of mind, for there must be an overt act to manifest such intent.

WHEREFORE, the petition for review on *certiorari* is *GRANTED.* The Decision dated March 29, 2010 and Resolution dated October 14, 2010 of the Court of Appeals in CA-G.R. CR No. 32365 are *REVERSED and SET-ASIDE*. Petitioner

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[23] Rule 130, Section 36**.** *Testimony generally confined to personal knowledge*; *hearsay excluded*. — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these Rules. (30a)

[24] *PNOC Shipping & Transport Corp. v. CA*, 358 Phil. 38, 56 (1998); *Phil. Home Assurance Corp. v. CA*, 327 Phil. 255, 267-268 (1996); *Valencia v. Atty. Cabanting*, Adm. Cases Nos. 1302, 1391 and 1543, April 26, 1991, 196 SCRA 302, 310.

[25] *People v. Sariol*, G.R. No. 83809, June 22, 1989, 174 SCRA 237, 242.

Clemente *y* Martinez *alias* Emmanuel Dino is hereby *ACQUITTED* of the crime of Illegal possession and use of false bank notes defined and penalized under Article 168 of the Revised Penal Code, as amended.

With costs *de oficio*.

SO ORDERED.

Brion (Acting Chairperson), Bersamin, Mendoza,[*] and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 194836. June 15, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARNOLD CASTRO *y* YANGA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); IMPLEMENTING RULES AND REGULATIONS; CHAIN OF CUSTODY; ESTABLISHED IN CASE AT BAR.— Undeniably, in every prosecution for illegal sale of prohibited drugs, the presentation in evidence of the seized drug, as an integral part of the *corpus delicti,* is most material. It is therefore vital that the identity of the prohibited drug be proved with moral certainty. Also, the fact that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit must be established with the same degree of certitude. It is in this respect that the chain of custody requirement performs its function, that is, to ensure that all unnecessary doubts concerning the identity of the evidence are removed. Contrary

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[*] Designated additional member per Raffle dated December 6, 2010 in lieu of Associate Justice Conchita Carpio Morales who took no part.

to the claim of Castro, the chain of custody of the seized prohibited drugs was adequately established in the case at bar. As aptly observed by the CA: Here, appellant was brought to the police station immediately after the illegal drugs and marked money were seized from him. The confiscated substances were marked accordingly, turned over to investigator PO Alexander Jimenez, and submitted to the PNP crime laboratory for analysis. Forensic chemist Arban tested the substances and after finding them positive for *shabu*, issued his chemistry report also on February 26, 2004, or within 24 hours after confiscation of the items. Thus, the trial court correctly upheld the admissibility of the seized items upon its finding that handling of the sachets was free of any physical distortion. Admittedly, testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. Nonetheless, what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items.

2. ID.; ID.; ID.; INTEGRITY OF THE EVIDENCE IS PRESUMED TO BE PRESERVED UNLESS THERE IS A SHOWING OF BAD FAITH, ILL WILL, OR PROOF THAT THE EVIDENCE HAS BEEN TAMPERED WITH.— In the recent case of *People v. Quiamanlon*, this Court held that "the integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with." Concomitantly, it is Castro who bears the burden to make some showing that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers, as well as a presumption that said public officers properly discharged their duties. Since Castro failed to discharge such burden, it cannot be disputed that the drugs seized from him were the same ones examined in the crime laboratory. The prosecution, therefore, established the crucial link in the chain of custody of the seized drugs.

3. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS AFFIRMING THOSE OF THE TRIAL COURT ARE BINDING ON THE SUPREME COURT UNLESS THERE IS A CLEAR SHOWING THAT SUCH FINDINGS ARE TAINTED WITH ARBITRARINESS, CAPRICIOUSNESS OR PALPABLE ERROR.— It is hornbook doctrine that the factual findings of the CA affirming those of the trial court are binding on this Court unless there is a clear showing that such findings

are tainted with arbitrariness, capriciousness or palpable error. In *People v. Lusabio, Jr.*, this Court held: All in all, we find the evidence of the prosecution to be more credible than that adduced by accused-appellant. **When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.** The reason is obvious. **Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.** Since Castro failed to show any palpable error, arbitrariness, or capriciousness on the findings of fact of the lower courts, the same deserve great weight and are deemed conclusive and binding.

4. CRIMINAL LAW; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS.— In the prosecution for the crime of illegal sale of prohibited drugs under Section 5, Article II of RA 9165, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof. Significantly, what is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.

5. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ESTABLISHED IN CASE AT BAR.— With respect to the charge of illegal possession of dangerous drugs under Section 11, Article II of RA 9165, the evidence of the prosecution has sufficiently established the elements thereof, *to wit*: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. Pertinently, 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. As a consequence, the burden of evidence is shifted to the accused to explain the

absence of knowledge or *animus possidendi*. In the case at bar, Castro miserably failed to discharge such burden.

6. REMEDIAL LAW; EVIDENCE; DENIAL; INHERENTLY A WEAK DEFENSE.— A bare denial is an inherently weak defense and has been invariably viewed by this Court with disfavor for it can be easily concocted but difficult to prove, and is a common standard line of defense in most prosecutions arising from violations of RA 9165. Concomitantly, this Court has held in several cases that "denials unsubstantiated by convincing evidence are not enough to engender reasonable doubt particularly where the prosecution presents sufficiently telling proof of guilt," as in the case at bar. As against P/Insp. Armenta's positive identification of Castro as the seller of the sachet containing the white crystalline substance eventually confirmed to be a dangerous drug, Castro's denial is perceptibly self-serving and has little weight in law.

7. ID.; ID.; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY; UPHELD.— [I]n the absence of any intent on the part of the police authorities to falsely impute such crime against the accused, the presumption of regularity in the performance of duty should stand.

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 July 21, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03800 entitled

[*] Per Special Order No. 1003 dated June 8, 2011.

[1] *Rollo*, pp. 2-13. Penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca de Guia-Salvador and Sesinando E. Villon.

People of the Philippines v. Arnold Castro y Yanga which affirmed the January 6, 2009 Decision[2] in Criminal Cases Nos. Q-04-125048-9 of the Regional Trial Court (RTC), Branch 103 in Quezon City. The RTC found accused Arnold Castro *y* Yanga (Castro) guilty of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

Criminal Case No. Q-04-125048 pertains to the Information filed against Castro for violation of Section 5, Article II of RA 9165, the accusatory portion of which reads:

> That on or about the 26th day of February, 2004 in Quezon City, Philippines, the said accused not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, wil[l]fully, and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, 0.03 (zero point zero three) gram of white crystalline substance containing Methylamphetamine Hydrochloride[,] a dangerous drug.
>
> CONTRARY TO LAW.[3]

On the other hand, in Criminal Case No. Q-04-125049, Castro was charged with violation of Section 11, Article II of RA 9165, as follows:

> That on or about the 26th day of February, 2004 in Quezon City, Philippines, the said accused not being authorized by law to possess or use any dangerous drug, did, then and there, wil[l]fully, unlawfully and knowingly have in his/her possession and control 0.07 (zero point zero seven) gram of white crystalline substance containing Methylamphetamine Hydrochloride[,] a dangerous drug.
>
> CONTRARY TO LAW.[4]

On arraignment, Castro pleaded "not guilty" to both charges.[5] Thereafter, trial on the merits ensued.

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[2] CA *rollo*, pp. 19-24. Penned by Presiding Judge Jaime N. Salazar, Jr.

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

[4] CA *rollo*, p. 17.

[5] *Rollo*, p. 3.

During trial, the prosecution presented the testimonies of two (2) police witnesses, namely: P/Insp. Jaime Armenta (P/Insp. Armenta) and PO2 Napoleon Zamora (PO2 Zamora).[6] On the other hand, the defense presented the testimonies of Amalia Infante, Amor Castro, and the accused himself.[7]

The Prosecution's Version of Facts

On February 26, 2004, at around 1:00 a.m., P/Insp. Armenta and PO2 Zamora, members of the Galas Police Station, received a report from a male informant that a certain *alias* "Idol" had been illegally selling drugs along Cordillera and Ramirez Streets in Brgy. San Isidro, Quezon City.[8] P/Insp. Armenta immediately relayed the said report to their chief, Col. Robert Razon (Col. Razon).[9]

Consequently, Col. Razon formed a buy-bust operation team, composed of more than four (4) policemen, which included P/Insp. Armenta and PO2 Zamora.[10] P/Insp. Armenta was designated as the poseur-buyer and was given a one hundred peso bill as the buy-bust money, which he marked with his initials "JA."[11] P/Insp. Armenta was also the one who prepared and sent a Pre-Operation Report[12] to the Philippine Drug Enforcement Agency (PDEA) for proper coordination.[13]

The buy-bust team was dispatched in two (2) private vehicles to Brgy. San Isidro, Quezon City.[14] It arrived at the area of operation at around 2:00 a.m. Both P/Insp. Armenta and the

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

[7] CA *rollo*, p. 21.

[8] *Rollo*, pp. 3-4.

[9] *Rollo*, p. 4.

[10] *Rollo*, p. 4.

[11] *Rollo*, p. 4.

[12] This Pre-Operation Report was given control number PDEA No. C-250204; *rollo*, p. 4.

[13] *Rollo*, p. 4.

[14] *Rollo*, p. 4.

confidential informant walked towards an *eskinita* with a distance of more than ten (10) meters.[15] PO2 Zamora saw them talk to another person, who turned out to be Castro, near a lighted Meralco post.[16]

The confidential informant introduced P/Insp. Armenta to Castro as a prospective buyer of *shabu*.[17] Thereafter, Castro asked P/Insp. Armenta how much, to which the latter responded "*piso*," which meant Php100.00.[18] P/Insp. Armenta then handed the one hundred peso buy-bust money to Castro.[19] The latter, in turn, gave him a transparent plastic sachet containing white crystalline substance that he pulled out from his pocket.[20]

Afterwards, P/Insp. Armenta scratched his head to signal to his team members that the transaction was already consummated.[21] Accordingly, the buy-bust team immediately closed in and arrested Castro. PO2 Zamora informed Castro of his violation, frisked him and recovered from his pocket two (2) more transparent plastic sachets of white crystalline substance, as well as the marked money.[22]

P/Insp. Armenta took custody of the transparent plastic sachet that Castro sold to him, while PO2 Zamora kept the marked money and the two (2) other plastic sachets which he recovered.[23] When they reached their office, P/Insp. Armenta marked the transparent plastic sachet in his custody with his initials and the initials of Castro (JA-AC).[24] PO2 Zamora also marked the two

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

[16] *Rollo*, p. 4.

[17] *Rollo*, p. 4.

[18] *Rollo*, p. 4.

[19] *Rollo*, pp. 4-5.

[20] *Rollo*, pp. 4-5.

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

[22] *Rollo*, p. 5.

[23] *Rollo*, p. 5.

[24] *Rollo*, p. 5.

(2) other sachets with his initials and also that of Castro's (NZ-AC).[25] The three (3) transparent plastic sachets were then turned over to the investigator, police officer Alexander Jimenez, who prepared and submitted a letter-request for analysis.[26]

Forensic Chemist/Police Inspector Leonard T. Arban of the PNP Crime Laboratory made a chemical analysis on the seized items.[27] In his Chemistry Report No. D-226-04, he confirmed that the three (3) transparent plastic sachets were positive for Methylamphetamine Hydrochloride.[28]

Version of the Defense

Castro claimed that on February 24, 2004, at around 9:00 p.m., he was taking a rest in front of their house at No. 92 Union Sibika St., Galas, Quezon City when a Quezon City Police mobile car suddenly parked in front of him.[29] Four (4) men alighted, forced him to board the patrol car, and brought him to the Galas Police Station, where a plastic sachet was shown to him.[30] After Castro denied ownership of the said plastic sachet, a police officer then allegedly told him that he would be released only if he had money.[31]

To corroborate Castro's claim, his neighbor, Amalia Infante, testified that while she was walking along Mindanao St. at around 9:00 p.m. on February 24, 2004, she saw that Castro was surrounded by four (4) men.[32] They were about 15 to 20 meters away from her.[33] Despite her curiosity, she, however, went straight to the bakery to buy bread for her son.[34]

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[25] *Rollo*, p. 5.

[26] *Rollo*, p. 5.

[27] *Rollo*, p. 5.

[28] *Rollo*, p. 5.

[29] *Rollo*, p. 6.

[30] *Rollo*, p. 6.

[31] *Rollo*, p. 6.

[32] *Rollo*, p. 6.

[33] *Rollo*, p. 6.

[34] *Rollo*, p. 6.

Castro's father, Amor Castro, also testified that on February 24, 2004, at around 9:00 p.m., he was watching television with his other children when he heard the sound of a car engine in front of his house.[35] When he looked outside, he saw four (4) men in civilian clothes putting his son, Castro, inside a police mobile car.[36] These men then told him to follow them at the Galas Police Station.[37] When he arrived at the police station, Castro told him that PO2 Zamora was allegedly demanding Php30,000.00 for his release.[38] He also claimed that Castro was plying his route as a tricycle driver on February 26, 2004.[39]

Ruling of the Trial Court

After trial, the RTC, on January 6, 2009, convicted Castro. The dispositive portion of its Decision reads:

ACCORDINGLY, judgment is rendered finding the accused ARNOLD CASTRO *y* Yanga **GUILTY** beyond reasonable doubt of the two offenses of which he is charged at bench, and he is hereby sentenced as follows:

I. In Q-04-125048 the accused is sentenced to LIFE IMPRISONMENT for violation of Section 5, of RA 9165 (drug-pushing) as charged, and ordered to pay a fine of ₱500,000.00; and

II. In Q-04-125049 the same accused is sentenced to suffer a jail term of 12 years and 1 day, as minimum to 13 years, as maximum and to pay a fine of ₱300,000.00 for violating Section 11, R.A. 9165 (possession).

The three (3) plastic sachets of *shabu* in these two cases are ordered transmitted to the PDEA thru DDB for proper disposal as per RA 9165.

In the court's personal opinion, the accused Arnold *y* Castro should only be found guilty of one (1) crime of drugpushing and not

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[35] CA *rollo*, p. 22.

[36] CA *rollo*, p. 22.

[37] *Rollo*, p. 6.

[38] *Rollo*, p. 6.

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

possession in addition, for his possession of the two other sachets appears to be sachets that he intended to sell to others. Nonetheless, since the Supreme Court has a contrary opinion in decided cases, this court cannot do anything but follow and obey that Supreme Court doctrine for as long as it has not been changed.

SO ORDERED.[40]

On appeal to the CA, Castro questioned the lower court's Decision in convicting him notwithstanding the prosecution's alleged failure to preserve the integrity and identity of the *corpus delicti* of the offenses charged, and its supposed failure to prove his guilt with moral certainty.[41]

Ruling of the Appellate Court

On July 21, 2010, the CA affirmed the judgment of the lower court. It ruled that both the sale and possession of illegal drugs were adequately established by the prosecution. It noted that Castro was caught *in flagrante delicto* in selling *shabu* to P/Insp. Armenta during the buy-bust operation and that he was also caught in possession of two (2) other sachets of *shabu* in his pocket.[42]

The CA also held that the trial court's findings on the credibility of witnesses are accorded great weight and respect because the trial judge has the direct opportunity to observe them on the stand and ascertain if they are telling the truth or not.[43] Further, the CA ruled that the chain of custody of the seized prohibited drugs was shown not to have been broken as the handling of the sachets was free of any physical distortion.[44]

The *fallo* of the CA Decision reads:

Accordingly, the appeal is **DISMISSED**. The Decision dated January 6, 2009 is **AFFIRMED**.

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[40] CA *rollo*, pp. 23-24.

[41] CA *rollo*, p. 36.

[42] *Rollo*, p. 12.

[43] *Rollo*, p. 12.

[44] *Rollo*, p. 11.

SO ORDERED.[45]

On August 5, 2010, Castro filed his *Notice of Appeal* of even date.[46]

In Our Resolution dated January 26, 2011,[47] We notified the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. On March 21, 2011, Castro manifested that he will no longer file a supplemental brief as the assigned errors and issues have already been thoroughly discussed in his *Brief for the Accused-Appellant* dated October 20, 2009.[48] Similarly, the People of the Philippines, on March 30, 2011, manifested that it is no longer filing a supplemental brief considering that all the issues raised by Castro have been exhaustively discussed in its Brief for the *Plaintiff-Appellee* dated February 18, 2010.[49]

The Issues

Castro contends in his *Brief* that:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PRESERVE THE INTEGRITY AND IDENTITY OF THE *CORPUS DELICTI* OF THE OFFENSES CHARGED.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED WHEN HIS GUILT WAS NOT PROVEN WITH MORAL CERTAINTY.

Our Ruling

We sustain Castro's conviction.

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[45] *Rollo*, pp. 12-13.

[46] *Rollo*, pp. 14-15.

[47] *Rollo*, pp. 19-20.

[48] *Rollo*, pp. 21-23.

[49] *Rollo*, pp. 29-30.

Chain of Custody Established

Castro contends that the prosecution patently failed to preserve the integrity of the seized items and to establish an unbroken chain of custody.[50] He claims that the police officer who had initial contact with the seized articles failed to observe the proper procedure in its handling and custody.[51] He insists that under Section 21 of the Implementing Rules and Regulations (IRR) of RA 9165, the apprehending team having initial control of the seized items 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.[52]

He further asserts that the dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction, thus, it is essential that the identity of the prohibited drug be established beyond doubt.[53]

Undeniably, in every prosecution for illegal sale of prohibited drugs, the presentation in evidence of the seized drug, as an integral part of the *corpus delicti*, is most material.[54] It is therefore vital that the identity of the prohibited drug be proved with moral certainty.[55] Also, the fact that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit must be established with the same degree of certitude.[56] It is in this respect that the chain of custody

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[50] CA *rollo*, pp. 43-44.

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

[52] CA *rollo*, p. 45.

[53] CA *rollo*, p. 43.

[54] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011 citing *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 718.

[55] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011 citing *People v. Cortez*, G.R. No. 183819, July 23, 2009, 593 SCRA 743, 762.

[56] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011 citing *People v. Cortez*, G.R. No. 183819, July 23, 2009, 593 SCRA 743, 762.

requirement performs its function, that is, to ensure that all unnecessary doubts concerning the identity of the evidence are removed.[57]

Contrary to the claim of Castro, the chain of custody of the seized prohibited drugs was adequately established in the case at bar. As aptly observed by the CA:

> Here, appellant was brought to the police station immediately after the illegal drugs and marked money were seized from him. The confiscated substances were marked accordingly, turned over to investigator PO Alexander Jimenez, and submitted to the PNP crime laboratory for analysis. Forensic chemist Arban tested the substances and after finding them positive for *shabu*, issued his chemistry report also on February 26, 2004, or within 24 hours after confiscation of the items. Thus, the trial court correctly upheld the admissibility of the seized items upon its finding that handling of the sachets was free of any physical distortion.[58]

Admittedly, testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain.[59] Nonetheless, what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items.[60]

Pertinently, the Implementing Rules and Regulations of RA 9165 on the handling and disposition of seized dangerous drugs is clear on this matter, thus:

> 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,

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[57] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011 citing *People v. Cortez*, G.R. No. 183819, July 23, 2009, 593 SCRA 743, 762 citing *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

[58] *Rollo*, p. 11.

[59] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011 citing *People v. Cortez*, G.R. No. 183819, July 23, 2009, 593 SCRA 743, 763.

[60] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011.

plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; ***Provided,*** **that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; ***Provided, further,*** **that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items** x x x. (Emphasis supplied.)

Based on the above-quoted provision, the custodial chain rule is not to be rigorously applied provided "the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team."[61] Consequently, the purported procedural infirmities harped on by Castro concerning the custody, photographing, inventory and marking of the seized items do not in any manner affect the prosecution of the instant case. Neither do the alleged infirmities render Castro's arrest illegal nor the items seized from him inadmissible.

Castro, however, further contends that "in order to properly establish, with moral certainty, the chain of custody, it is the prosecution's duty to show that in every link of the chain – from the moment the item was picked up to the time it is offered into evidence – there was no contamination or an opportunity to alter the object evidence."[62]

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[61] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011.

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

We disagree. In the recent case of *People v. Quiamanlon*, this Court held that "the integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with."[63]

Concomitantly, it is Castro who bears the burden to make some showing that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers, as well as a presumption that said public officers properly discharged their duties.[64] Since Castro failed to discharge such burden, it cannot be disputed that the drugs seized from him were the same ones examined in the crime laboratory. The prosecution, therefore, established the crucial link in the chain of custody of the seized drugs.

Proof of guilt beyond reasonable doubt adequately established

After a careful examination of the records of this case, this Court is satisfied that the prosecution's evidence established Castro's guilt beyond reasonable doubt.

It is hornbook doctrine that the factual findings of the CA affirming those of the trial court are binding on this Court unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.[65] In *People v. Lusabio, Jr.*, this Court held:

> All in all, we find the evidence of the prosecution to be more credible than that adduced by accused-appellant. **When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.** The reason is obvious. **Having the full opportunity to observe directly the witnesses' deportment and manner of**

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[63] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011 citing *People v. Ventura*, G.R. No. 184957, October 27, 2009, 604 SCRA 543, 562.

[64] *People v. Ventura*, G.R. No. 184957, October 27, 2009, 604 SCRA 543, 562.

[65] *Fuentes v. Court of Appeals*, G.R. No. 109849, February 26, 1997, 268 SCRA 703, 708-709.

testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[66] (Emphasis supplied; citations omitted)

Since Castro failed to show any palpable error, arbitrariness, or capriciousness on the findings of fact of the lower courts, the same deserve great weight and are deemed conclusive and binding.

In the prosecution for the crime of illegal sale of prohibited drugs under Section 5, Article II of RA 9165, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof.[67] Significantly, what is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.[68]

In the instant case, P/Insp. Armenta, the poseur-buyer, clearly testified on the first element, thus:

FISCAL ARAULA

Q You said you were one of the members of the group that composed the team, in your particular way what will be your role?

WITNESS (P/INSP. ARMENTA)

A Poseur buyer.

Q Being a poseur buyer, what Col. Razon informed (sic) you?
A He provided ₱100 to be used on the buy bust operation.

x x x x x x x x x

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[66] G.R. No. 186119, October 27, 2009, 604 SCRA 565, 590.

[67] *People v. Alberto*, G.R. No. 179717, February 5, 2010, 611 SCRA 706, 713 citing *People v. Dumlao*, G.R. No. 181599, August 20, 2008, 562 SCRA 762, 770.

[68] *People v. Alberto*, G.R. No. 179717, February 5, 2010, 611 SCRA 706, 713 citing *People v. Dumlao*, G.R. No. 181599, August 20, 2008, 562 SCRA 762, 770.

Q Upon receiving that buy bust money, what did you do to that buy bust money?
A I put my initial JA on the right portion of the money.

Q Showing to you the photocopy of the buy bust money, what can you say?
A This is the machine copy.

Q Why do you say that is the machine copy, tell me why did you say that this is the buy bust money you received?
A Because of my initial (*sic*).

x x x x x x x x x

Q You said after the briefing Col. Razon gave you the money, what happened after that?
A We were on board the private vehicle and we proceeded to the place.

Q How many vehicles did you use?
A Two, sir.

Q What time was that?
A Past 2:00, sir.

Q What time your group arrived (sic) on (*sic*) barangay Cordillera St.?
A About 4:00 o'clock a.m.

Q Upon arrival on (sic) that area, what happened then?
A Our informant introduced to me a male person identified as *alias* Idol.

Q In what particular place were you introduced?
A Near the lighted Meralco post.

Q Was he alone at the time?
A Yes, sir.

Q Were there other persons in the area?
A Very rare, sir.

Q How about your companions?
A They positioned themselves away that can view me.

x x x x x x x x x

Q The person you named Idol is present in the courtroom, can you identify that person?
A Yes, sir.

Q Please tap his shoulder? (sic)

INTERPRETER

Witness tapped the shoulder of a person inside the courtroom who identified himself as ARNOLD CASTRO.

Q By the way you said you received the transparent sachet coming from the accused in this case, if that transparent sachet will be shown to you can you identify that?
A Yes, sir.

Q Showing to you the transparent sachet, what can you say to that. (sic) Among the 3 sachets, can you identify the sachet you received from the accused?
A This is the one.

Q Why do you say?
A Because of my initial JA-AC.

x x x x x x x x x

Q You testified a while ago that you scratch (sic) your head as a pre-arranged signal, upon scratching your head what happened?
A The rest of the team rush (sic) to our place and effect the arrest of the accused.[69]

As regards the second element, P/Insp. Armenta also testified on the material details of the buy-bust operation. Particularly:

Q You said you were introduced to the person named Idol, how did this informant of yours introduced you to the subject?
A He said to Idol that I am going to buy *shabu*.

Q What was the answer of Idol at that time?
A He asked me how I will (sic) going to buy.

Q What was your answer?
A *Piso* for ₱100.00

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[69] TSN, December 13, 2004, pp. 6-15.

Q What was the action then?
A He asked [for] the money.

Q Did you give the money?
A Yes, sir.

Q After that?
A He placed it on (sic) his pocket and he took on (from) the same pocket the transparent sachet.

Q What did he do to the plastic sachet?
A He gave it to me.

Q And what did you do?
A I received it and I made a signal to my companion.[70]

As the poseur-buyer, P/Insp. Armenta positively identified Castro during trial as the seller of the illegal drugs. He also testified that, using the marked money, he paid for the object of the crime, *i.e.*, the *shabu* that was handed to him by Castro. Notably, the testimony of P/Insp. Armenta was substantially corroborated by PO2 Zamora.

With respect to the charge of illegal possession of dangerous drugs under Section 11, Article II of RA 9165, the evidence of the prosecution has sufficiently established the elements thereof, *to wit*: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[71]

Pertinently, 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.[72] As a consequence, the burden of evidence

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[70] TSN, December 13, 2004, pp. 11-13.

[71] *People v. Gutierrez*, G.R. No. 177777, December 4, 2009, 607 SCRA 377, 390-391 citing *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 846.

[72] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011 citing *Buenaventura v. People*, G.R. No.171578, August 8, 2007, 529 SCRA 500, 513.

is shifted to the accused to explain the absence of knowledge or *animus possidendi*.[73] In the case at bar, Castro miserably failed to discharge such burden.

When Castro was arrested upon the conclusion of the buy-bust operation, PO2 Zamora bodily frisked him and was able to recover not only the buy-bust money, but two (2) transparent plastic sachets containing white crystalline substance as well. As testified by PO2 Zamora:

FISCAL ARAULA

Q When you accosted him, what happened, [M]r. [W]itness?

WITNESS (PO2 ZAMORA)

A We introduced ourselves as police officers[,] sir.

x x x x x x x x x

Q After that what happened, [M]r. [W]itness?
A I bodily frisked the person[,] sir.

Q What is the result [M]r. [W]itness?
A I was able to recover the buy bust money sir.

Q What part of the body, [M]r. [W]itness?
A Left front pocket[,] sir.

Q Other than that, what else, [M]r. [W]itness?
A Two small transparent plastic sachet[s], [M]r. [W]itness? (sic)

Q If that transparent plastic sachet you recovered will be shown to you, can you identify the same, [M]r. [W]itness?
A Yes[,] sir.

Q Why, [M]r. [W]itness?
A Because of the marking[,] sir.

Q What is the markings (sic), [M]r. [W]itness?
A NZ-AC sir.[74]

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[73] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011 citing *Buenaventura v. People*, G.R. No. 171578, August 8, 2007, 529 SCRA 500, 513.

[74] TSN, March 20, 2006, pp. 14-17.

Significantly, the owner-possessor of said sachets can be no other than Castro, who has neither shown any proof of the absence of *animus possidendi* nor presented any evidence that would show that he was duly authorized by law to possess them during the buy-bust operation, thus leading to no other conclusion than that Castro is equally liable for illegal possession of dangerous drugs under Section 11, Article II of RA 9165.

Denial as an Inherently Weak Defense

A bare denial is an inherently weak defense[75] and has been invariably viewed by this Court with disfavor for it can be easily concocted but difficult to prove, and is a common standard line of defense in most prosecutions arising from violations of RA 9165.[76]

Concomitantly, this Court has held in several cases that "denials unsubstantiated by convincing evidence are not enough to engender reasonable doubt particularly where the prosecution presents sufficiently telling proof of guilt,"[77] as in the case at bar.

As against P/Insp. Armenta's positive identification of Castro as the seller of the sachet containing the white crystalline substance eventually confirmed to be a dangerous drug, Castro's denial is perceptibly self-serving and has little weight in law.

Also, it is of note that the testimonies of Amalia Infante and Amor Castro failed to corroborate the testimony of Castro as they both failed to witness the event from the time the police arrived at the scene leading to the arrest of Castro.

Further, in the absence of any intent on the part of the police authorities to falsely impute such crime against the accused,

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[75] *People v. Dulay*, G.R. No. 150624, February 24, 2004, 423 SCRA 652, 662 citing *People v. Arlee*, G.R. No. 113518, January 25, 2000, 323 SCRA 201, 214.

[76] *People v. Barita*, G.R. No. 123541, February 8, 2000, 325 SCRA 22, 38.

[77] *People v. Eugenio*, G.R. No. 146805, January 16, 2003, 395 SCRA 317, 326 citing *People v. Del Mundo*, G.R. No. 138929, October 2, 2001, 366 SCRA 471.

the presumption of regularity in the performance of duty should stand.[78]

In view of the foregoing, We uphold the presumption of regularity in the performance of official duty and find that the prosecution has discharged its burden of proving the guilt of Castro beyond reasonable doubt.

WHEREFORE, the appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03800 finding accused-appellant Arnold Castro *y* Yanga guilty of the crimes charged is *AFFIRMED*.

SO ORDERED.

Leonardo-de Castro, Bersamin,[**] *del Castillo,* and *Perez, JJ.,* concur.

EN BANC

[A.C. No. 6683. June 21, 2011]

RE: RESOLUTION OF THE COURT DATED 1 JUNE 2004 IN G.R. NO. 72954 AGAINST,

ATTY. VICTOR C. AVECILLA, *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; TAKING JUDICIAL RECORDS, SUCH AS A *ROLLO*, OUTSIDE COURT PREMISES, WITHOUT THE COURT'S CONSENT, IS AN ADMINISTRATIVELY PUNISHABLE ACT.— Taking judicial

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[78] *People v. Cruz*, G.R. No. 185381, December 16, 2009, 608 SCRA 350, 369.

[**] Additional member per Special Order No. 1000 dated June 8, 2011.

records, such as a *rollo*, outside court premises, without the court's consent, is an administratively punishable act. In ***Fabiculana, Sr. v. Gadon***, this Court previously sanctioned a sheriff for the wrongful act of bringing court records home, thus: Likewise Ciriaco Y. Forlales, although not a respondent in complainant's letter-complaint, should be meted the proper penalty, having admitted taking the records of the case home and forgetting about them. **Court employees are, in the first place, not allowed to take any court records, papers or documents outside the court premises.** It is clear that Forlales was not only negligent in his duty of transmitting promptly the records of an appealed case to the appellate court but he also failed in his duty not to take the records of the case outside of the court and to subsequently forget about them.

2. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; CANON 6, RULE 6.02 THEREOF, VIOLATED IN CASE AT BAR. — The act of the respondent in borrowing a *rollo* for unofficial business entails the employment of deceit not becoming a member of the bar. It presupposes the use of misrepresentation and, to a certain extent, even abuse of position on the part of the respondent because the lending of *rollos* are, as a matter of policy, only limited to official purposes. As a lawyer then employed with the government, the respondent clearly violated Rule 6.02, Canon 6 of the Code of Professional Responsibility, to wit: *Rule 6.02* **- A lawyer in the government service shall not use his public position to promote or advance his private interests**, nor allow the latter to interfere with his public duties.

3. ID.; ID.; ID.; ID.; PENALTY, MODIFIED IN CASE AT BAR; REASONS. — We find the recommended penalty of suspension from the practice of law for one (1) year as too harsh for the present case. We consider the following circumstances in favor of the respondent: 1. G.R. No. 72954 was already finally resolved when its *rollo* was borrowed on 13 September 1991. Thus, the act of respondent in keeping the subject *rollo* worked no prejudice insofar as deciding G.R. No. 72954 is concerned. 2. It was never established that the contents of the *rollo*, which remained confidential despite the finality of the resolution in G.R. No. 72954, were disclosed by the respondent. 3. After his possession of the subject *rollo* was discovered, the respondent cooperated with the JRO for the return of the *rollo*. We,

therefore, temper the period of suspension to only six (6) months.

APPEARANCES OF COUNSEL

Domingo C. Palarca for Victor C. Avecilla.

D E C I S I O N

PEREZ, *J.*:

The present administrative case is based on the following facts:

Prelude

Sometime in 1985, respondent Atty. Victor C. Avecilla (Atty. Avecilla) and a certain Mr. Louis C. Biraogo (Mr. Biraogo) filed a petition before this Court impugning the constitutionality of *Batas Pambansa Blg*. 883, *i.e.*, the law that called for the holding of a presidential snap election on 7 February 1986. The petition was docketed as **G.R. No. 72954** and was consolidated with nine (9) other petitions[1] voicing a similar concern.

On 19 December 1985, the Court *En banc* issued a Resolution dismissing the consolidated petitions, effectively upholding the validity of *Batas Pambansa Blg.* 883.[2]

On 8 January 1986, after the aforesaid resolution became final, the *rollo*[3] of G.R. No. 72954 was entrusted to the Court's Judicial Records Office (JRO) for safekeeping.[4]

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[1] The other petitions were docketed as G.R. Nos. 72915, 72922, 72923, 72924, 72927, 72935, 72954, 72957, 72968 and 72986.

[2] G.R. Nos. 72915, 72922, 72923, 72924, 72927, 72935, 72954, 72957, 72968 and 72986, 19 December 1985, 140 SCRA 453, 454.

[3] Refers to the folder containing the entire records of a case. The *rollo* is the official repository of all pleadings, communications, documents and other papers filed by the parties in a particular case. (*See* Section 1 of Rule 9 of the Internal Rules of the Supreme Court).

[4] *Rollo*, p. 51.

The Present Case

On 14 July 2003, the respondent and Mr. Biraogo sent a letter[5] to the Honorable Hilario G. Davide, Jr., then Chief Justice of the Supreme Court (Chief Justice Davide), requesting that they be furnished several documents[6] relative to the expenditure of the Judiciary Development Fund (JDF). In order to show that they have interest in the JDF enough to be informed of how it was being spent, the respondent and Mr. Biraogo claimed that they made contributions to the said fund by way of the docket and legal fees they paid as petitioners in G.R No. 72954.[7]

On 28 July 2003, Chief Justice Davide instructed[8] Atty. Teresita Dimaisip (Atty. Dimaisip), then Chief of the JRO, to forward the *rollo* of G.R. No. 72954 for the purpose of verifying the claim of the respondent and Mr. Biraogo.

On 30 July 2003, following a diligent search for the *rollo* of G.R. No. 72954, Atty. Dimaisip apprised[9] Chief Justice Davide that the subject *rollo* could not be found in the archives. Resorting to the tracer card[10] of G.R. No. 72954, Atty. Dimaisip discovered that the subject *rollo* had been borrowed from the JRO on 13 September 1991 but, unfortunately, was never since returned.[11] The tracer card named the respondent, although acting through a certain Atty.

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[5] Temporary *rollo*, pp. 88-89.

[6] The documents requested were: (1) Report of disbursement of the Judiciary Development Fund, (2) Report of collection by the Supreme Court of the said Fund, (3) List of cash advances, (4) List of outstanding cash advances, (5) Report of checks issued for the fund, (6) Disbursement vouchers and subsidiary ledgers of accounts involving the Fund, and (7) Pertinent audit reports of the Commission on Audit. *Id.* at 88.

[7] *Id.* at 89.

[8] Memorandum. *Id.* at 96.

[9] *Id.* at 97-98.

[10] Refers to the index card that monitors the movement of a given *rollo*. *Rollo*, p. 51.

[11] Temporary *rollo*, p. 98.

Salvador Banzon (Atty. Banzon), as the borrower of the subject *rollo*.[12]

The next day, or on 31 July 2003, Chief Justice Davide took prompt action by directing[13] Atty. Dimaisip to supply information about how the respondent was able to borrow the *rollo* of G.R. No. 72954 and also to take necessary measures to secure the return of the said *rollo*.

Reporting her compliance with the foregoing directives, Atty. Dimaisip sent to Chief Justice Davide a Memorandum[14] on 13 August 2003. In substance, the Memorandum relates that:

1. At the time the *rollo* of G.R. No. 72954 was borrowed from the JRO, the respondent was employed with the Supreme Court as a member of the legal staff of retired Justice Emilio A. Gancayco (Justice Gancayco). Ostensibly, it was by virtue of his confidential employment that the respondent was able to gain access to the *rollo* of G.R. No. 72954.[15]

2. Atty. Dimaisip had already contacted the respondent about the possible return of the subject *rollo*.[16] Atty. Dimaisip said that the respondent acknowledged having borrowed the *rollo* of G.R. No. 72954 through Atty. Banzon, who is a colleague of his in the office of Justice Gancayco.[17]

On 18 August 2003, almost twelve (12) years after it was borrowed, the *rollo* of G.R. No. 72954 was finally turned over by Atty. Avecilla to the JRO.[18]

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[12] *Id.*

[13] Memorandum. *Id.* at 103.

[14] *Id.* at 104-105.

[15] *Id.* at 104.

[16] *Id.*

[17] *Id.*

[18] *See* Memorandum of Atty. Teresita Dimaisip to Chief Justice Hilario G. Davide, Jr. dated 19 August 2003. *Id.* at 109.

On 22 September 2003, Chief Justice Davide directed[19] the Office of the Chief Attorney (OCAT) of this Court, to make a study, report and recommendation on the incident. On 20 November 2003, the OCAT submitted a Memorandum[20] to the Chief Justice opining that the respondent may be administratively charged, as a lawyer and member of the bar, for taking out the *rollo* of G.R. No. 72954. The OCAT made the following significant observations:

1. Justice Gancayco compulsorily retired from the Supreme Court on 20 August 1991.[21] However, as is customary, the coterminous employees of Justice Gancayco were given an extension of until 18 September 1991 to remain as employees of the court for the limited purpose of winding up their remaining affairs. Hence, the respondent was already nearing the expiration of his "extended tenure" when he borrowed the *rollo* of G.R. No. 72954 on 13 September 1991.[22]

2. The above circumstance indicates that the respondent borrowed the subject *rollo* not for any official business related to his duties as a legal researcher for Justice Gancayco, but merely to fulfill a personal agenda.[23] By doing so, the respondent clearly abused his confidential position for which he may be administratively sanctioned.[24]

3. It must be clarified, however, that since the respondent is presently no longer in the employ of the Supreme Court, he can no longer be sanctioned as such employee.[25] Nevertheless, an administrative action against

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[19] Memorandum. *Id.* at 84-85.

[20] *Id.* at 71-83.

[21] *Id.* at 77.

[22] *Id.*

[23] *Id.*

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

[25] *Id.* at 77.

the respondent as a lawyer and officer of the court remains feasible.[26]

Accepting the findings of the OCAT, the Court *En banc* issued a Resolution[27] on 9 December 2003 directing the respondent to *show cause* why he should not be held administratively liable for borrowing the *rollo* of G.R. No. 72954 and for failing to return the same for a period of almost twelve (12) years.

The respondent conformed to this Court's directive by submitting his Respectful Explanation (Explanation)[28] on 21 January 2004. In the said explanation, the respondent gave the following defenses:

1. The respondent maintained that he neither borrowed nor authorized anyone to borrow the *rollo* of G.R. No. 72954.[29] Instead, the respondent shifts the blame on the person whose signature actually appears on the tracer card of G.R. No. 72954 and who, without authority, took the subject *rollo* in his name.[30] Hesitant to pinpoint anyone in particular as the author of such signature, the respondent, however, intimated that the same *might* have belonged to Atty. Banzon.[31]

2. The respondent asserted that, for some unknown reason, the subject *rollo* just ended up in his box of personal papers and effects, which he brought home following the retirement of Justice Gancayco.[32] The respondent can only speculate that the one who actually borrowed the *rollo* might have been a colleague in the office of

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[26] *Id.*

[27] *Id.* at 29.

[28] *Id.* at 125-128.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

Justice Gancayco and that through inadvertence, the same was misplaced in his personal box.[33]

3. The respondent also denounced any ill-motive for failing to return the *rollo*, professing that he had never exerted effort to examine his box of personal papers and effects up until that time when he was contacted by Atty. Dimaisip inquiring about the missing *rollo*.[34] The respondent claimed that after finding out that the missing *rollo* was, indeed, in his personal box, he immediately extended his cooperation to the JRO and wasted no time in arranging for its return.[35]

On 24 February 2004, this Court referred the respondent's Explanation to the OCAT for initial study. In its Report[36] dated 12 April 2004, the OCAT found the respondent's Explanation to be unsatisfactory.

On 1 June 2004, this Court tapped[37] the Office of the Bar Confidant (OBC) to conduct a formal investigation on the matter and to prepare a final report and recommendation. A series of hearings were thus held by the OBC wherein the testimonies of the respondent,[38] Atty. Banzon,[39] Atty. Dimaisip[40] and one Atty. Pablo Gancayco[41] were taken. On 6 August 2007, the respondent submitted his Memorandum[42] to the OBC reiterating the defenses in his Explanation.

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[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.* at 5-18.

[37] *Id.* at 1.

[38] *Rollo*, pp. 237-331.

[39] *Id.* at 226-236.

[40] *Id.* at 106-183.

[41] *Id.* at 184-225.

[42] *Id.* at 750-773.

On 13 October 2009, the OBC submitted its Report and Recommendation[43] to this Court. Like the OCAT, the OBC dismissed the defenses of the respondent and found the latter to be fully accountable for taking out the *rollo* of G.R. No. 72954 and failing to return it timely.[44] The OBC, thus, recommended that the respondent be suspended from the practice of law for one (1) year.[45]

Our Ruling

We agree with the findings of the OBC. However, owing to the peculiar circumstances in this case, we find it fitting to reduce the recommended penalty.

The Respondent Borrowed The Rollo

After reviewing the records of this case, particularly the circumstances surrounding the retrieval of the *rollo* of G.R. No. 72954, this Court is convinced that it was the respondent, and no one else, who is responsible for taking out the subject *rollo*.

The tracer card of G.R. No. 72954 bears the following information:

1. The name of the respondent, who was identified as borrower of the *rollo*,[46] and
2. The signature of Atty. Banzon who, on behalf of the respondent, actually received the *rollo* from the JRO.[47]

The respondent sought to discredit the foregoing entries by insisting that he never authorized Atty. Banzon to borrow the subject *rollo* on his behalf.[48] We are, however, not convinced.

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[43] Sealed Report and Recommendation of the OBC.

[44] *Id.*

[45] *Id.*

[46] *Rollo*, p. 51.

[47] *Id.*

[48] Temporary *rollo*, pp. 127-129.

First. Despite the denial of the respondent, the undisputed fact remains that it was from his possession that the missing *rollo* was retrieved about twelve (12) years after it was borrowed from the JRO. This fact, in the absence of any plausible explanation to the contrary, is sufficient affirmation that, true to what the tracer card states, it was the respondent who borrowed the *rollo* of G.R. No. 72954.

Second. The respondent offered no convincing explanation how the subject *rollo* found its way into his box of personal papers and effects. The respondent can only surmise that the subject *rollo* may have been inadvertently placed in his personal box by another member of the staff of Justice Gancayco.[49] However, the respondent's convenient surmise remained just that—a speculation incapable of being verified definitively.

Third. If anything, the respondent's exceptional stature as a lawyer and former confidante of a Justice of this Court only made his excuse unacceptable, if not totally unbelievable. As adequately rebuffed by the OCAT in its Report dated 12 April 2004:

> x x x However, the excuse that the *rollo* "inadvertently or accidentally" found its way to his personal box through his officemates rings hollow in the face of the fact that he was no less than the confidential legal assistance of a Member of this Court. With this responsible position, Avecilla is expected to exercise extraordinary diligence with respect to all matters, including seeing to it that only his personal belongings were in that box for taking home after his term of office in this Court has expired.[50]

Verily, the tracer card of G.R. No. 72954 was never adequately controverted. We, therefore, sustain its entry and hold the respondent responsible for borrowing the *rollo* of G.R. No. 72954.

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[49] *Id.*

[50] *Id.* at 17.

Respondent's Administrative Liability

Having settled that the respondent was the one who borrowed the *rollo* of G.R. No. 72954, We next determine his administrative culpability.

We begin by laying the premises:

1. The respondent is presently no longer in the employ of this Court and as such, can no longer be held administratively sanctioned as an employee.[51] However, the respondent, as a lawyer and a member of the bar, remains under the supervisory and disciplinary aegis of this Court.[52]

2. The respondent was already nearing the expiration of his "extended tenure" when he borrowed the *rollo* of G.R. No. 72954 on 13 September 1991.[53] We must recall that Justice Gancayco already retired as of 20 August 1991. Hence, it may be concluded that for whatever reason the respondent borrowed the subject *rollo*, it was not for any official reason related to the adjudication of pending cases.[54]

3. The respondent's unjustified retention of the subject *rollo* for a considerable length of time all but confirms his illicit motive in borrowing the same. It must be pointed out that the subject *rollo* had been in the clandestine possession of the respondent for almost twelve (12) years until it was finally discovered and recovered by the JRO.

Given the foregoing, We find that there are sufficient grounds to hold respondent administratively liable.

First. Taking judicial records, such as a *rollo*, outside court premises, without the court's consent, is an administratively

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[51] *Id.* at 8.

[52] *See* Section 5(5), Article VIII of the CONSTITUTION.

[53] Temporary *rollo*, p. 8.

[54] *Id.*

punishable act. In ***Fabiculana, Sr. v. Gadon***,[55] this Court previously sanctioned a sheriff for the wrongful act of bringing court records home, thus:

> Likewise Ciriaco Y. Forlales, although not a respondent in complainant's letter-complaint, should be meted the proper penalty, having admitted taking the records of the case home and forgetting about them. **Court employees are, in the first place, not allowed to take any court records, papers or documents outside the court premises.** It is clear that Forlales was not only negligent in his duty of transmitting promptly the records of an appealed case to the appellate court but he also failed in his duty not to take the records of the case outside of the court and to subsequently forget about them.[56] (Emphasis supplied)

Second. The act of the respondent in borrowing a *rollo* for unofficial business entails the employment of deceit not becoming a member of the bar. It presupposes the use of misrepresentation and, to a certain extent, even abuse of position on the part of the respondent because the lending of *rollos* are, as a matter of policy, only limited to official purposes.

As a lawyer then employed with the government, the respondent clearly violated Rule 6.02, Canon 6 of the Code of Professional Responsibility, to wit:

> *Rule 6.02* - **A lawyer in the government service shall not use his public position to promote or advance his private interests**, nor allow the latter to interfere with his public duties. (Emphasis supplied).

Third. However, We find the recommended penalty of suspension from the practice of law for one (1) year as too harsh for the present case. We consider the following circumstances in favor of the respondent:

1. G.R. No. 72954 was already finally resolved when its *rollo* was borrowed on 13 September 1991. Thus, the

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[55] A.M. No. P-94-1101, 29 December 1994, 239 SCRA 542.

[56] *Id.* at 545.

act of respondent in keeping the subject *rollo* worked no prejudice insofar as deciding G.R. No. 72954 is concerned.

2. It was never established that the contents of the *rollo*, which remained confidential despite the finality of the resolution in G.R. No. 72954, were disclosed by the respondent.

3. After his possession of the subject *rollo* was discovered, the respondent cooperated with the JRO for the return of the *rollo*.

We, therefore, temper the period of suspension to only six (6) months.

WHEREFORE, in light of the foregoing premises, the respondent is hereby *SUSPENDED* from the practice of law for six (6) months. The respondent is also *STERNLY WARNED* that a repetition of a similar offense in the future will be dealt with more severely.

SO ORDERED.

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

EN BANC

[A.M. No. P-10-2829. June 21, 2011]

JUDGE EDILBERTO G. ABSIN, *complainant, vs.* **EDGARDO A. MONTALLA, Stenographer, Regional Trial Court, Branch 29, San Miguel, Zamboanga Del Sur,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; STENOGRAPHERS; DUTIES. — Montalla should be reminded that it is the duty of the court stenographer who has attended a session of a court to immediately deliver to the clerk of court all the notes he has taken, the same to be attached to the record of the case. Precisely, Administrative Circular No. 24-90 was issued in order to minimize delay in the adjudication of cases as a great number of cases could not be decided or resolved promptly because of lack of TSNs. The circular required all stenographers to transcribe all stenographic notes and to attach the TSNs to the record of the case not later than 20 days from the time the notes are taken. The attaching may be done by putting all TSNs in a separate folder or envelope, which will then be joined to the record of the case. The circular also provided that the stenographer concerned shall accomplish a verified monthly certification as to compliance with this duty and in the absence of such certification or for failure and/or refusal to submit it, his salary shall be withheld.

2. ID.; ID.; ID.; ID.; ID.; GROSS NEGLECT OF DUTY; FAILURE TO SUBMIT TRANSCRIPTS OF STENOGRAPHIC NOTES WITHIN THE PERIOD PRESCRIBED UNDER ADMINISTRATIVE CIRCULAR NO. 24-90, A CASE OF; PUNISHABLE BY DISMISSAL EVEN IF FOR THE FIRST OFFENSE. — The Court has ruled, in a number of cases, that the failure to submit the TSNs within the period prescribed under Administrative Circular No. 24-90 constitutes gross neglect of duty. Gross neglect of duty is classified as a grave offense and punishable by dismissal even if for the first offense pursuant

> to Section 52(A)(2) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. This is not the first time that Montalla was charged with neglect of duty for delay in the submission of the TSNs. He was previously warned of a repetition of the same or similar infraction. x x x In the present case, Montalla also failed to submit the required TSNs despite the warnings and the chances given to him to submit the same. The TSNs were taken in 2004, 2005, and 2006 and he was required to submit the same in 2009, 2010 and just recently, in February 2011. His utter disregard of the court directives and the reminders from his superiors and his lapses in the performance of his duty as a court stenographer caused delay in the speedy disposition of the case. This is no longer simple neglect of duty. Montalla, in repeatedly failing to submit the required TSNs for several years now, no longer deserves the compassion and understanding of the Court.

D E C I S I O N

PER CURIAM:

This administrative matter stemmed from a letter-complaint filed by Judge Edilberto G. Absin (Judge Absin), Presiding Judge of the Regional Trial Court, Branch 29, San Miguel, Zamboanga del Sur (RTC-Branch 29), charging respondent Edgardo A. Montalla (Montalla), stenographer of the same court, with neglect of duty in failing to submit the required transcripts of stenographic notes (TSNs) despite repeated reminders from the court.

In his letter-complaint dated 23 November 2009, Judge Absin alleged that in the Resolution dated 23 October 2009 issued by the Court of Appeals (CA) in CA-G.R. No. 01280-MIN (*Heirs of Victoriano Magallanes, et al. v. Ernesto Pono and Crispina Pono*), the CA noted that Montalla failed to submit signed copies of the TSNs taken on the following dates: (1) 13 October 2004 on the witness Maria Sabuero; (2) 11 January 2005 on the witness Rodolfo Omboy; (3) 26 April 2005 on the witness Rosalinda Magallanes; (4) 12 October 2005 on the witness Ernesto Pono; (5) 7 December 2005 on the witness Crispina Pono; and (6) 25 January 2006 and 2 March 2006 on the witness

Rogelio Magallanes. Montalla allegedly asked for time to submit the required TSNs but failed to submit the same. Montalla was repeatedly reminded to comply with the CA's resolution but he still did not comply.

In his Comment dated and mailed on 10 March 2010, Montalla admitted he was the stenographer who took down the stenographic notes on the dates mentioned and both the presiding judge and the clerk of court repeatedly reminded him to transcribe the stenographic notes of the proceedings. Montalla, however, claimed he was prevented from performing his tasks due to poor health as he was diagnosed with pulmonary tuberculosis, peptic ulcer, and diabetes. Montalla now seeks the compassion of the Court as he is allegedly still recovering from his illnesses.

In the Resolution dated 2 August 2010, the parties were required to manifest if they were willing to submit the matter for resolution on the basis of the pleadings filed. We noted the letter dated 24 September 2010 of Judge Absin informing the Court that he was submitting the case for resolution on the basis of the pleadings filed without further comment. We dispensed with the manifestation of Montalla who failed to file the same within the period despite receipt of the resolution.

The Office of the Court Administrator (OCA) opined that Montalla should have been fully aware that public officers are repositories of public trust and are under obligation to perform the duties of their office honestly, faithfully, and to the best of their ability. For failure to submit the required TSNs, Montalla is guilty of gross neglect of duty classified as a grave offense and punishable by dismissal. However, for humanitarian reasons, the OCA recommended the imposition of the penalty of suspension of six months without pay with a stern warning that a repetition of the same or similar infraction in the future shall be dealt with more severely.

On 9 February 2011, we issued a Resolution ordering Montalla to manifest whether he has submitted the required TSNs. In effect, this Resolution gave Montalla one more chance to redeem himself. However, Montalla mailed on 4 March 2011 his

Comment, which was received by OCA on 2 May 2011, containing the same statements he made in his Comment dated/mailed on 10 March 2010. He admits that the Clerk of Court and Judge Absin had reminded him, repeatedly, to transcribe the stenographic notes. Montalla admits his transgressions but this time his excuse is that his failure to submit the required TSNs was due to poor health (allegedly because of "previous pulmonary tuberculosis, peptic ulcer and diabetes") that prevented him from performing simple tasks. But one thing is clear. Montalla still has not submitted the required TSNs which were taken sometime in 2004, 2005, and 2006. Verily, Montalla has been remiss in his duty as a court stenographer.

Montalla should be reminded that it is the duty of the court stenographer who has attended a session of a court to immediately deliver to the clerk of court all the notes he has taken, the same to be attached to the record of the case.[1] Precisely, Administrative Circular No. 24-90[2] was issued in order to minimize delay in the adjudication of cases as a great number of cases could not be decided or resolved promptly because of lack of TSNs. The circular required all stenographers to transcribe all stenographic notes and to attach the TSNs to the record of the case not later than 20 days from the time the notes are taken.

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[1] Section 17, Rule 136 of the Revised Rules of Court provides:

SEC. 17. *Stenographer*. - It shall be the duty of the stenographer who has attended a session of a court either in the morning or in the afternoon, to deliver to the clerk of court, immediately at the close of such morning or afternoon session, all the notes he has taken, to be attached to the record of the case; and it shall likewise be the duty of the clerk to demand that the stenographer comply with said duty. The clerk of court shall stamp the date on which such notes are received by him. When such notes are transcribed, the transcript shall be delivered to the clerk, duly initialed on each page thereof, to be attached to the record of the case.

Whenever requested by a party, any statement made by a judge of first instance, or by a commissioner, with reference to a case being tried by him, or to any of the parties thereto, or to any witness or attorney, during the hearing of such case, shall be made of record in the stenographic notes.

[2] Revised Rules on Transcription of Stenographic Notes and Their Transmission to Appellate Courts, 12 July 1990.

The attaching may be done by putting all TSNs in a separate folder or envelope, which will then be joined to the record of the case.[3] The circular also provided that the stenographer concerned shall accomplish a verified monthly certification as to compliance with this duty and in the absence of such certification or for failure and/or refusal to submit it, his salary shall be withheld.[4]

The Court has ruled, in a number of cases,[5] that the failure to submit the TSNs within the period prescribed under Administrative Circular No. 24-90 constitutes gross neglect of duty. Gross neglect of duty is classified as a grave offense and punishable by dismissal even if for the first offense pursuant to Section 52(A)(2) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.

This is not the first time that Montalla was charged with neglect of duty for delay in the submission of the TSNs. He was previously warned of a repetition of the same or similar infraction. In *Office of the Court Administrator v. Montalla*,[6] Montalla incurred a delay of more than three years in transcribing the TSNs despite constant reminders from his superiors to submit the same. In that case, Montalla admitted lapses in the performance of his function which caused a delay in the speedy disposition of cases. He invoked serious marital problems which allegedly greatly affected his work. The Court considered Montalla's "humble acknowledgment of his transgressions and his offer of sincere apology and promise to be more circumspect in the performance of his duties" and the fact that it was his first infraction. Montalla was found guilty of simple neglect of

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[3] Paragraph 2(a).

[4] Paragraph 2(b).

[5] *Marquez v. Pacariem,* A.M. No. P-06-2249, 8 October 2008, 568 SCRA 77, 89; *Banzon v. Hechanova,* A.M. No. P-04-1765 (Formerly OCA IPI No. 01-1174-P), 8 April 2008, 550 SCRA 554, 559-560; *Judge Reyes v. Bautista,* 489 Phil. 85, 93 (2005); *Judge Santos v. Laranang,* 383 Phil. 267, 276-277 (2000).

[6] A.M. No. P-06-2269, 20 December 2006, 511 SCRA 328.

duty and was fined ₱2,000 with a stern warning that a repetition of the same or similar offense in the future shall be dealt with more severely.

In the present case, Montalla also failed to submit the required TSNs despite the warnings and the chances given to him to submit the same. The TSNs were taken in 2004, 2005, and 2006 and he was required to submit the same in 2009, 2010 and just recently, in February 2011. His utter disregard of the court directives and the reminders from his superiors and his lapses in the performance of his duty as a court stenographer caused delay in the speedy disposition of the case. This is no longer simple neglect of duty. Montalla, in repeatedly failing to submit the required TSNs for several years now, no longer deserves the compassion and understanding of the Court.

As a stenographer, Montalla should realize that the performance of his duty is essential to the prompt and proper administration of justice, and his inaction hampers the administration of justice and erodes public faith in the judiciary. The Court has expressed its dismay over the negligence and indifference of persons involved in the administration of justice. No less than the Constitution mandates that public officers must serve the people with utmost respect and responsibility. Public office is a public trust, and Montalla has without a doubt violated this trust by his failure to fulfill his duty as a court stenographer.[7]

WHEREFORE, we find respondent Edgardo A. Montalla, Stenographer, Regional Trial Court, Branch 29, San Miguel, Zamboanga del Sur, *GUILTY* of Gross Neglect of Duty. We *DISMISS* him from the service and *FORFEIT* his retirement benefits, except accrued leave credits. He is further disqualified from reemployment in the Judiciary. This judgment is immediately executory.

To avoid further delay in the disposition of CA-G.R. No. 01280-MIN (*Heirs of Victoriano Magallanes, et al. v. Ernesto Pono and Crispina Pono*), Montalla is ordered to submit, within

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[7] *Banzon v. Hechanova, supra* note 5 at 560.

a non-extendible period of thirty (30) days from receipt hereof, the transcripts of stenographic notes mentioned above, under pain of contempt.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. MTJ-11-1786. June 22, 2011]
(Formerly OCA IPI No. 10-2262-MTJ)

FELICISIMA R. DIAZ, *complainant, vs.* **JUDGE GERARDO E. GESTOPA, JR., Municipal Trial Court, Naga, Cebu,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; REVISED RULES ON SUMMARY PROCEDURE; PERIOD FOR RENDITION OF JUDGMENT; RATIONALE. — The Rule on Summary Procedure clearly and undoubtedly provides for the period within which judgment should be rendered. Section 10 thereof provides: SEC. 10. *Rendition of judgment*. - Within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment. x x x It is thus very clear that the period for rendition of judgments in cases falling under summary procedure is 30 days. This is in keeping with the spirit of the rule which aims to achieve an expeditious and inexpensive determination of the cases falling thereunder.

2. ID.; ID.; REFERRAL OF AN UNLAWFUL DETAINER CASE TO *BARANGAY* CONCILIATION IS AN UNSOUND EXERCISE

OF DISCRETION; EXPLAINED. — Respondent judge argued that such referral to the *barangay* is justified by Section 408 (g) of the Local Government Code. We are unconvinced. Indeed, in *Farrales v. Camarista,* the Court explained that while the last paragraph of the afore-cited provision apparently gives the Court discretion to refer the case to the *lupon* for amicable settlement although it may not fall within the authority of the *lupon, the referral of said subject civil case to the lupon is saliently an unsound exercise of discretion, considering that the matter falls under the Rule on Summary Procedure.* The reason is because the Rule on Summary Procedure was promulgated for the purpose of achieving "an expeditious and inexpensive determination of cases." The fact that unlawful detainer cases fall under summary procedure, speedy resolution thereof is thus deemed a matter of public policy. To do otherwise would ultimately defeat the very essence of the creation of the Rules on Summary Procedure. To further strengthen and emphasize the objective of expediting the adjudication of cases falling under the Revised Rules on Summary Procedure, Sections 7 and 8 mandated preliminary conference which is precisely for the purpose of giving room for a possible amicable settlement. x x x Thus, there was no reason anymore to refer the case back to the *barangay* for the sole purpose of amicable settlement, because the abovementioned Sections 7 and 8 provided already for such action. Furthermore, considering that complainant had already manifested in court, albeit belatedly, the presence of what it considered to be a valid Certification to File Action in court due to unsuccessful conciliation, respondent's act of referring the case to *barangay* conciliation rendered its purpose moot and academic.

3. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW AND PROCEDURE; FAILURE TO APPLY ELEMENTARY RULES OF PROCEDURE, A CASE OF; PENALTY. — Time and again, we have reiterated that the rules of procedure are clear and unambiguous, leaving no room for interpretation. We have held in numerous cases that the failure to apply elementary rules of procedure constitutes gross ignorance of the law and procedure. Neither good faith nor lack of malice will exonerate respondent, because as previously noted, the rules violated were basic procedural rules. All that was needed for respondent to do was to apply them. Under Rule 140 of the Rules of Court, gross ignorance of the law or procedure is a serious charge

for which the respondent judge shall be penalized with either (a) dismissal; (b) suspension from office; or (c) a fine of more than ₱20,000.00 but not more than ₱40,000.00. In this case, considering respondent judge's two previous administrative infractions, we deem it proper to impose a fine in the amount of ₱21,000.00.

D E C I S I O N

PERALTA, *J.*:

Before us is an administrative complaint filed by complainant Felicisima R. Diaz against Judge Gerardo E. Gestopa, Jr., Municipal Trial Court (MTC), Naga, Cebu, for incompetence, gross ignorance of the law, neglect of duty, and conduct unbecoming of a judge relative to Civil Case No. R-595 entitled *Felicisima Rivera-Diaz v. Spouses Ruel & Diana Betito and Isidro Pungkol*.

The antecedent facts are as follows:

Complainant alleged that on April 27, 2009, she filed an unlawful detainer case before the MTC of Naga, Cebu, entitled *Felicisima Rivera-Diaz v. Spouses Ruel & Diana Betito and Isidro Pungkol*, docketed as Case No. R-595. On July 8, 2009, the case was scheduled for pre-trial conference. Since complainant cannot attend the conference because of her heart ailment, she instead sent her nephew, Elmer Llanes, to appear in her behalf.

During the conference, Judge Gestopa recommended the case for *barangay* conciliation, pursuant to Section 408 (g) of the Local Government Code.[1] Complainant's counsel objected and moved for mediation instead. However, respondent judge insisted that he has the authority to refer it back to *barangay* for conciliation.

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[1] Section 408 (g) of the Local Government Code provides that "the court in which non-criminal cases not falling within the authority of the *lupon* under this Code are filed may, at any time before trial, *motu proprio* refer the case to the *lupon* concerned for amicable settlement."

Judge Gestopa concluded that since the subject property is in Naga, and that complainant has always been a resident of Naga, it is therefore proper to refer the case for *barangay* conciliation. Complainant, on the other hand, claimed that she is no longer a resident of Naga.

Complainant moved for reconsideration. She argued that the referral of the case to the *lupon* is a violation of the Rules on Summary Procedure. She stressed that she is no longer a resident of Naga and is now actually residing in Dumlog, Talisay City, Cebu. Complainant further pointed out that the case had already been previously referred to the *lupon*. In fact, a Certification to File Action in court had been issued on May 20, 2008. She further admitted that she did not attach the certificate to the complaint since she believed that the same was not required anymore, considering that the parties are not residents of the same *barangay* or municipality.

On July 20, 2009, Judge Gestopa denied the motion for reconsideration.

Dissatisfied, complainant filed the instant administrative complaint against Judge Gestopa. Complainant alleged that respondent judge exhibited gross ignorance of the law in referring the case back to *barangay* conciliation when clearly she is not a resident of Naga. She accused respondent judge of unduly delaying for months the resolution of the case. She further claimed that respondent judge appeared to be biased, thus, she requested that the case be transferred to another court.

On May 5, 2010, the Office of the Court Administrator (OCA) directed Judge Gestopa to submit his Comment on the complaint against him.

In his Comment dated August 2, 2010, Judge Gestopa argued that the referral of the case to the *barangay* for conciliation was made in good faith, to give way for the possible amicable settlement of the parties. He insisted that complainant was just trying to circumvent the *Katarungang Pambarangay Law*. Respondent judge pointed out that while complainant denied that she is a resident of Naga, she however actually sought

barangay conciliation, as evidenced by the Certification to File Action dated May 20, 2008, which was issued by *Barangay* North Poblacion and attached to the complainant's motion for reconsideration.

Respondent judge, however, admitted that on November 16, 2009, the members of the *Lupong Tagapamayapa of Barangay* North Poblacion declared that *barangay* conciliation between the parties failed to reach a settlement. Thus, an Order was issued directing the parties to appear before the Philippine Mediation Center (PMC) for mediation. On February 17, 2010, the PMC submitted the Mediator's Report of "Unsuccessful Mediation."

In a Memorandum dated January 12, 2011, the OCA found Judge Gestopa guilty of gross ignorance of the law and procedure, and recommended that he be fined in the amount of Forty Thousand Pesos (₱40,000.00). The instant administrative case was, likewise, recommended to be redocketed as a regular administrative matter against Judge Gestopa.

RULING

The findings of the OCA are well taken.

There is no doubt that Civil Case No. R-595 was a case of unlawful detainer covered by the Revised Rules on Summary Procedure.

The Rule on Summary Procedure clearly and undoubtedly provides for the period within which judgment should be rendered. Section 10 thereof provides:

> SEC. 10. *Rendition of judgment*. - Within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment.
>
> However, should the court find it necessary to clarify certain material facts, it may, during the said period, issue an order specifying the matters to be clarified, and require the parties to submit affidavits or other evidence on the said matters within ten (10) days from receipt of said order. Judgment shall be rendered within fifteen (15) days after the receipt of the last clarificatory affidavits, or the expiration of the period for filing the same.

The court shall not resort to the clarificatory procedure to gain time for the rendition of the judgment.

It is thus very clear that the period for rendition of judgments in cases falling under summary procedure is 30 days. This is in keeping with the spirit of the rule which aims to achieve an expeditious and inexpensive determination of the cases falling thereunder.[2]

Respondent judge argued that such referral to the *barangay* is justified by Section 408 (g) of the Local Government Code.[3] We are unconvinced.

Indeed, in *Farrales v. Camarista*,[4] the Court explained that while the last paragraph of the afore-cited provision apparently gives the Court discretion to refer the case to the *lupon* for amicable settlement although it may not fall within the authority of the *lupon, the referral of said subject civil case to the lupon is saliently an unsound exercise of discretion, considering that the matter falls under the Rule on Summary Procedure.* The reason is because the Rule on Summary Procedure was promulgated for the purpose of achieving "an expeditious and inexpensive determination of cases." The fact that unlawful detainer cases fall under summary procedure, speedy resolution thereof is thus deemed a matter of public policy. To do otherwise would ultimately defeat the very essence of the creation of the Rules on Summary Procedure.

To further strengthen and emphasize the objective of expediting the adjudication of cases falling under the Revised Rules on Summary Procedure, Sections 7 and 8 mandated preliminary conference which is precisely for the purpose of giving room for a possible amicable settlement, to wit:

SEC. 7. *Preliminary conference; appearance of parties.* - Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. The rules on pre-trial in ordinary cases

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[2] *Ferrales v. Camarista*, 383 Phil. 832, 841 (2000).

[3] *Supra* note 1.

[4] *Supra* note 2.

shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.

The failure of the plaintiff to appear in the preliminary conference shall be a cause for the dismissal of his complaint. The defendant who appears in the absence of the plaintiff shall be entitled to judgment on his counterclaim in accordance with Section 6 hereof. All cross-claims shall be dismissed.

If a sole defendant shall fail to appear, the plaintiff shall be entitled to judgment in accordance with Section 6 hereof. This Rule shall not apply where one of two or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference.

Section 8 of said Rule reads in full:

SEC. 8. *Record of preliminary conference*. - Within five (5) days after the termination of the preliminary conference, the court shall issue an order stating the matters taken up therein, including but not limited to:

a) Whether the parties have arrived at an amicable settlement, and if so, the terms thereof;

b) The stipulations or admissions entered into by the parties;

c) Whether, on the basis of the pleadings and the stipulations and admissions made by the parties, judgment may be rendered without the need of further proceedings, in which event the judgment shall be rendered within thirty (30) days from issuance of the order;

d) A clear specification of material facts which remain controverted; and

e) Such other matters intended to expedite the disposition of the case.

Thus, there was no reason anymore to refer the case back to the *barangay* for the sole purpose of amicable settlement, because the abovementioned Sections 7 and 8 provided already for such action.

Furthermore, considering that complainant had already manifested in court, albeit belatedly, the presence of what it

considered to be a valid Certification to File Action in court due to unsuccessful conciliation, respondent's act of referring the case to *barangay* conciliation rendered its purpose moot and academic.

We cannot accept the justifications made by respondent judge, considering that this is not the first time that he seemed to be at loss as to how to correctly interpret the Rules on Summary Procedure. We note that he had been previously penalized in two other administrative cases due to his failure to decide the cases falling under the Rules on Summary Procedure within the reglementary period, to wit: in In Re: A.M. No. MTJ-99-1181, *Renato M. Casia v. Judge Gerardo E. Gestopa, Jr.*, August 11, 1999, respondent judge was fined in the amount of ₱1,000.00 for his failure to decide a case within the required period; likewise, in A.M. No. MTJ-00-1303, *Vidala Saceda v. Judge Gerardo E. Gestopa, Jr.*, December 13, 2001, for a similar offense, respondent judge was fined in the amount of ₱10,000.00.

Time and again, we have reiterated that the rules of procedure are clear and unambiguous, leaving no room for interpretation. We have held in numerous cases that the failure to apply elementary rules of procedure constitutes gross ignorance of the law and procedure. Neither good faith nor lack of malice will exonerate respondent, because as previously noted, the rules violated were basic procedural rules. All that was needed for respondent to do was to apply them.

Under Rule 140 of the Rules of Court, gross ignorance of the law or procedure is a serious charge for which the respondent judge shall be penalized with either (a) dismissal; (b) suspension from office; or (c) a fine of more than ₱20,000.00 but not more than ₱40,000.00. In this case, considering respondent judge's two previous administrative infractions, we deem it proper to impose a fine in the amount of ₱21,000.00.

WHEREFORE, the Court finds Judge Gerardo E. Gestopa, Jr., Municipal Trial Court, Naga, Cebu, *GUILTY of Gross*

Ignorance of the Law and is hereby *FINED* in the amount of Twenty-One Thousand Pesos (₱21,000.00), with a *STERN WARNING* that a repetition of the same or similar offenses in the future shall be dealt with more severely.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Abad,* and *Mendoza, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-07-2044. June 22, 2011]
(Formerly OCA I.P.I. No. 07-2553-RTJ)

ATTY. FACUNDO T. BAUTISTA, *complainant, vs.* **JUDGE BLAS O. CAUSAPIN, JR., Presiding Judge, Regional Trial Court, Branch 32, Guimba, Nueva Ecija,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; CERTIFICATION AGAINST FORUM SHOPPING; MUST BE SIGNED BY ALL THE PETITIONERS OR PLAINTIFFS IN A CASE AND THE SIGNING BY ONLY ONE OF THEM IS INSUFFICIENT. — Rule 7, Section 5 of the Rules of Court – which already incorporated Supreme Court Circular No. 28-91, as amended by Supreme Court Administrative Circular No. 04-94 – requires the plaintiff or principal party to execute a certification against forum shopping, to be simultaneously filed with the complaint or initiatory pleading. x x x No doubt this Court has held that the certificate of non-forum shopping should be signed by all the petitioners or plaintiffs in a case, and that

[*] Acting member per Special Order No. 1006.

the signing by only one of them is insufficient and constitutes a defect in the petition. The attestation 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 or similar to the current petition.

2. ID.; ID.; ID.; ID.; EXCEPTION ALLOWING SUBSTANTIAL COMPLIANCE THEREWITH; RELEVANT RULING, CITED. — [I]n *Cavile*, the Court recognized an exception to the general rule, allowing substantial compliance with the rule on the execution of a certificate of non-forum shopping: The rule is that the certificate of non-forum shopping must be signed by all the petitioners or plaintiffs in a case and the signing by only one of them is insufficient. **However, the Court has also stressed that the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective.** The rule of substantial compliance may be availed of with respect to the contents of the certification. This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. It does not thereby interdict substantial compliance with its provisions under justifiable circumstances.

3. ID.; ID.; ID.; ID.; DISMISSAL OF THE CASE FOR LACK OF A PROPER CERTIFICATE OF NON-FORUM SHOPPING REQUIRES NOTICE AND HEARING; RULES.— Before a complaint can be dismissed for lack of a proper certificate of non-forum shopping, notice and hearing are required. SC Administrative Circular No. 04-94 provided that: 2. Any violation of this Circular shall be a cause for the dismissal of the complaint, petition, application or other initiatory pleading, **upon motion and after hearing**. However, any clearly willful and deliberate forum-shopping by any party and his counsel through the filing of multiple complaints or other initiatory pleadings to obtain favorable action shall be a ground for summary dismissal thereof and shall constitute direct contempt of court. Furthermore, the submission of a false certification or non-compliance with the

undertakings therein, as provided in Paragraph 1 hereof, shall constitute indirect contempt of court, without prejudice to disciplinary proceedings against the counsel and the filing of a criminal action against the guilty party. The same requirement was subsequently carried over to Rule 7, Section 5, second paragraph of the 1997 Rules of Court.

4. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; LACK OF CONVERSANCE WITH THE LAW THAT IS SIMPLE AND ELEMENTARY, A CASE OF.— Where the law involved is simple and elementary, lack of conversance therewith constitutes gross ignorance of the law. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. The mistake committed by respondent Judge is not a mere error of judgment that can be brushed aside for being minor. The disregard of established rule of law which amounts to gross ignorance of the law makes a judge subject to disciplinary action.

5. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; NOTICE OF HEARING; A MOVANT SHALL SET HIS MOTION FOR HEARING, UNLESS IT IS ONE OF THOSE WHICH A COURT CAN ACT UPON WITHOUT PREJUDICING THE RIGHTS OF THE OTHER PARTY; RATIONALE.— As prescribed by [Rule 15, Sections 4 and 5 of the 1997 Rules of Court] a movant shall set his motion for hearing, unless it is one of those which a court can act upon without prejudicing the rights of the other party. The prevailing doctrine in this jurisdiction is that a motion without a notice of hearing addressed to the parties is a mere scrap of paper. The logic for such a requirement is simple: a motion invariably contains a prayer which the movant makes to the court, which is usually in the interest of the adverse party to oppose. The notice of hearing to the adverse party is therefore a form of due process; it gives the other party the opportunity to properly vent his opposition to the prayer of the movant. In keeping with the principles of due process, therefore, a motion which does not afford the adverse party the chance to oppose it should simply be disregarded.

6. ID.; ID.; ID.; ID.; ID.; MOTION FOR EXTENSION OF TIME TO PLEAD NEED NOT CONTAIN A NOTICE OF HEARING.— Yet the rule requiring notice of hearing is not unqualifiedly

applicable to all motions, and there are motions which may be heard *ex parte*, as Rule 15, Section 4 of the 1997 Rules of Court also clearly acknowledges. Among the latter class of motions are precisely those seeking extension of time to plead, and the reason these are not strictly held to the requirement of notice is that they are non-contentious and do not as a rule involve the substantial rights of the other parties in the suit. x x x Considering that a motion for extension of time may be acted upon by the court *ex parte* or without hearing, then it need not contain a notice of hearing. It is equally unnecessary for the court to wait until motion day, under Rule 15, Section 7 of the 1997 Rules of Court, to act on a motion for extension of time. Therefore, contrary to the finding of the OCA, Judge Causapin did not commit abuse of discretion in granting defendants' motions for extension of time on the same day said motions were filed and even when the same motions did not contain a notice of hearing.

7. JUDICIAL ETHICS; JUDGES; GROSS MISCONDUCT; RESPONDENT JUDGE IS GUILTY THEREOF IN CASE AT BAR.— [T]he Court finds Judge Causapin guilty of x x x gross misconduct for having drinking sprees with the defendants in Civil Case No. 1387-G and requesting Atty. Bautista to withdraw plaintiffs' motion to declare defendants in default in Civil Case No. 1387-G.

8. ID.; ID.; GRAVE OFFENSES; GROSS IGNORANCE OF THE LAW AND GROSS MISCONDUCT; PENALTIES; CASE AT BAR.— Rule 140, Section 8 of the 1997 Rules of Court characterizes both gross ignorance of the law and procedure and gross misconduct as grave offenses. The penalties prescribed for such offense are: (1) dismissal from service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three months but not exceeding six months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. Since Judge Causapin already retired compulsorily on November 24, 2006, the penalty of suspension is no longer feasible. Hence, the Court imposes

upon him a fine of ₱20,000.00, to be deducted from his retirement benefits.

D E C I S I O N

LEONARDO-DE CASTRO, *J.:*

Before the Court is an administrative Complaint[1] filed by Atty. Facundo T. Bautista (Atty. Bautista) against Judge Blas O. Causapin, Jr. (Judge Causapin), Presiding Judge of the Regional Trial Court (RTC), Branch 32 of Guimba, Nueva Ecija, for gross ignorance of the law and gross misconduct.

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

On December 15, 2005, the heirs of Baudelio T. Bautista, represented by Delia R. Bautista; the heirs of Aurora T. Bautista, represented by Reynaldo B. Mesina; Elmer B. Polangco; Nancy B. Polangco; and Gabriel Bautista (plaintiffs), through counsel, Atty. Bautista, filed a Complaint for Partition before the RTC against Jose Bautista and Domingo T. Bautista (defendants), docketed as Civil Case No. 1387-G. Civil Case No. 1387-G was raffled to Judge Causapin's branch.

Defendants had until January 26, 2006 to file their answer, but on January 24, 2006, they filed a motion for an extension of 15 days within which to file the said pleading. Judge Causapin granted defendants' motion in an Order dated January 25, 2006.

Defendants filed on February 6, 2006 a second motion for extension to file answer. In an Order of even date, Judge Causapin granted defendants an "inextendible" extension of 15 days.

Defendants filed on February 20, 2006 a final motion for extension of 10 days within which to file their answer, which was again granted by Judge Causapin in an Order issued on the same day.

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[1] *Rollo*, pp. 8-19.

On February 25, 2006, Atty. Bautista filed a comment[2] on defendants' motions for extension of time to file answer. He pointed out that all three motions did not contain a notice of the time and place of hearing, thus, these should be considered mere scraps of paper.

Finally, on March 20, 2006, defendants filed their joint Answer with Counterclaim and Motion to Dismiss.

Plaintiffs countered by filing on March 27, 2006 a motion to declare defendants in default. Judge Causapin set the plaintiffs' motion for hearing on April 28, 2006.

Plaintiffs and Atty. Bautista appeared for the hearing set on April 28, 2006, but defendants failed to appear. Judge Causapin reset the hearing on plaintiffs' motion to May 19, 2006.

Plaintiffs and defendants with their respective counsels appeared during the hearing on May 19, 2006. Defendants' counsel, however, moved for time within which to file pleading, which was granted by Judge Causapin. The hearing was reset to June 20, 2006.

Only plaintiffs and their counsel, Atty. Bautista, appeared for the hearing on June 20, 2006, thus, Judge Causapin again reset the hearing on plaintiffs' motion to July 11, 2006.

Atty. Bautista failed to appear for the hearing on July 11, 2006. Judge Causapin once more reset the hearing on plaintiffs' motion to August 28, 2006.

At the hearing on August 28, 2006, the parties and their counsels were present. Judge Causapin finally submitted for resolution plaintiffs' motion to declare defendants in default.

In the Resolution of Motion to Hold Defendants in Default[3] dated September 18, 2006, Judge Causapin dismissed the complaint without prejudice on the ground that plaintiffs Reynaldo Mesina and Nancy Polangco did not sign the verification and

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

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

certification on non-forum shopping attached to the complaint, in violation of Rule 7, Section 5 of the Rules of Court. He cited the ruling in *Loquias v. Office of the Ombudsman*,[4] that "[w]here there are two or more plaintiffs or petitioners, a complaint or petition signed by only one of them is defective, unless he was authorized by his co-parties to represent them and to sign the certification."[5] Judge Causapin observed further that compulsory parties – plaintiffs heirs of Baudelio T. Bautista and Aurora T. Bautista, represented by Delia R. Bautista and Reynaldo Mesina, respectively – were not properly named in the complaint, in violation of Rule 3, Sections 2, 3, and 7 of the Rules of Court. Hence, Judge Causapin held in the end that defendants could not be declared in default for not answering a defective complaint, which in law does not exist.

Consequently, Atty. Bautista filed the present administrative Complaint against Judge Causapin for Gross Ignorance of the Law, for issuing (1) the Orders dated January 25, 2006, February 6, 2006, and February 20, 2006, which granted defendants' motions for extension of time to file their answer to the complaint in Civil Case No. 1387-G, without notice of hearing; and (2) the Resolution dated September 18, 2006, which summarily dismissed the complaint in Civil Case No. 1387-G without ruling on the plaintiffs' motion to declare defendants in default.

Atty. Bautista averred that Judge Causapin, in dismissing the complaint in Civil Case No. 1387-G, exhibited gross ignorance of the law and utter lack of professional competence. Atty. Bautista disputed the application of *Loquias* to Civil Case No. 1387-G, and insisted that *Cavile v. Heirs of Clarita Cavile*[6] was the more appropriate jurisprudence. In *Cavile*, the Supreme Court recognized the execution of the certificate of non-forum shopping by only one of the petitioners, on behalf of all other petitioners therein, as substantial compliance with the Rules of Court. In addition, Judge Causapin cannot *motu proprio* dismiss

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[4] 392 Phil. 596 (2000).

[5] *Rollo*, p. 59.

[6] 448 Phil. 302 (2003).

a case without complying with Rule 7, Section 5 of the Rules of Court which provides that the dismissal of a case without prejudice shall be upon motion and hearing. Atty. Bautista denied that there were other compulsory heirs who were not impleaded in the complaint in Civil Case No. 1387-G, and even if there were, the non-inclusion of compulsory parties was not a valid ground for dismissal of the complaint.

Atty. Bautista also questioned Judge Causapin's impartiality considering that (1) Judge Causapin was seen having a drinking spree with Jose T. Bautista, one of the defendants in Civil Case No. 1387-G, as attested to by Delia Ronquillo in an Affidavit dated October 16, 2006;[7] and (2) Judge Causapin and Jose Bautista, the other defendant in Civil Case No. 1387-G, are both active members of the Masonic Organization and drink together regularly.[8]

Lastly, Atty. Bautista charged Judge Causapin with gross misconduct. Atty. Bautista alleged that he was categorically requested by Judge Causapin to withdraw the motion to declare defendants in default since, as assured by said Judge, the plaintiffs' civil case for partition was already strong and there was no chance of plaintiffs losing the case. Likewise constituting gross misconduct was the granting by Judge Causapin of defendants' many motions for extension of time to file answer on the very same day said motions were filed. A written motion without a Notice of Hearing was a mere scrap of paper.

In the 1st Indorsement[9] dated November 9, 2006, the Office of the Court Administrator (OCA), through then Court Administrator Christopher O. Lock, required Judge Causapin to comment on Atty. Bautista's complaint within 10 days from receipt.

On November 22, 2006, while the OCA was still awaiting Judge Causapin's comment to Atty. Baustista's complaint, said

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[7] *Rollo*, pp. 60-61.

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

[9] *Id.* at 64.

judge issued in Civil Case No. 1387-G a Resolution of Plaintiffs' Motion for Reconsideration of Order dated September 18, 2006,[10] wherein he clarified his reasons for dismissing Civil Case No. 1387-G:

> The unsigning of the Verification and Certification of Non-Forum Shopping is the reason for the dismissal of the case without prejudice.
>
> The Court considered also the fact that the Court cannot make a decision with finality in this case for partition since the names of the heirs of Baudelio Bautista were not on record as well as the heirs of Aurora T. Bautista represented by Reynaldo Mesina and since the Verification and Certification of Non Forum Shopping was not signed by two of the plaintiffs. The Court further considered the provisions of the Rules of Court in Rule 7, Section 5, paragraph 2 which provides "failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be caused for the dismissal of the case without prejudice unless otherwise provided upon motion and after hearing." x x x
>
> The Court under the circumstances obtaining in the case at bar was of the opinion that dismissing the case without prejudice would make it easier and simpler for the plaintiffs to rectify the errors observed by the Court by refiling a new complaint.
>
> x x x x x x x x x
>
> The claim of the plaintiffs that there was no hearing held to hear is in violation of Rule 7, Section 5 of the Rules of Court is without merit.
>
> The defendants in their Answer pointed to the fact that the plaintiffs' verification of their complaint was defective.
>
> The case was scheduled for Pre-trial on June 20, 2006 but the parties did not finish the Pre-trial scheduled for several times. Both parties filed on June 20, 2006, separate motions submitting the issues for resolution of the court, hence, the questioned resolution of the court finding the defendants not in default and dismissing plaintiffs' complaint without prejudice.
>
> The order dismissing the complaint without prejudice was made so that the plaintiffs will be afforded time to correct whatever

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[10] *Id.* at 68-77.

deficiencies very much apparent in their complaint as to parties to the case and as to the Verification and Certification of Non-Forum Shopping which according to Rule 7, Section 5 of the Rules of Court cannot be cured by amendment.[11]

As regards the question of the appropriate jurisprudence, Judge Causapin held in his Resolution of November 22, 2006:

This Court cannot find any difference in the rule of Non-Forum shopping in the cases of *Loquias vs. Office of the Ombudsman* earlier cited and the case of *Cavile et al. vs. Heirs of Clarita Cavile, et al.,* also herein before cited.

x x x x x x x x x

The only difference between the two above-cited cases is that "the Supreme Court in the case of Cavile found an exception to the general rule and allowed an exception to the general rule because it found the signature of one of the petitioners Thomas George Cavile, Sr. as the signature of the other petitioners who were all named as petitioners in the case to be having a common interest as against all the defendants calling the situation as a "special circumstance" to allow substantial compliance with the mandatory requirement of Rule 7, Section 5 of the Rules of Court.

The circumstance of parties to the case present in the case of Cavile do not obtain in this case which by no stretch of imagination and of facts cannot apply to the case at bar because there is no indication that all the parties-plaintiffs have a common interest against the defendants because not all the plaintiffs were named in the complaint.[12]

In the same Resolution, Judge Causapin defended his Orders granting defendants' motions for extension of time to file answer to the complaint, thus:

While it is true that all defendants[']' Motion for Extension of Time to File Answer were furnished the plaintiffs, it is also true that all the motions of the defendants did not contain a setting of the motions for hearing.

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[11] *Id.* at 71-77.

[12] *Id.* at 76.

The Court considered the motions for extension of time to file answer "motions" which the Court may act upon without prejudicing the rights of the adverse party as provided in Section 4, Rule 15 of the Rules of Court x x x.

The Court therefore Granted all the motions of extension of time filed by the defendants favorably.[13]

On December 6, 2006, Judge Causapin filed his Comment[14] to Atty. Bautista's complaint against him, essentially reiterating the ratiocinations in his Resolution dated November 22, 2006 in Civil Case No. 1387-G.

The OCA submitted on February 20, 2007 its Report[15] with the following recommendations:

Respectfully submitted for the consideration of the Honorable Court our recommendation that (a) the instant case be RE-DOCKETTED as an administrative matter; and (b) respondent judge be FINED in the amount of ₱20,000.00, which shall be deducted from his accrued leave credits; in case such accrued leave credits be found insufficient to answer for the said fine, the respondent Judge shall pay the balance thereof to the Court.[16]

The Court re-docketed Atty. Bautista's Complaint as a regular administrative case and required the parties to manifest within 10 days from notice if they are willing to submit the matter for resolution based on the pleadings filed.[17] Even though both parties duly received notices, only Judge Causapin submitted such a Manifestation[18] on June 11, 2007. The Court finally deemed the case submitted for resolution based on the pleadings filed.

The Court finds that Judge Causapin is administratively liable for gross ignorance of the law and gross misconduct.

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[13] *Id.* at 72.

[14] *Id.* at 65-67.

[15] *Id.* at 1-5.

[16] *Id.* at 5.

[17] *Id.* at 79.

[18] *Id.* at 84.

Rule 7, Section 5 of the Rules of Court – which already incorporated Supreme Court Circular No. 28-91,[19] as amended by Supreme Court Administrative Circular No. 04-94[20] – requires the plaintiff or principal party to execute a certification against forum shopping, to be simultaneously filed with the complaint or initiatory pleading.

Rule 7, Section 5 of the 1997 Rules of Court prescribes:

> 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.

No doubt this Court has held 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 and constitutes a defect in the petition. The attestation requires

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[19] Effective January 1, 1992.

[20] Effective April 1, 1994.

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 or similar to the current petition.[21]

It is true that in *Loquias*, the Court required strict compliance with Rule 7, Section 5 of the 1997 Rules of Court:

> At the outset, it is noted that the Verification and Certification was signed by Antonio Din, Jr., one of the petitioners in the instant case. We agree with the Solicitor General that the petition is defective. Section 5, Rule 7 expressly provides that it is the plaintiff or principal party who shall certify under oath that he has not commenced any action involving the same issues in any court, *etc*. Only petitioner Din, the Vice-Mayor of San Miguel, Zamboanga del Sur, signed the certification. There is no showing that he was authorized by his co-petitioners to represent the latter and to sign the certification. It cannot likewise be presumed that petitioner Din knew, to the best of his knowledge, whether his co-petitioners had the same or similar actions or claims filed or pending. We find that substantial compliance will not suffice in a matter involving strict observance by the rules. The attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. Petitioners must show reasonable cause for failure to personally sign the certification. Utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.[22]

Nevertheless, in *Cavile*,[23] the Court recognized an exception to the general rule, allowing substantial compliance with the rule on the execution of a certificate of non-forum shopping:

> The rule is that the certificate of non-forum shopping must be signed by all the petitioners or plaintiffs in a case and the signing by only one of them is insufficient. **However, the Court has also stressed that the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness as to subvert its**

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[21] *Andres v. Justice Secretary Cuevas*, 499 Phil. 36, 47 (2005).

[22] *Loquias v. Office of the Ombudsman, supra* note 4 at 603-604.

[23] *Cavile v. Heirs of Clarita Cavile, supra* note 6.

own ultimate and legitimate objective. The rule of substantial compliance may be availed of with respect to the contents of the certification. This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. It does not thereby interdict substantial compliance with its provisions under justifiable circumstances.

We find that the execution by Thomas George Cavile, Sr. in behalf of all the other petitioners of the certificate of non-forum shopping constitutes substantial compliance with the Rules. All the petitioners, being relatives and co-owners of the properties in dispute, share a common interest thereon. They also share a common defense in the complaint for partition filed by the respondents. Thus, when they filed the instant petition, they filed it as a collective, raising only one argument to defend their rights over the properties in question. There is sufficient basis, therefore, for Thomas George Cavili, Sr. to speak for and in behalf of his co-petitioners that they have not filed any action or claim involving the same issues in another court or tribunal, nor is there other pending action or claim in another court or tribunal involving the same issues. Moreover, it has been held that the merits of the substantive aspects of the case may be deemed as "special circumstance" for the Court to take cognizance of a petition for review although the certification against forum shopping was executed and signed by only one of the petitioners.[24]

Atty. Bautista argues that:

[T]he *Cavile Case* is more relevant to the case before [Judge Causapin] – the *Loquias Case* being an Election Contest; whereas, the *Cavile Case* was an action for Partition under Rule 69. Expectedly, the parties in an Election case may have different causes of action or defences; whereas, in a simple action for Partition, the plaintiffs normally have a common interest in the subject of the case, and therefore, a common cause of action against the defendants. Precisely, the matter of "common cause of action" was the rationale in allowing the signature of only one plaintiff in the *Cavile* case as substantial compliance with the requirements of Rule 7 Section 5 of the Rules of Civil Procedure. The conclusion

[24] *Id.* at 311-312.

of respondent-Judge is this respect displays his ignorance of the law and lack of competence.[25]

Judge Causapin concluded that *Cavile* does not apply to Civil Case No. 1387-G because the plaintiffs in the latter case do not have a common interest. Without notice and hearing, Judge Causapin dismissed the complaint in the said civil case because of the purported defect in the certificate of non-forum shopping. Thus, plaintiffs were not afforded the opportunity to explain, justify, and prove that the circumstances in *Cavile* are also present in Civil Case No. 1387-G.

Before a complaint can be dismissed for lack of a proper certificate of non-forum shopping, notice and hearing are required.

SC Administrative Circular No. 04-94 provided that:

> 2. Any violation of this Circular shall be a cause for the dismissal of the complaint, petition, application or other initiatory pleading, **upon motion and after hearing**. However, any clearly willful and deliberate forum-shopping by any party and his counsel through the filing of multiple complaints or other initiatory pleadings to obtain favorable action shall be a ground for summary dismissal thereof and shall constitute direct contempt of court. Furthermore, the submission of a false certification or non-compliance with the undertakings therein, as provided in Paragraph 1 hereof, shall constitute indirect contempt of court, without prejudice to disciplinary proceedings against the counsel and the filing of a criminal action against the guilty party. (Emphasis ours.)

The same requirement was subsequently carried over to Rule 7, Section 5, second paragraph of the 1997 Rules of Court.

Morever, defendants in Civil Case No. 1387-G did not file a proper motion to dismiss. According to Rule 16, Section 1 of the 1997 Rules of Court, a motion to dismiss should be filed "[w]ithin the time for but before filing the answer to the complaint[.]" Defendants in Civil Case No. 1387-G incorporated their motion to dismiss into their answer with counterclaim. They actually raised the defect in plaintiffs' certificate of non-

[25] *Rollo*, p. 88.

forum shopping as a special and affirmative defense. This calls for the application of Rule 16, Section 6 of the Rules of Court which reads:

> SEC. 6. *Pleading grounds as affirmative defenses.* – If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.
>
> The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer.

Going by the foregoing rule, Judge Causapin had the discretion in Civil Case No. 1387-G of either (1) setting a preliminary hearing specifically on the defect in the plaintiffs' certificate of non-forum shopping; or (2) proceeding with the trial of the case and tackling the issue in the course thereof. In both instances, parties are given the chance to submit arguments and evidence for or against the dismissal of the complaint. Judge Causapin neither conducted such a preliminary hearing or trial on the merits prior to dismissing Civil Case No. 1387-G.

Where the law involved is simple and elementary, lack of conversance therewith constitutes gross ignorance of the law. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. The mistake committed by respondent Judge is not a mere error of judgment that can be brushed aside for being minor.[26] The disregard of established rule of law which amounts to gross ignorance of the law makes a judge subject to disciplinary action.

In *Pesayco v. Layague*,[27] the Court stressed that:

> A judge must be acquainted with legal norms and precepts as well as with procedural rules. When a judge displays an utter lack of

[26] *Jamora v. Bersales*, A.M. No. MTJ-04-1529, December 16, 2004, 447 SCRA 20, 32.

[27] A.M. No. RTJ-04-1889, December 22, 2004, 447 SCRA 450.

familiarity with the rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court the duty to be proficient in the law x x x. Basic rules of procedure must be at the palm of a judge's hands.[28]

Atty. Bautista also charges Judge Causapin with gross misconduct, alleging that said judge had been having drinking sprees with the defendants in Civil Case No. 1387-G, and categorically requested Atty. Bautista to withdraw plaintiffs' motion to declare defendants in default in Civil Case No. 1387-G.

As the OCA pointed out, Judge Causapin failed to deny Atty. Bautista's allegations; and the Court deems Judge Causapin's silence as admission of the same. Judge Causapin could have easily denied the allegations and adduced proof to rebut the same, but he chose to sidestep said issue by being silent, notwithstanding that these constitute one of the principal charges against him.[29]

Judge Causapin's drinking sprees with the defendants and request for Atty. Bautista to withdraw plaintiffs' motion to declare defendants in default are evidently improper. These render suspect his impartiality. A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary. The conduct of a judge must be free from any whiff of impropriety not only with respect to the performance of his judicial duties but also to his behavior outside his *sala* and even as a private individual.[30]

Nonetheless, we cannot hold Judge Causapin administratively liable for granting defendants' motions for extension of time to file answer without hearing and on the same day said motions were filed.

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[28] *Id.* at 459.

[29] *See Perez v. Suller*, A.M. No. MTJ-94-936, November 6, 1995, 249 SCRA 665, 670-671.

[30] *Atty. Omaña v. Judge Yulde*, 436 Phil. 549, 558-559 (2002).

Atty. Bautista questions defendants' motions for extension of time to file answer, which did not contain notices of hearing as required by the following provisions under Rule 15 of the 1997 Rules of Court:

> SEC. 4. *Hearing of motion.* – Except for motions which the court may act upon without prejudicing the rights of the adverse party, **every written motion shall be set for hearing by the applicant.**
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
>
> SEC. 5. *Notice of hearing.* – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

As prescribed by the aforequoted provisions, a movant shall set his motion for hearing, unless it is one of those which a court can act upon without prejudicing the rights of the other party. The prevailing doctrine in this jurisdiction is that a motion without a notice of hearing addressed to the parties is a mere scrap of paper.[31]

The logic for such a requirement is simple: a motion invariably contains a prayer which the movant makes to the court, which is usually in the interest of the adverse party to oppose. The notice of hearing to the adverse party is therefore a form of due process; it gives the other party the opportunity to properly vent his opposition to the prayer of the movant. In keeping with the principles of due process, therefore, a motion which

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[31] *Basco v. Court of Appeals*, 383 Phil. 671, 685 (2000); *Marcos v. Ruiz*, G.R. Nos. 70746-47, September 1, 1992, 213 SCRA 177, 192; *National Power Corporation v. Jocson*, G.R. Nos. 94193-99, February 25, 1992, 206 SCRA 520, 539; *Prado v. Veridiano II*, G.R. No. 98118, December 6, 1991, 204 SCRA 654, 667; *Bank of the Philippine Islands v. Far East Molasses, Corp.*, G.R. No. 89125, July 2, 1991, 198 SCRA 689, 698; *Cui v. Madayag*, 314 Phil. 846, 858 (1995).

does not afford the adverse party the chance to oppose it should simply be disregarded.[32]

Yet the rule requiring notice of hearing is not unqualifiedly applicable to all motions, and there are motions which may be heard *ex parte*, as Rule 15, Section 4 of the 1997 Rules of Court also clearly acknowledges. Among the latter class of motions are precisely those seeking extension of time to plead, and the reason these are not strictly held to the requirement of notice is that they are non-contentious and do not as a rule involve the substantial rights of the other parties in the suit.[33] In *Amante v. Suñga*,[34] the Court declared that:

> The motion for extension of time within which a party may plead is not a litigated motion where notice to the adverse party is necessary to afford the latter an opportunity to resist the application, but an *ex parte* motion "made to the court in behalf of one or the other of the parties to the action, in the absence and usually without the knowledge of the other party or parties." As "a general rule, notice of motion is required where a party has a right to resist the relief sought by the motion and principles of natural justice demand that his rights be not affected without an opportunity to be heard..."
>
> It has been said that "*ex parte* motions are frequently permissible in procedural matters, and also in situations and under circumstances of emergency; and an exception to a rule requiring notice is sometimes made where notice or the resulting delay might tend to defeat the objection of the motion."[35]

Considering that a motion for extension of time may be acted upon by the court *ex parte* or without hearing, then it need not contain a notice of hearing. It is equally unnecessary for the court to wait until motion day, under Rule 15, Section 7[36] of the

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[32] *Atty. Neri v. Judge De la Peña*, 497 Phil. 73, 81 (2005).

[33] *Denso (Phils.) Inc. v. Intermediate Appellate Court*, 232 Phil. 256, 266 (1987).

[34] 159-A Phil. 474 (1975).

[35] *Id.* at 476-477.

[36] SECTION 7. *Motion day.* - Except for motions requiring immediate action, all motions shall be scheduled for hearing on Friday afternoons, or if Friday is a non-working day, in the afternoon of the next working day.

1997 Rules of Court, to act on a motion for extension of time. Therefore, contrary to the finding of the OCA, Judge Causapin did not commit abuse of discretion in granting defendants' motions for extension of time on the same day said motions were filed and even when the same motions did not contain a notice of hearing.

In conclusion, the Court finds Judge Causapin guilty of (1) gross ignorance of the law for dismissing, without hearing, the complaint in Civil Case No. 1387-G on the ground of non-compliance with Rule 7, Section 5 of the 1997 Rules of Court on execution of a certificate of non-forum shopping; and (2) gross misconduct for having drinking sprees with the defendants in Civil Case No. 1387-G and requesting Atty. Bautista to withdraw plaintiffs' motion to declare defendants in default in Civil Case No. 1387-G.

The Court now proceeds to determine the appropriate penalty imposable upon Judge Causapin for gross ignorance of the law and gross misconduct.

Rule 140, Section 8 of the 1997 Rules of Court characterizes both gross ignorance of the law and procedure and gross misconduct as grave offenses. The penalties prescribed for such offense are: (1) dismissal from service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three months but not exceeding six months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

Since Judge Causapin already retired compulsorily on November 24, 2006, the penalty of suspension is no longer feasible. Hence, the Court imposes upon him a fine of ₱20,000.00, to be deducted from his retirement benefits.

WHEREFORE, Judge Blas O. Causapin, Jr. is found *GUILTY* of both gross ignorance of the law and gross misconduct

and is accordingly *FINED* the amount of ₱20,000.00, to be deducted from his retirement benefits or accrued leave credits; and if such amount is insufficient to answer for the said fine, Judge Causapin shall pay the balance thereof.

SO ORDERED.

Corona, C.J. (Chairperson), del Castillo, Abad,[*] and *Mendoza,*[**] *JJ.,* concur.

SPECIAL FIRST DIVISION

[G.R. No. 149433. June 22, 2011]

THE COCA-COLA EXPORT CORPORATION, *petitioner, vs.* **CLARITA P. GACAYAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; ELUCIDATED; APPLICATION IN CASE AT BAR.— It is well-settled in our jurisdiction that loss of trust and confidence constitutes a just and valid cause for an employee's termination. In *Etcuban, Jr. v. Sulpicio Lines, Inc.*, this Court held: Law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence. More so, in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination. Loss of confidence as a just cause for termination of employment is premised from the fact that an employee concerned holds a

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[*] Per Raffle dated June 13, 2011.

[**] Per Special Order No. 1022 dated June 10, 2011.

position of trust and confidence. This situation holds where a person is entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. But, in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer. In the instant case, respondent Gacayan was the Senior Financial Accountant of petitioner company. While respondent Gacayan denies that she is handling or has custody of petitioner's funds, a re-examination of the records of this case reveals that she indeed handled delicate and confidential matters in the financial analyses and evaluations of the action plans and strategies of petitioner company. Respondent Gacayan was also privy to the strategic and operational decision-making of petitioner company, a sensitive and delicate position requiring the latter's utmost trust and confidence. As such, she should be considered as holding a position of responsibility or of trust and confidence. We revert to the findings of the Labor Arbiter, as affirmed by the NLRC, that respondent Gacayan betrayed the trust and confidence reposed on her when she, ironically a Senior Financial Accountant tasked with ensuring financial reportorial/regulatory compliance from others, repeatedly submitted tampered or altered receipts to support her claim for meal reimbursements, in gross violation of the rules and regulations of petitioner company.

2. ID.; ID.; ID.; DUE PROCESS REQUIREMENT OF TWO WRITTEN NOTICES BEFORE TERMINATION, FULLY COMPLIED WITH.— On the issue of due process, petitioner company complied with all the aforementioned requirements for the valid dismissal of respondent Gacayan. x x x Evidence shows that respondent Gacayan was properly notified of the charges against her. She received several memoranda from petitioner company requiring her to explain in writing why her claims for reimbursement for meal expenses should not be considered fraudulent since there were alterations in the receipts she submitted. Petitioner company also sent respondent Gacayan a letter dated January 3, 1995 directing her to explain why she should not be subjected to disciplinary sanctions for her violations of the company's rules and regulations which punishes with dismissal the submission of any fraudulent item of expense. Petitioner company even advised respondent

Gacayan to bring along a counsel of her choice at the hearings conducted to investigate the matter. Respondent Gacayan submitted her explanation and denied any knowledge of the commission of alterations on the receipts which she submitted. She even appeared and participated at the proceedings of the investigation. Clearly, respondent Gacayan was given ample opportunity to present her side and rebut the evidence against her. x x x Given the foregoing, it is evident that the required procedural due process for respondent Gacayan's termination was fully complied with. The letter dated January 3, 1995 served on respondent Gacayan was the written notice specifying the charges against her, while the subsequent letter dated April 4, 1995 served as the written notice of termination.

3. ID.; ID.; ID.; ID.; BURDEN OF PROOF THAT THE DISMISSAL IS VALID RESTS ON THE EMPLOYER; SATISFIED IN CASE AT BAR.— In fine, petitioner company had sufficiently discharged its burden of proving that the dismissal of respondent Gacayan was for just cause, that it was made within the parameters of the law, and that respondent was afforded due process pursuant to the basic tenets of equity, justice and fair play.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles Law Offices for petitioner.

Palma Tolete Villamil Raagas Basbas & Cruz Law Offices for respondent.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

For resolution is the Motion for Reconsideration filed by petitioner The Coca-Cola Export Corporation (petitioner company) of our Decision promulgated on December 15, 2010, denying its petition for review on *certiorari* of the Decision dated May 30, 2001, and subsequent Resolution dated August 9, 2001 of the Court of Appeals in CA-G.R. SP No. 49192.

In our Decision dated December 15, 2010, we affirmed with modification the decision of the Court of Appeals which ruled that respondent Clarita P. Gacayan (respondent Gacayan) was illegally dismissed from her employment with petitioner company. We upheld the appellate court's order that respondent Gacayan be reinstated to her former position, if possible, otherwise to a substantially equivalent position without loss of seniority rights and full backwages. We, however, modified the award of backwages, ruling that they should be computed from the time the compensation was not paid up to the time of respondent Gacayan's reinstatement.

In support of its motion, petitioner company advanced the following arguments:

I.

"LOSS OF TRUST AND CONFIDENCE," AS A JUST CAUSE FOR TERMINATION, IS NOT RESTRICTED TO MANAGERIAL EMPLOYEES BUT LIKEWISE APPLIES TO "SUPERVISORS OR OTHER PERSONNEL OCCUPYING POSITIONS OF RESPONSIBILITY."

II.

RESPONDENT'S BREACH OF PETITIONER'S TRUST IS CLEARLY SUPPORTED AND BORNE BY THE RECORDS.

III.

RESPONDENT'S WRONGFUL, MALICIOUS, AND FRAUDULENT INTENT IS EVIDENT FROM THE RECORDS.

IV.

RESPONDENT'S DISMISSAL IS NOT "HARSH" BUT IS COMPLETELY COMMENSURATE TO THE SEVERITY OF HER ACTS. THE COURT'S ORDER FOR RESPONDENT'S REINSTATEMENT WITH BACKWAGES REWARDS GROSS DISHONESTY AND ENNOBLES BREACH OF TRUST.[1]

To resolve the instant motion, it is necessary to restate briefly the factual background of the case.

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[1] *Rollo*, p. 644.

One of the benefits enjoyed by the employees of petitioner company was the reimbursement of meal and transportation expenses incurred while rendering overtime work. This was allowed only when the employee worked overtime for at least four hours on a Saturday, Sunday, or holiday, and for at least two hours on weekdays. The maximum amount allowed to be reimbursed was one hundred fifty (₱150.00) pesos. It was in connection with this company policy that respondent Gacayan, then a Senior Financial Accountant, was made to explain the alleged alterations in three (3) receipts which she submitted to support her claim for reimbursement of meal expenses, to wit: 1) McDonald's Receipt No. 875493 dated October 1, 1994 for ₱111.00; 2) Shakey's Pizza Parlor Receipt No. 122658 dated November 20, 1994 for ₱174.06; and 3) Shakey's Pizza Parlor Receipt No. 41274 dated July 19, 1994 for ₱130.50.

Petitioner company sent respondent Gacayan several memoranda requiring her to explain why her claims for reimbursement should not be considered fraudulent since there were alterations, *i.e.*, the dates of issuance of the receipts and the food items purchased as enumerated thereon, in the receipts she submitted.

Consequently, respondent Gacayan submitted her explanation denying any personal knowledge in the commission of the alterations on the subject receipts.

Petitioner company then conducted a hearing and formal investigation on the matter to give respondent Gacayan an opportunity to explain the issues against her and to present her side. After attending the first scheduled hearing and participating thereat, respondent Gacayan did not attend the succeeding hearings, citing her doctor's advice to rest, and likewise complaining of the alleged partiality of the investigating committee against her.

In a letter dated April 4, 1995, petitioner company dismissed respondent Gacayan for fraudulently submitting tampered and/or altered receipts in support of her petty cash reimbursements in gross violation of the company's rules and regulations.

On June 6, 1995, respondent Gacayan filed a complaint with the National Labor Relations Commission (NLRC).

In a Decision dated June 17, 1996, the Labor Arbiter dismissed respondent Gacayan's complaint for lack of merit. This was affirmed by the NLRC in its Resolution dated April 14, 1998.

On appeal, the Court of Appeals reversed the NLRC and ruled that the penalty imposed on respondent Gacayan was too harsh. The Court of Appeals ordered the immediate reinstatement of respondent Gacayan to her former position or to a substantially equivalent position without loss of seniority rights and with full backwages. Hence, petitioner company filed with this Court a petition for review on *certiorari* which was denied in our Decision dated December 15, 2010.

In our Decision dated December 15, 2010, we declared that respondent Gacayan's dismissal from employment was not grounded on any of the just causes enumerated under Article 282[2] of the Labor Code since petitioner company, in its termination letter dated April 4, 1998, neither mentioned its alleged loss of trust and confidence in respondent Gacayan, nor discussed the alleged sensitive and delicate position of respondent Gacayan requiring the utmost trust of petitioner company.

Petitioner company now begs us to reconsider this pronouncement, arguing that respondent Gacayan's position as a "Senior Financial Accountant with the Job Description of

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[2] ART. 282. *Termination by employer*. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

a Financial Project Analyst" has duties which clearly qualify her as one occupying a position of trust and responsibility, thus:

8.1. Provides support in the form of financial analyses and evaluation of alternative strategies or action plans to assist management in strategic and operational decision-making.

8.2. Scope of work is mainly financial analysis but may include assessment of tax, legal, regulatory, socio-political, marketing, operating, and other considerations.

8.3. Liaises with the Bottler to comply with Corporate Bottler financial reporting requirements and to ensure Bottler's plans are aligned with TCCEC's [Respondent's]. Includes:

Business Plan.

Monthly Rolling Estimate.

Monthly variance analysis (vs Budget and prior year, Pesos and Dlrs)

Dividend Declared Report and monitoring of dividend remittances.

Quarterly reports.

Analysis of financial issues/questions raised by Corporate.

Presentation charts.

8.4. Assists management on various initiatives on *ad hoc* basis (scope of work depends on objectives).

Ad hoc requests from Corporation for Information.

Accounting for REFPET project costs.

Foundation 3-year plan.

Finance representative in MRP II project.

CCFEL ROSS conversion project.

BLI and BII recapitalization.[3]

According to petitioner company, respondent Gacayan had access to and was responsible for confidential, delicate, and sensitive matters, particularly relating to its operations and finances. Moreover, petitioner company maintains that respondent Gacayan was in-charge of the proper handling of funds as "among

[3] *Rollo*, pp. 646-647.

her tasks was the preparation of the Business Plan, Monthly Rolling Estimate, Monthly variance analysis (vs Budget and prior year, Pesos and Dlrs), Dividend Declared Report and monitoring of dividend remittances, and Quarterly reports."[4] Petitioner company further calls on the Court to affirm our ruling in *Divine Word College of San Jose v. Aurelio*[5] and *Panday v. National Labor Relations Commission*[6] that a Senior Bookkeeper (in the former case) or a Branch Accountant (in the latter case) held a position of trust and confidence.

Likewise, petitioner company maintains that respondent Gacayan's "act of falsifying or altering receipts in order to secure unwarranted reimbursements, not only once, but on three (3) separate occasions, were clearly established by the evidence on record and unambiguously displays [r]espondent [Gacayan]'s wrongful intent."[7]

After due consideration of the motion for reconsideration, we find the same impressed with merit.

It is well-settled in our jurisdiction that loss of trust and confidence constitutes a just and valid cause for an employee's termination. In *Etcuban, Jr. v. Sulpicio Lines, Inc.*,[8] this Court held:

> Law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence. More so, in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination. Loss of confidence as a just cause for termination of employment is premised from the fact that an employee concerned holds a position of trust and confidence. This situation holds where a person is entrusted with confidence on delicate matters, such as the custody, handling, or

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[4] *Id.* at 647.

[5] G.R. No. 163706, March 29, 2007, 519 SCRA 497.

[6] G.R. No. 67664, May 20, 1992, 209 SCRA 122.

[7] *Rollo*, p. 649.

[8] G.R. No. 148410, January 17, 2005, 448 SCRA 516.

care and protection of the employer's property. But, in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.[9]

In the instant case, respondent Gacayan was the Senior Financial Accountant of petitioner company. While respondent Gacayan denies that she is handling or has custody of petitioner's funds, a re-examination of the records of this case reveals that she indeed handled delicate and confidential matters in the financial analyses and evaluations of the action plans and strategies of petitioner company. Respondent Gacayan was also privy to the strategic and operational decision-making of petitioner company, a sensitive and delicate position requiring the latter's utmost trust and confidence. As such, she should be considered as holding a position of responsibility or of trust and confidence.

We revert to the findings of the Labor Arbiter, as affirmed by the NLRC, that respondent Gacayan betrayed the trust and confidence reposed on her when she, ironically a Senior Financial Accountant tasked with ensuring financial reportorial/ regulatory compliance from others, repeatedly submitted tampered or altered receipts to support her claim for meal reimbursements, in gross violation of the rules and regulations of petitioner company. Upon review, even the Court of Appeals did not absolve respondent Gacayan of wrongdoing but rather merely held that dismissal was too harsh a penalty for her infraction.

It has oft been held that loss of confidence should not be used as a subterfuge for causes which are illegal, improper and unjustified. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith. It bears stressing that what is at stake here are the sole means of livelihood, the name and the reputation of the employee.[10]

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[9] *Id.* at 528-529.

[10] *Philippine National Construction Corporation v. Matias*, 497 Phil. 476, 489 (2005).

Verily, in *Tiu and/or Conti Pawnshop v. National Labor Relations Commission*,[11] we held that the language of Article 282(c) of the Labor Code states that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by the employer. Ordinary breach will not suffice; it must be willful. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[12] And in the case of supervisors or personnel occupying positions of responsibility, like respondent Gacayan, the loss of trust and confidence must spring from the voluntary or willful act of the employee, or by reason of some blameworthy act or omission on the part of the employee.[13]

Thus, petitioner company must sufficiently and convincingly show that the loss of trust and confidence in respondent Gacayan was founded on clearly established facts, incidents and substantial evidence.

In its motion for reconsideration, petitioner company emphasized the clear and convincing evidence on record that respondent Gacayan breached the trust and confidence reposed in her when she repeatedly submitted tampered or altered receipts to support her claim for meal reimbursement. Petitioner company maintained that respondent Gacayan cannot mistakenly file a claim for overtime meal allowance reimbursement for a day she knew she was not entitled to, as she did not actually render overtime work. Petitioner company reiterated its evidence showing that respondent Gacayan acted with wrongful, malicious and fraudulent intent when she repeatedly submitted tampered or altered receipts.

With regard to the first receipt in question, McDonald's Receipt No. 875493 dated October 1, 1994 for ₱111.00, petitioner

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[11] G.R. No. 83433, November 12, 1992, 215 SCRA 540.

[12] *Id.* at 547.

[13] *Caoile v. National Labor Relations Commission*, 359 Phil. 399, 406 (1998).

company was able to secure a certification[14] from the issuing branch of McDonald's that said receipt was not issued on October 1, 1994 but on October 2, 1994. The second receipt, Shakey's Pizza Parlor Receipt No. 122658 dated November 20, 1994 for ₱174.06, was actually for three orders of Bunch of Lunch and not a single order of Buddy Pack with Extra Mojos as claimed by respondent Gacayan. Petitioner company presented the sworn affidavit[15] of the delivery personnel of Shakey's Pasong Tamo to attest to this fact. Lastly, the third receipt, Shakey's Pizza Parlor Receipt No. 41274 dated July 19, 1994 for ₱130.50, was found to be actually issued on July 17, 1994. Moreover, another employee who supposedly shared the food with respondent Gacayan denied in a sworn affidavit[16] that she partook of the said meal. In sum, petitioner company highlighted in its motion that the gravity of respondent Gacayan's offense lies in the inherent dishonesty of her alteration of the said receipts even though the amounts she received were minimal sums.

Respondent Gacayan intentionally, knowingly, purposely, and without justifiable excuse, submitted tampered or altered receipts to support her claim for meal reimbursement. Respondent Gacayan failed to sufficiently refute the charges against her for the submission of said fraudulent items of expense. All she did was to deny any personal knowledge in the commission of the alterations in the subject receipts and to point fingers at other people who may have done the alterations.[17]

First, respondent Gacayan blamed the McDonald's staff for the mistake in the date on the first receipt. She also blamed her sister's driver for allegedly giving her a wrong receipt. Second, respondent Gacayan blamed the delivery staff of Shakey's for bringing yet another wrong receipt. She allegedly requested the delivery personnel to merely write the correct items which she ordered and to sign the said receipt to authenticate

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[14] *Rollo,* p. 144.

[15] *Id.* at 147.

[16] *Id.* at 163.

[17] *Id.* at 115.

the alterations made in order to avoid the hassle of having to wait for a replacement receipt. This, however, was contradicted by the delivery personnel who narrated that what was ordered and what he delivered were three orders of Bunch of Lunch and not a Buddy Pack. The delivery personnel further recounted that the call for delivery on that particular day was made by a certain Leah Gatayan (Gacayan) who turned out to be respondent Gacayan's daughter who was with her in the office as evidenced by the logbook entry of the security guard in respondent Gacayan's office. Third, respondent Gacayan claimed to have shared a meal with a certain CAV (Corazon A. Varona), who executed an affidavit denying such an instance of meal-sharing with her.

Although the amounts involved in the subject receipts were relatively small, or only the dates and/or items ordered were altered or tampered with, respondent Gacayan's act of submitting fraudulent items of expense adversely reflected on her integrity and honesty, which is ample basis for petitioner company to lose its trust and confidence in her.

On the issue of due process, petitioner company complied with all the aforementioned requirements for the valid dismissal of respondent Gacayan. We quote with approval the Labor Arbiter in his disquisition, to wit:

As far as the notice requirement is concerned, the law requires the employer to give two (2) kinds of notices to the employee sought to be terminated:

> 'It is evident from the said provisions that the employer is required to furnish an employee who is to be dismissed two (2) written notices before such termination. The first is the notice to apprise the employee of the particular act or omissions for which his dismissal is sought. This may loosely be considered as the proper charge. The second is the notice informing the employee of the employer's decision to dismiss him. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, and ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires. This is in consonance with

> the express provisions of law on the protection of labor and the broader dictates of procedural due process. Non compliance therewith is fatal because these requirements are conditions *sine qua non* before dismissal may be validly effected. (*Tiu vs. National Labor Relations Commission*, 215 SCRA 540, 551-552, emphasis added).'

Tested against the foregoing yardstick, the termination of complainant [herein respondent] is clearly valid.

Respondents [herein petitioner] complied with the notice requirement strictly to the letter. Complainant [respondent] was given the first notice which the Supreme Court amply termed in the foregoing jurisprudence as the 'proper charge.' This Office further notes that more than one notice was given to the complainant [respondent]. In fact, complainant [respondent] was repeatedly directed to answer the charges against her. As she in fact did.

Complainant [Respondent] was given repeated opportunities to ventilate her side through the numerous hearings scheduled by the respondents [petitioner]. But after attending only the first hearing, complainant [respondent] suddenly refused in fact she failed to attend the two (2) other hearings. [Even] when she came to know that the Shakey's delivery man was going to be invited.

It was only after the evidence against complainant [respondent] was received and her fraudulent participation morally ascertained that respondents [petitioner] finally decided to terminate his (sic) services. And after arriving at a conclusion, complainant [respondent] was consequently informed of her termination which was the sanction imposed on her.

Again, following the yardstick laid down by the Tiu doctrine cited above, the procedure in terminating complainant [respondent] was definitely followed. Her termination is therefore valied (sic) and must be upheld for all intents and purposes.

Certainly, complainant cannot now belatedly claim that she was denied due process. For it was her who repeatedly refused to subsequently appear before the formal administrative investigation conducted by respondent company [petitioner].

> 'Due process is not violated where a person is not heard because he has chosen, for whatever reason, not to be heard. It is obvious that if he opts to be silent where he has the right

> to be (sic) speak, he cannot later be heard to complain that he was unduly silenced.' (*Pepsi Cola Distributors of the Philippines, Inc. vs. National Labor Relations Commission*, G.R. No. 100686, August 15, 1995)[18]

Evidence shows that respondent Gacayan was properly notified of the charges against her. She received several memoranda[19] from petitioner company requiring her to explain in writing why her claims for reimbursement for meal expenses should not be considered fraudulent since there were alterations in the receipts she submitted. Petitioner company also sent respondent Gacayan a letter[20] dated January 3, 1995 directing her to explain why she should not be subjected to disciplinary sanctions for her violations of the company's rules and regulations which punishes with dismissal the submission of any fraudulent item of expense. Petitioner company even advised respondent Gacayan to bring along a counsel of her choice at the hearings conducted to investigate the matter.

Respondent Gacayan submitted her explanation and denied any knowledge of the commission of alterations on the receipts which she submitted. She even appeared and participated at the proceedings of the investigation. Clearly, respondent Gacayan was given ample opportunity to present her side and rebut the evidence against her.

Despite all the chances given by petitioner company for respondent Gacayan to present her case, respondent Gacayan failed to attend the succeeding hearings and merely filed applications for leave.[21] Petitioner company, however, continued to send notices[22] to respondent Gacayan informing her of the re-setting of the continuation of the investigation on January 23, 1995 and March 15, 1995. With respondent Gacayan's

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[18] *Id.* at 281-285.

[19] *Id.* at 142 and 145.

[20] *Id.* at 149-150.

[21] *Id.* at 117-118.

[22] *Id.* at 161 and 168.

continued absence at the scheduled hearings and after the evidence was evaluated, petitioner company finally dismissed respondent Gacayan for fraudulently submitting tampered or altered receipts in support of her petty cash reimbursements.

Given the foregoing, it is evident that the required procedural due process for respondent Gacayan's termination was fully complied with. The letter dated January 3, 1995 served on respondent Gacayan was the written notice specifying the charges against her, while the subsequent letter[23] dated April 4, 1995 served as the written notice of termination.

In fine, petitioner company had sufficiently discharged its burden of proving that the dismissal of respondent Gacayan was for just cause, that it was made within the parameters of the law, and that respondent was afforded due process pursuant to the basic tenets of equity, justice and fair play. We agree with petitioner company that to allow respondent Gacayan to be reinstated to her former position with payment of backwages would tend rather to reward dishonesty and ennoble breach of trust by employees to the prejudice of the employer.

This Court has always reminded that:

> While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be expected that every labor dispute will be automatically decided in favor of labor. Management also has its own rights which, as such, are entitled to respect and enforcement in the interest of simple fair play.[24]

WHEREFORE, in view of the foregoing, we *GRANT* the Motion for Reconsideration filed by petitioner The Coca-Cola Export Corporation and *RECONSIDER* our Decision dated December 15, 2010. The assailed Decision dated May 30, 2001 and Resolution dated August 9, 2001 of the Court of Appeals in CA-G.R. SP No. 49192 are *REVERSED* and *SET ASIDE*. The Resolutions dated April 14, 1998 and June

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[23] *Id.* at 169-170.

[24] *Amkor Technology Philippines, Inc. v. Juangco*, G.R. No. 166507, January 23, 2007, 512 SCRA 325, 331.

19, 1998 of the National Labor Relations Commission are hereby *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Peralta,[*] and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 170292. June 22, 2011]

HOME DEVELOPMENT MUTUAL FUND (HDMF), *petitioner, vs.* **SPOUSES FIDEL and FLORINDA R. SEE and SHERIFF MANUEL L. ARIMADO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER ONLY WHEN APPEAL IS NOT AVAILABLE TO THE AGGRIEVED PARTY; IT IS NOT A SUBSTITUTE FOR A LOST APPEAL ESPECIALLY IF THE PARTY'S OWN NEGLIGENCE OR ERROR IN THE CHOICE OF REMEDY OCCASIONED SUCH LOSS OR LAPSE.— "*[C]ertiorari* is a limited form of review and is a remedy of last recourse." It is proper only when appeal is not available to the aggrieved party. In the case at bar, the February 21, 2002 Decision of the trial court was appealable under Rule 41 of the Rules of Court because it completely disposed of respondent-spouses' case against Pag-ibig. Pag-ibig does not explain why it did not resort to an appeal and allowed the trial court's decision to attain finality. In fact, the February 21, 2002 Decision was already at the stage of execution when Pag-ibig belatedly resorted to a Rule 65 Petition for *Certiorari*. Clearly, Pag-ibig lost its right to appeal and tried to remedy the situation

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[*] Per Raffle dated December 15, 2010.

by resorting to *certiorari*. It is settled, however, that *certiorari* is not a substitute for a lost appeal, "especially if the [party's] own negligence or error in [the] choice of remedy occasioned such loss or lapse."

2. ID.; ID.; ID.; REGLEMENTARY 60-DAY PERIOD FOR FILING OF PETITION; COUNTED FROM NOTICE OF JUDGMENT, ORDER OR RESOLUTION BEING ASSAILED OR FROM NOTICE OF THE DENIAL OF MOTION FOR RECONSIDERATION; DATE OF RECEIPT OF THE COPY OF THE WRIT OF EXECUTION IS IMMATERIAL.— [E]ven assuming *arguendo* that a Rule 65 *certiorari* could still be resorted to, Pag-ibig's petition would still have to be dismissed for having been filed beyond the reglementary period of 60 days from notice of the denial of the motion for reconsideration. Pag-ibig admitted receiving the trial court's Order denying its Motion for Reconsideration on March 22, 2002; it thus had until May 21, 2002 to file its petition for *certiorari*. However, Pag-ibig filed its petition only on May 24, 2002, which was the 63rd day from its receipt of the trial court's order and obviously beyond the reglementary 60-day period. Pag-ibig stated that its petition for *certiorari* was filed "within sixty (60) days *from receipt of the copy of the writ of execution* by petitioner [Pag-ibig] on 07 May 2002," which writ sought to enforce the Decision assailed in the petition. This submission is beside the point. Rule 65, Section 4 is very clear that the reglementary 60-day period is counted "from notice of the judgment, order or resolution" being assailed, or "from notice of the denial of the motion [for reconsideration]," and *not* from receipt of the writ of execution which seeks to enforce the assailed judgment, order or resolution. The date of Pag-ibig's receipt of the copy of the writ of execution is therefore immaterial for purposes of computing the timeliness of the filing of the petition for *certiorari*.

3. ID.; CIVIL PROCEDURE; MOTIONS; OMNIBUS MOTION RULE; ALL AVAILABLE OBJECTIONS THAT ARE NOT INCLUDED IN A PARTY'S MOTION SHALL BE DEEMED WAIVED; CASE AT BAR.— As to Pag-ibig's argument that the February 21, 2002 Decision of the RTC is null and void for having been issued without a trial, it is a mere afterthought which deserves scant consideration. The Court notes that Pag-ibig did not object to the absence of a trial when it sought a reconsideration of the February 21, 2002 Decision. Instead, Pag-ibig raised the following lone argument in their motion: 3. Consequently, [Pag-ibig] should not be compelled

to release the title to other [respondent-spouses] See because Manuel Arimado [has] yet to deliver to [Pag-ibig] the sum of ₱272,000.00. Under the Omnibus Motion Rule embodied in Section 8 of Rule 15 of the Rules of Court, all available objections that are not included in a party's motion shall be deemed waived.

APPEARANCES OF COUNSEL

Euphrasia R. Martinez for petitioner.
Balmaceda & Balmaceda Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

A party that loses its right to appeal by its own negligence cannot seek refuge in the remedy of a writ of *certiorari*.

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the August 31, 2005 Decision,[2] as well as the October 26, 2005 Resolution,[3] of the Court of Appeals (CA) in CA-G.R. SP No. 70828. The dispositive portion of the assailed CA Decision reads thus:

WHEREFORE, premises considered, the instant petition is **DENIED DUE COURSE** and is accordingly **DISMISSED**. The assailed Decision of the Regional Trial Court, Branch 6, Legazpi City dated February 21, 2002 and its Order dated March 15, 2002 are **AFFIRMED**.

SO ORDERED.[4]

Factual Antecedents

Respondent-spouses Fidel and Florinda See (respondent-spouses) were the highest bidders in the extrajudicial foreclosure

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

[2] *Id.* at 30-35; penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Elvi John S. Asuncion and Hakim S. Abdulwahid.

[3] *Id.* at 36.

[4] CA Decision, p. 5; *id.* at 34.

sale of a property[5] that was mortgaged to petitioner Home Development Mutual Fund or Pag-ibig Fund (Pag-ibig). They paid the bid price of ₱272,000.00 in cash to respondent Sheriff Manuel L. Arimado (Sheriff Arimado). In turn, respondent-spouses received a Certificate of Sale wherein Sheriff Arimado acknowledged receipt of the purchase price, and an Official Receipt No. 11496038 dated January 28, 2000 from Atty. Jaime S. Narvaez, the clerk of court with whom Sheriff Arimado deposited the respondent-spouses' payment.[6]

Despite the expiration of the redemption period, Pag-ibig refused to surrender its certificate of title to the respondent-spouses because it had yet to receive the respondent-spouses' payment from Sheriff Arimado[7] who failed to remit the same despite repeated demands.[8] It turned out that Sheriff Arimado withdrew from the clerk of court the ₱272,000.00 paid by respondent-spouses, on the pretense that he was going to deliver the same to Pag-ibig. The money never reached Pag-ibig and was spent by Sheriff Arimado for his personal use.[9]

Considering Pag-ibig's refusal to recognize their payment, respondent-spouses filed a complaint for specific performance with damages against Pag-ibig and Sheriff Arimado before Branch 3 of the Regional Trial Court (RTC) of Legazpi City. The complaint alleged that the law on foreclosure authorized Sheriff Arimado to receive, on behalf of Pag-ibig, the respondent-

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[5] The mortgaged property was covered by Transfer Certificate of Title No. 78070 and more particularly described as follows:

A parcel of land (Lot 2583-C of the subdivision plan) situated in the barrio of Tagas, Municipality of Daraga, Albay; bounded on the E., by Calle Sto. Domingo; on the S., by Lot 2583-B; on the W., by Lot 2583-D and on the N., by Lot 2583-E x x x containing an area of Two Hundred Fifty Three (253) sq. m. (RTC Decision dated October 31, 2001, p. 2; CA *rollo*, p. 16.)

[6] Complaint, pp. 1-2; *rollo*, pp. 37 and 42.

[7] *Id.* at 3; *id.* at 38.

[8] Answer, pp. 2-3; *id.* at 44-45.

[9] RTC Decision dated February 21, 2002, p. 1; CA *rollo*, p. 19.

spouses' payment. Accordingly, the payment made by respondent-spouses to Pag-ibig's authorized agent should be deemed as payment to Pag-ibig.[10] It was prayed that Sheriff Arimado be ordered to remit the amount of ₱ 272,000.00 to Pag-ibig and that the latter be ordered to release the title to the auctioned property to respondent-spouses.[11]

Pag-ibig admitted the factual allegations of the complaint (*i.e.*, the bid of respondent-spouses,[12] their full payment in cash to Sheriff Arimado,[13] and the fact that Sheriff Arimado misappropriated the money[14]) but maintained that respondent-spouses had no cause of action against it. Pag-ibig insisted that it has no duty to deliver the certificate of title to respondent-spouses unless Pag-ibig actually receives the bid price. Pag-ibig denied that the absconding sheriff was its agent for purposes of the foreclosure proceedings.[15]

When the case was called for pre-trial conference, the parties submitted their Compromise Agreement for the court's approval. The Compromise Agreement reads:

> Undersigned parties, through their respective counsels[,] to this Honorable Court respectfully submit this Compromise Agreement for their mutual interest and benefit that this case be amicably settled, the terms and conditions of which are as follows:
>
> 1. [Respondent] Manuel L. Arimado, Sheriff IV RTC, Legazpi acknowledges his obligation to the Home Development Mutual Fund (PAG-IBIG), Regional Office V, Legazpi City and/or to [respondent-spouses] the amount of ₱300,000.00, representing payment for the bid price and other necessary expenses incurred by the [respondent-spouses], the latter being the sole bidder of the property subject matter of the Extrajudicial Foreclosure Sale conducted by Sheriff

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[10] Complaint, pp. 3-5; *rollo*, pp. 38-40.

[11] *Id.* at 5-6; *id.* at 40-41.

[12] Paragraph 3 of the Answer, p. 1; *id.* at 43.

[13] Paragraphs 4 and 5 of the Answer, pp. 1-2; *id.* at 43-44.

[14] Paragraph 8 of the Answer, p. 2; *id.* at 44.

[15] Answer, pp. 2-3; *id.* at 44-45.

Arimado on January 14, 2000, at the Office of the Clerk of Court, RTC, Legazpi;

x x x x x x x x x

3. Respondent Manuel L. Arimado due to urgent financial need acknowledge[s] that he personally used the money paid to him by [respondent-spouses] which represents the bid price of the above[-]mentioned property subject of the foreclosure sale. The [money] should have been delivered/paid by Respondent Arimado to Home Development Mutual Fund (PAG-IBIG) as payment and in satisfaction of its mortgage claim.

4. Respondent Manuel L. Arimado obligates himself to pay in cash to [petitioner] Home Development Mutual Fund (PAG-IBIG) the amount of ₱272,000.00 representing full payment of its claim on or before October 31, 2001 [so] that the title to the property [could] be released by PAG-IBIG to [respondent-spouses]. An additional amount of ₱28,000.00 shall likewise be paid by [respondent] Arimado to the [respondent-spouses] as reimbursement for litigation expenses;

5. [Petitioner] Home Development Mutual Fund (PAG-IBIG) shall upon receipt of the ₱272,000.00 from [respondent] Manuel L. Arimado release immediately within a period of three (3) days the certificate of title of the property above-mentioned to [respondent-spouses] being the rightful buyer or owner of the property;

6. **In the event [respondent] Manuel L. Arimado fails to pay** [petitioner] Home Development Mutual Fund (PAG-IBIG), or, [respondent-spouses] the amount of ₱272,000.00 on or before October 31, 2001, **the [respondent-spouses] shall be entitled to an immediate writ of execution** without further notice to respondent Manuel L. Arimado **and the issue** as to whether [petitioner] Home Development Mutual Fund (PAG-IBIG) shall be liable for the release of the title to [respondent spouses] under the circumstances or allegations narrated in the complaint **shall continue to be litigated upon in order that the Honorable Court may resolve the legality of said issue;**

7. In the event [respondent] Manuel L. Arimado complies with the payment as above-stated, the parties mutually agree to withdraw all claims and counterclaim[s] they may have against each other arising out of the above-entitled case.[16]

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[16] RTC Decision dated October 31, 2001, pp. 1-2; CA *rollo*, pp. 15-16.

The trial court approved the compromise agreement and incorporated it in its Decision dated October 31, 2001. The trial court stressed the implication of paragraph 6 of the approved compromise agreement:

> Accordingly, the parties are enjoined to comply strictly with the terms and conditions of their Compromise Agreement.
>
> In the event that [respondent] Manuel L. Arimado fails to pay [petitioner] HDMF (Pag-ibig), or [respondent-spouses] the amount of ₱272,000.00 on October 31, 2001, the Court, upon motion of [respondent-spouses], may issue the necessary writ of execution.
>
> In this connection, with respect to the issue as to whether or not [petitioner] HDMF (Pag-ibig) shall be liable for the release of the title of the [respondent-spouses] under the circumstances narrated in the Complaint which necessitates further litigation in court, let the hearing of the same be set on December 14, 2001 at 9:00 o'clock in the morning.
>
> SO ORDERED.[17]

None of the parties sought a reconsideration of the aforequoted Decision.

When Sheriff Arimado failed to meet his undertaking to pay on or before October 31, 2001, the trial court proceeded to rule on the issue of whether Pag-ibig is liable to release the title to respondent-spouses despite non-receipt of their payment.[18]

Ruling of the Regional Trial Court[19]

The trial court rendered its Decision dated February 21, 2002 in favor of respondent-spouses, reasoning as follows: Under Article 1240 of the Civil Code, payment is valid when it is made to a person authorized *by law* to receive the same. In foreclosure proceedings, the sheriff is authorized by Act No. 3135 and the Rules of Court to receive payment of the bid

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[17] *Id.* at 3-4; *id.* at 17-18; penned by Judge Wenceslao R. Villanueva, Jr.

[18] Order dated February 21, 2002, *id.* at 55.

[19] RTC Decision dated February 21, 2002, *id.* at 19-22; penned by Judge Vladimir B. Brusola.

price from the winning bidder. When Pag-ibig invoked the provisions of these laws by applying for extrajudicial foreclosure, it likewise constituted the sheriff as its agent in conducting the foreclosure and receiving the proceeds of the auction. Thus, when the respondent-spouses paid the purchase price to Sheriff Arimado, a legally authorized representative of Pag-ibig, this payment effected a discharge of their obligation to Pag-ibig.

The trial court thus ordered Pag-ibig to deliver the documents of ownership to the respondent-spouses. The dispositive portion reads thus:

> WHEREFORE, premises considered, decision is hereby rendered in favor of the [respondent-spouses] and against the [petitioner] HDMF, ordering said [petitioner] to execute a Release and/or Discharge of Mortgage, and to deliver the same to the [respondent-spouses] together with the documents of ownership and the owner's copy of Certificate of Title No. T-78070 covering the property sold [to respondent-spouses] in the auction sale within ten (10) days from the finality of this decision.
>
> Should [petitioner] HDMF fail to execute the Release and/or Discharge of Mortgage and to deliver the same together with the documents of ownership and TCT No. T-78070 within ten (10) days from the finality of this decision, the court shall order the Clerk of Court to execute the said Release and/or Discharge of Mortgage and shall order the cancellation of TCT No. T-78070 and the issuance of a second owner's copy thereof.
>
> SO ORDERED.[20]

Pag-ibig filed a motion for reconsideration on the sole ground that "[Pag-ibig] should not be compelled to release the title to x x x [respondent-spouses] See because Manuel Arimado [has] yet to deliver to [Pag-ibig] the sum of ₱272,000.00."[21]

The trial court denied the motion on March 15, 2002. It explained that the parties' compromise agreement duly authorized the court to rule on Pag-ibig's liability to respondent-spouses

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[20] *Id.* at 22.

[21] Motion for Reconsideration, *id.* at 23-24.

despite Sheriff Arimado's non-remittance of the proceeds of the auction.[22]

Pag-ibig received the denial of its motion for reconsideration on March 22, 2002[23] but took no further action. Hence, on April 23, 2002, the trial court issued a writ of execution of its February 21, 2002 Decision.[24]

On May 24, 2002,[25] Pag-ibig filed before the CA a Petition for *Certiorari* under Rule 65 in order to annul and set aside the February 21, 2002 Decision of the trial court. Pag-ibig argued that the February 21, 2002 Decision, which ordered Pag-ibig to deliver the title to respondent-spouses despite its non-receipt of the proceeds of the auction, is void because it modified the final and executory Decision dated October 31, 2001.[26] It maintained that the October 31, 2001 Decision already held that Pag-ibig will deliver its title to respondent-spouses only *upon* receipt of the proceeds of the auction from Sheriff Arimado. Since Sheriff Arimado did not remit the said amount to Pag-ibig, the latter has no obligation to deliver the title to the auctioned property to respondent-spouses.[27]

Further, Pag-ibig contended that the February 21, 2002 Decision was null and void because it was issued without affording petitioner the right to trial.[28]

Ruling of the Court of Appeals[29]

The CA denied the petition due course. The CA noted that petitioner's remedy was to appeal the February 21, 2002 Decision of the trial court and not a petition for *certiorari* under Rule

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[22] Order dated March 15, 2002, *id.* at 27.

[23] CA Petition, p. 3; *id.* at 35.

[24] *Id.* at 13-14.

[25] Petitioner's Memorandum p. 7; *rollo*, p. 158.

[26] CA Petition, p. 7; CA *rollo*, p. 39.

[27] *Id.* at 5-7; *id.* at 37-39.

[28] *Id.* at 8; *id.* at 40.

[29] *Rollo*, pp. 30-35.

65. At the time the petition was filed, the Decision of the trial court had already attained finality. The CA then held that the remedy of *certiorari* was not a substitute for a lost appeal.[30]

The CA also ruled that petitioner's case fails even on the merits. It held that the February 21, 2002 Decision did not modify the October 31, 2001 Decision of the trial court. The latter Decision of the trial court expressly declared that in case Sheriff Arimado fails to pay the ₱272,000.00 to Pag-ibig, the court will resolve the remaining issue regarding Pag-ibig's obligation to deliver the title to the respondent-spouses.[31]

As to the contention that petitioner was denied due process when no trial was conducted for the reception of evidence, the CA held that there was no need for the trial court to conduct a full-blown trial given that the facts of the case were already admitted by Pag-ibig and what was decided in the February 21, 2002 Decision was only a legal issue.[32]

Petitioner filed a motion for reconsideration[33] which was denied for lack of merit in the Resolution dated October 26, 2005.[34]

Issues

Petitioner then raises the following issues for the Court's consideration:

1. Whether *certiorari* was the proper remedy;

2. Whether the February 21, 2002 Decision of the trial court modified its October 31, 2001 Decision based on the compromise agreement;

3. Whether petitioner was entitled to a trial prior to the rendition of the February 21, 2002 Decision.

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[30] CA Decision, pp. 4-5; *id.* at 33-34.

[31] *Id.* at 5; *id.* at 34.

[32] *Id.*; *id.*

[33] CA *rollo*, pp. 366-384.

[34] *Rollo*, p. 36.

Our Ruling

Petitioner argues that the CA erred in denying due course to its petition for *certiorari* and maintains that the remedy of *certiorari* is proper for two reasons: first, the trial court rendered its February 21, 2002 Decision without the benefit of a trial; and second, the February 21, 2002 Decision modified the October 31, 2001 Decision, which has already attained finality. These are allegedly two recognized instances where *certiorari* lies to annul the trial court's Decision because of grave abuse of discretion amounting to lack of jurisdiction.[35]

The argument does not impress.

"[*C*]*ertiorari* is a limited form of review and is a remedy of last recourse."[36] It is proper only when appeal is not available to the aggrieved party.[37] In the case at bar, the February 21, 2002 Decision of the trial court was appealable under Rule 41 of the Rules of Court because it completely disposed of respondent-spouses' case against Pag-ibig. Pag-ibig does not explain why it did not resort to an appeal and allowed the trial court's decision to attain finality. In fact, the February 21, 2002 Decision was already at the stage of execution when Pag-ibig belatedly resorted to a Rule 65 Petition for *Certiorari*. Clearly, Pag-ibig lost its right to appeal and tried to remedy the situation by resorting to *certiorari*. It is settled, however, that *certiorari* is not a substitute for a lost appeal, "especially if the [party's] own negligence or error in [the] choice of remedy occasioned such loss or lapse."[38]

Moreover, even assuming *arguendo* that a Rule 65 *certiorari* could still be resorted to, Pag-ibig's petition would still have to be dismissed for having been filed beyond the reglementary

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[35] Petitioner's Memorandum, pp. 15-17; *id.* at 166-168.

[36] *Heirs of Lourdes Padilla v. Court of Appeals,* 469 Phil. 196, 204 (2004).

[37] RULES OF COURT, Rule 41, Section 1, in relation to Rule 65, Section 1.

[38] *David v. Cordova,* 502 Phil. 626, 638 (2005).

period of 60 days from notice of the denial of the motion for reconsideration.[39] Pag-ibig admitted receiving the trial court's Order denying its Motion for Reconsideration on March 22, 2002;[40] it thus had until May 21, 2002 to file its petition for *certiorari*. However, Pag-ibig filed its petition only on May 24, 2002,[41] which was the 63rd day from its receipt of the trial court's order and obviously beyond the reglementary 60-day period.

Pag-ibig stated that its petition for *certiorari* was filed "within sixty (60) days *from receipt of the copy of the writ of execution* by petitioner [Pag-ibig] on 07 May 2002," which writ sought to enforce the Decision assailed in the petition.[42] This submission is beside the point. Rule 65, Section 4 is very clear that the reglementary 60-day period is counted "from notice of the judgment, order or resolution" being assailed, or "from notice of the denial of the motion [for reconsideration]," and *not* from receipt of the writ of execution which seeks to enforce the assailed judgment, order or resolution. The date of Pag-ibig's receipt of the copy of the writ of execution is therefore immaterial for purposes of computing the timeliness of the filing of the petition for *certiorari*.

Since Pag-ibig's petition for *certiorari* before the CA was an improper remedy and was filed late, it is not even necessary to look into the other issues raised by Pag-ibig in assailing the February 21, 2002 Decision of the trial court and the CA's rulings sustaining the same. At any rate, Pag-ibig's arguments on these other issues are devoid of merit.

As to Pag-ibig's argument that the February 21, 2002 Decision of the RTC is null and void for having been issued without a trial, it is a mere afterthought which deserves scant consideration. The Court notes that Pag-ibig did not object to the absence of

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[39] RULES OF COURT, Rule 65, Section 4.

[40] Petition in CA-G.R. SP No. 70828, p. 3; CA *rollo*, p. 35.

[41] Petitioner's Memorandum, p. 7; *rollo*, p. 158.

[42] Petition in CA-G.R. SP No. 70828, p. 4; CA *rollo*, p. 36.

a trial when it sought a reconsideration of the February 21, 2002 Decision. Instead, Pag-ibig raised the following lone argument in their motion:

> 3. Consequently, [Pag-ibig] should not be compelled to release the title to other [respondent-spouses] See because Manuel Arimado [has] yet to deliver to [Pag-ibig] the sum of ₱ 272,000.00.[43]

Under the Omnibus Motion Rule embodied in Section 8 of Rule 15 of the Rules of Court, all available objections that are not included in a party's motion shall be deemed waived.

Pag-ibig next argues that the February 21, 2002 Decision of the trial court, in ordering Pag-ibig to release the title despite Sheriff Arimado's failure to remit the ₱272,000.00 to Pag-ibig, "modified" the October 31, 2001 Decision. According to Pag-ibig, the October 31, 2001 Decision allegedly decreed that Pag-ibig would deliver the title to respondent-spouses *only after* Sheriff Arimado has paid the ₱272,000.00.[44] In other words, under its theory, Pag-ibig cannot be ordered to release the title if Sheriff Arimado fails to pay the said amount.

The Court finds no merit in this argument. The October 31, 2001 Decision (as well as the Compromise Agreement on which it is based) does not provide that Pag-ibig cannot be ordered to release the title if Sheriff Arimado fails to pay. On the contrary, what the Order provides is that if Sheriff Arimado fails to pay, the trial court shall litigate (and, necessarily, resolve) the issue of whether Pag-ibig is obliged to release the title. This is based on paragraph 6 of the Compromise Agreement which states that in the event Sheriff Arimado fails to pay, "the [respondent-spouses] shall be entitled to an immediate writ of execution without further notice to [Sheriff] Arimado **and the issue** as to whether [Pag-ibig] shall be liable for the release of the title to [respondent spouses] under the circumstances or allegations narrated in the complaint **shall continue to be litigated upon in order that the Honorable**

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[43] *Id.* at 23-24.

[44] Petition in CA-G.R. SP No. 70828, p. 8; *id.* at 40.

Court may resolve the legality of said issue." In fact, the trial court, in its October 31, 2001 Decision, already set the hearing of the same "on December 14, 2001 at 9:00 o'clock in the morning."[45]

It is thus clear from both the October 31, 2001 Decision and the Compromise Agreement that the trial court was authorized to litigate and resolve the issue of whether Pag-ibig should release the title upon Sheriff Arimado's failure to pay the ₱272,000.00. As it turned out, the trial court eventually resolved the issue against Pag-ibig, *i.e.*, it ruled that Pag-ibig is obliged to release the title. In so doing, the trial court simply exercised the authority provided in the October 31, 2001 Decision (and stipulated in the Compromise Agreement). The trial court did not thereby "modify" the October 31, 2001 Decision.

WHEREFORE, premises considered, the petition is *DENIED*. The assailed August 31, 2005 Decision, as well as the October 26, 2005 Resolution, of the Court of Appeals in CA-G.R. SP No. 70828 are *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Perez, and *Mendoza,*[*] *JJ.,* concur.

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[45] *Id.* at 17.

[*] Per Special Order No. 1022 dated June 10, 2011.

FIRST DIVISION

[G.R. No. 170416. June 22, 2011]

UNIVERSITY PLANS INCORPORATED, *petitioner, vs.* **BELINDA P. SOLANO, TERRY A. LAMUG, GLENDA S. BELGA, MELBA S. ALVAREZ,[*] WELMA R. NAMATA, MARIETTA D. BACHO and MANOLO L. CENIDO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION (NLRC); APPEALS; POSTING OF BOND IS INDISPENSABLE TO THE PERFECTION OF AN APPEAL IN CASES INVOLVING MONETARY AWARDS FROM THE DECISION OF THE LABOR ARBITER.— Article 223 of the Labor Code provides in part: Article 223. *Appeal.* – Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x **In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond** issued by a reputable bonding company duly accredited by the Commission **in the amount equivalent to the monetary award in the judgment appealed from.** x x x. While pertinent portions of Sections 4 and 6, Rule VI of the Revised Rules of Procedure of the NLRC read: SECTION 4. REQUISITES FOR PERFECTION OF APPEAL – a) The appeal shall be: x x x **ii) posting of a cash or surety bond as provided in Section 6 of this Rule**; x x x SECTION 6. BOND. – **In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.** x x x **No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a**

[*] Also spelled as "Almarez" in some parts of the records.

reasonable amount in relation to the monetary award. x x x The abovementioned provisions highlight the importance of posting a cash or surety bond in the perfection of an appeal to the NLRC from the Labor Arbiter's judgment involving a monetary award. Thus, in *Ramirez v. Court of Appeals,* this Court held, *viz*: Under the Rules, appeals involving monetary awards are perfected only upon compliance with the following mandatory requisites, namely: (1) payment of the appeal fees; (2) filing of the memorandum of appeal; and (3) **payment of the required cash or surety bond.** The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the labor arbiter. The intention of the lawmakers to make the bond a mandatory requisite for the perfection of an appeal by the employer is clearly expressed in the provision that an appeal by the employer may be perfected 'only upon the posting of a cash or surety bond.'

2. ID.; ID.; ID.; NLRC'S REVISED RULES OF PROCEDURE; SECTION 6, RULE VI THEREOF; WHEN THE AMOUNT OF BOND MAY BE REDUCED; GUIDELINES.— [U]nder Section 6, Rule VI of the NLRC's Revised Rules of Procedure, the bond may be reduced albeit only on meritorious grounds and upon posting of a partial bond in a reasonable amount in relation to the monetary award. Suffice it to state that while said Rules "allows the Commission to reduce the amount of the bond, the exercise of the authority is not a matter of right on the part of the movant, but lies within the sound discretion of the NLRC upon a showing of meritorious grounds." In *Nicol v. Footjoy Industrial Corporation,* the Court reviewed the jurisprudence respecting the bond requirement for perfecting appeal and summarized the guidelines under which the NLRC must exercise its discretion in considering an appellant's motion for reduction of bond, *viz*: [T]he bond requirement on appeals involving monetary awards has been and may be relaxed in meritorious cases. These cases include instances in which (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.

3. ID.; ID.; ID.; NOT PRECLUDED FROM CONDUCTING A PRELIMINARY DETERMINATION OF THE MERIT OR LACK OF MERIT OF A MOTION TO REDUCE BOND.— Notwithstanding petitioner's failure to submit its financial statement and list of sources of income and to give more details relative to its receivership, it was nevertheless able to show through the abovementioned SEC Orders that it was indeed under a state of receivership. This should have been sufficient reason for the NLRC to not outrightly deny petitioner's motion. As to the lacking documents and details on the receivership, it is true that they are needed by the NLRC in determining petitioner's capacity to post the required amount of bond. However, their absence should not lead to the outright denial of the motion since as earlier discussed, the NLRC is not precluded from conducting a preliminary determination on the merit or lack of merit of a motion to reduce bond. Here, considering the clear showing of petitioner's state of receivership, the NLRC should have conducted such preliminary determination and therein require the submission of said documents and other necessary evidence before proceeding to resolve the subject motion. After all, the present case falls under those cases where the bond requirement on appeal may be relaxed considering that (1) there was substantial compliance with the Rules; (2) the surrounding facts and circumstances constitute meritorious grounds to reduce the bond; and (3) the petitioner, at the very least, exhibited its willingness and/or good faith by posting a partial bond during the reglementary period. Also, such a procedure would be in keeping with the Labor Code's mandate to 'use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.' We thus find error on the part of the NLRC when it denied petitioner's Motion to Reduce Bond and likewise on the part of the CA when it affirmed said denial.

APPEARANCES OF COUNSEL

Rayala Alonso & Partners for petitioner.

Ishiwata Ishiwata Fernandez Barot and Associates for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The National Labor Relations Commission (NLRC) is not precluded from conducting a preliminary determination of the merit or lack of merit of a motion to reduce bond.[1]

This Petition for Review on *Certiorari* assails the Decision[2] dated October 27, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 77397 which denied the Petition for *Certiorari* filed before it. Likewise assailed is the CA Resolution[3] dated November 10, 2005 denying the Motion for Reconsideration thereto.

Factual Antecedents

Respondents Belinda P. Solano (Solano), Terry A. Lamug (Lamug), Glenda S. Belga (Belga), Melba S. Alvarez (Alvarez), Welma R. Namata (Namata), Marietta D. Bacho (Bacho) and Manolo L. Cenido (Cenido) filed before the Labor Arbiter complaints for illegal dismissal, illegal deductions, overriding commissions, unfair labor practice, moral and exemplary damages, and actual damages against petitioner University Plans Incorporated.

Ruling of the Labor Arbiter

In a Decision[4] dated July 31, 2000, the Labor Arbiter found petitioner guilty of illegal dismissal and ordered respondents' reinstatement as well as the payment of their full backwages, proportionate 13th month pay, moral/exemplary damages, and attorney's fees, *viz*:

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[1] *Nicol v. Footjoy Industrial Corporation*, G.R. No. 159372, July 27, 2007, 528 SCRA 300, 312-313.

[2] CA *rollo*, pp. 214-221; penned by Associate Justice Danilo B. Pine and concurred in by Associate Justices Rodrigo V. Cosico and Vicente S.E. Veloso.

[3] *Id.* at 240-241.

[4] *Id.* at 124-141.

WHEREFORE, premises considered, the respondents University Plans, Inc., Ernesto D. Tuazon, Joel D. Paguio, Maribel Sto. Domingo and Renato P. Dragon are hereby ordered to reinstate the seven complainants to their former positions without loss of seniority rights and other appurtenant benefits and to pay said complainants jointly and severally the amounts computed as follows:

	Backwages	13th Month Pay	Moral/Exemplary Damages
1. Belinda Solano	₱701,666.66	₱30,000.00	₱10,000.00
2. Glenda S. Belga	245,583.33	10,500.00	10,000.00
3. Welma R. Namata	245,583.33	10,500.00	10,000.00
4. Melba S. Almarez	243,168.33	8,085.00	10,000.00
5. Marrieta D. Bacho	191,317.75	4,930.75	10,000.00
6. Terry E. Lamug	505,833.33	7,500.00	10,000.00
7. Manolo L. Ceñido	801,937.50	36,993.75	10,000.00

Respondents are likewise ordered to pay attorney's fees equivalent to ten (10%) percent of the judgment award.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.[5]

Ruling of the National Labor Relations Commission

Petitioner filed before the NLRC its Memorandum on Appeal[6] as well as a Motion to Reduce Bond.[7] Simultaneous with the filing of said pleadings, it posted a cash bond in the amount of ₱30,000.00.

In its Motion to Reduce Bond, petitioner alleged that it was under receivership and that it cannot dispose of its assets at such a short notice. Because of this, it could not post the required bond. Nevertheless, it has ₱30,000.00 available for immediate disposition and thus prayed that said amount be deemed sufficient to satisfy the required bond for the perfection of its appeal.

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[5] *Id.* at 140-141.

[6] *Id.* at 142-155.

[7] *Id.* at 156-157.

In an Order[8] dated April 25, 2001, the NLRC denied petitioner's Motion to Reduce Bond and directed it to post an additional appeal bond in the amount of ₱3,013,599.50 within an unextendible period of 10 days from notice, otherwise the appeal shall be dismissed for non-perfection. In resolving the motion, the NLRC held that the amount of the appeal bond is fixed by law pursuant to Article 223 of the Labor Code which provides in part that:

> Article 223. *Appeal* . - x x x
>
> In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission *in the amount equivalent to the monetary award in the judgment appealed from.* (Emphasis ours.)
>
> x x x x x x x x x

Petitioner filed a Motion for Reconsideration[9] insisting that the NLRC has the discretion to reduce the appeal bond upon motion of appellant and on meritorious grounds. It argued that the fact that it was under receivership and could not dispose of any or all of its assets without prior court approval are meritorious grounds justifying the reduction of the appeal bond.

The NLRC, however, denied petitioner's motion for reconsideration in a Resolution[10] dated March 21, 2003. It ruled that while it has the discretion to reduce the appeal bond, it is nevertheless not persuaded that petitioner was incapable of posting the required bond. It noted that petitioner failed to submit any financial statement or provide details anent its alleged receivership or its sources of income. Citing *Rubber World (Phils.) Inc. v. National Labor Relations Commission*[11] where the Security and Exchange Commission (SEC) issued an Order

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[8] *Id.* at 41-44.

[9] *Id.* at 45-49.

[10] *Id.* at 51-55.

[11] 391 Phil. 318 (2000).

of Suspension of Payments, the NLRC noted that this was not obtaining in the present case. And since the appeal was not perfected due to petitioner's failure to post the required bond, the NLRC dismissed the same.

Unsatisfied, petitioner went to the CA through a Petition for *Certiorari*.[12]

Ruling of the Court of Appeals

In a Decision[13] dated October 27, 2004, the CA held that the NLRC in meritorious cases and upon motion by the appellant may reduce the amount of the bond. However, in order for the NLRC to exercise this discretion, it is imperative for the petitioner to show veritable proof that it is entitled to the same. Since petitioner failed to provide the NLRC with sufficient basis to determine its incapacity to post the required appeal bond, the CA opined that the NLRC's denial of petitioner's Motion to Reduce Bond was justified. Hence, it denied the petition.

As petitioner's Motion for Reconsideration[14] was likewise denied in a Resolution[15] dated November 10, 2005, petitioner is now before this Court through the present Petition for Review on *Certiorari*.[16]

Issues

Petitioner advances the following grounds:

I.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR WHEN IT DID NOT CONSIDER THE FACT THAT PETITIONER UNIVERSITY PLANS, INC. IS UNDER RECEIVERSHIP.

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

[13] *Id.* at 214-221.

[14] *Id.* at 225-237.

[15] *Id.* at 240-241.

[16] *Rollo*, pp. 9-39.

II.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR WHEN IT FAILED TO CONSIDER AND DISPOSE OF THE MERITS OF THE CASE.

A. THERE WAS ABSENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN RESPONDENTS SOLANO, BELGA, NAMATA, LAMUG AND ALVAREZ AND UPI.

B. RESPONDENT BACHO WAS VALIDLY RETRENCHED.

C. RESPONDENT CENIDO WAS DISMISSED FOR CAUSE.

III.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR, WHEN IT FAILED TO APPRECIATE THE FACT [THAT] MESSRS. ERNESTO D. TUAZON AND JOEL D. PAGUIO, MS. MARIBEL STO. DOMINGO AND MR. RENATO DRAGON, WERE IMPROPERLY IMPLEADED AND CONSEQUENTLY, THE LABOR ARBITER DID NOT ACQUIRE JURISDICTION OVER THEM.

IV.

CONSEQUENTLY, IT IS SIMPLY GRAVE ABUSE OF DISCRETION, NOT TO MENTION GROSS AND PALPABLE ERROR FOR THE HONORABLE COURT OF APPEALS TO HAVE UPHELD THE LABOR ARBITER'S ORDER OF REINSTATEMENT OF RESPONDENTS AND TO PAY THEM BACKWAGES, MORAL AND EXEMPLARY DAMAGES AND 10% ATTORNEY'S FEES.[17]

The Parties' Arguments

Petitioner stresses that it is under receivership pursuant to Presidential Decree No. 902-A. As such, all pending actions for claims are automatically stayed to enable the management committee or the rehabilitation receiver to effectively exercise its powers free from any judicial or extrajudicial interference. And since such suspension is automatic, there is no need for it to submit an Order of Suspension of Payments from the SEC, contrary to the ruling of the NLRC. The Cease and Desist

[17] *Id.* at 19-20.

Order[18] dated August 23, 1999 and the May 23, 2000 Order[19] placing petitioner under receivership both issued by the SEC would have sufficed.

Also, since its assets could not be disposed of nor could a case be filed against its receiver without prior leave of court pursuant to Section 6, Rule 59 of the Rules of Court,[20] petitioner argues it was difficult for it to raise the required amount of the bond. Petitioner insists that the NLRC should have considered these circumstances when it resolved its Motion to Reduce Bond and likewise by the CA when it affirmed the NLRC's denial of said motion. Besides, this Court, in several cases, has relaxed the requirement of posting an appeal bond as a condition for perfecting an appeal under Article 223 of the Labor Code in line with the desired objective of resolving the controversies on the merits.

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[18] CA *rollo*, pp. 158-159; In this Cease and Desist Order, petitioner, its officers and agents were prohibited from further selling, soliciting or offering any kind of pre-need plans to the public; from collecting premiums/installments due from planholders; from withdrawing from its trust funds or any kind of disposition thereof. All of petitioner's assets and properties, regardless of nature and location were likewise ordered frozen. This Order was issued after petitioner failed to comply with the SEC directive to complete its trust fund deficiencies and to submit its actual valuation report and audited financial statements, among others.

[19] *Id.* at 161-162; This Order placed petitioner under the management and control of a receiver, enumerated the power and responsibilities of the latter, and appointed Atty. Edgar Tarriela as such receiver.

[20] Sec. 6. *General powers of receiver*. – Subject to the control of the court in which the action or proceeding is pending, a receiver shall have the power to bring and defend, in such capacity, actions in his own name; to take and keep possession of the property in controversy; to receive rents; to collect debts due to himself as receiver or to the fund, property, estate, person, or corporation of which he is the receiver, to compound for and compromise the same; to make transfers; to pay outstanding debts; to divide the money and other property that shall remain among the persons legally entitled to receive the same; and generally to do such acts respecting the property as the court may authorize. However, funds in the hands of a receiver may be invested only by order of the court upon the written consent of all the parties to the action.

Petitioner likewise faults the CA when it did not dispose of the case on the merits. It then insists that there is no employer-employee relationship between it and respondents Solano, Belga, Namata, Lamug and Alvarez; that respondent Bacho was validly retrenched; that respondent Cenido was dismissed for cause; and consequently, that they are all not entitled to reinstatement, backwages, moral and exemplary damages, and attorney's fees. It also asserts that its officers should not have been held jointly and severally liable to respondents.

For their part, respondents aver that the CA correctly affirmed the NLRC's denial of petitioner's Motion to Reduce Bond. Aside from the very clear provisions of Article 223 of the Labor Code and of Section 6, Rule VI of the NLRC Rules of Procedure on the matter, the discretion to reduce the appeal bond rests upon the NLRC and only in justifiable and meritorious cases. And since petitioner failed to justify its claim to a reduction of the appeal bond, the NLRC properly denied its motion.

Respondents likewise assert that petitioner has already lost its right to appeal considering that same was not perfected when it failed to put up the required appeal bond within the time prescribed by the NLRC. Because of this, the Labor Arbiter's Decision became final and executory and, hence, the NLRC did not err in not touching upon the merits of the appeal.

Meanwhile, in the Memorandum[21] filed by respondent Solano, she informs this Court that upon verification from the SEC, petitioner was placed under liquidation as early as 2002. This can further be deduced from the September 1, 2003 Order[22] of the SEC designating Atty. Francis Carlo D. Taparan as its liquidator and from the February 13, 2007 letter[23] of SEC Secretary C.A. Gerard M. Lukban, which quoted excerpts from the minutes of the April 13, 2005 SEC Meeting designating him as petitioner's new liquidator. In view of these, respondents

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[21] *Rollo*, pp. 275-287.

[22] *Id.* at 288, 290.

[23] *Id.* at 291.

argue that petitioner's claim of receivership has already lost significance and therefore has become moot and academic.

Our Ruling

There is merit in the petition.

Posting of bond is indispensable to the perfection of an appeal in cases involving monetary awards from the Decision of the Labor Arbiter.

Article 223 of the Labor Code provides in part:

Article 223. *Appeal.* – Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x

x x x x x x x x x

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission **in the amount equivalent to the monetary award in the judgment appealed from.** (Emphasis supplied.)

x x x x x x x x x

While pertinent portions of Sections 4 and 6, Rule VI of the Revised Rules of Procedure of the NLRC read:

SECTION 4. REQUISITES FOR PERFECTION OF APPEAL – a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and 5) accompanied by i) proof of payment of the required appeal fee; **ii) posting of a cash or surety bond as provided in Section 6 of this Rule**; iii) a certificate of non-forum shopping; and iv) proof of service upon the other parties.

x x x x x x x x x

SECTION 6. BOND. – **In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.**

x x x x x x x x x

No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award. x x x (Emphasis supplied.)

The abovementioned provisions highlight the importance of posting a cash or surety bond in the perfection of an appeal to the NLRC from the Labor Arbiter's judgment involving a monetary award. Thus, in *Ramirez v. Court of Appeals*,[24] this Court held, *viz*:

Under the Rules, appeals involving monetary awards are perfected only upon compliance with the following mandatory requisites, namely: (1) payment of the appeal fees; (2) filing of the memorandum of appeal; and (3) **payment of the required cash or surety bond.**

The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the labor arbiter. The intention of the lawmakers to make the bond a mandatory requisite for the perfection of an appeal by the employer is clearly expressed in the provision that an appeal by the employer may be perfected 'only upon the posting of a cash or surety bond.' The word 'only' in Article 223 of the Labor Code makes it unmistakably plain that the lawmakers intended the posting of a cash or surety bond by the employer to be the essential and exclusive means by which an employer's appeal may be perfected. The word 'may' refers to the perfection of an appeal as optional on the part of the defeated party, but not to the compulsory posting of an appeal bond, if he desires to appeal. The meaning and the intention of the legislature in enacting a statute must be determined from the language employed; and where there is no ambiguity in the words used, then

[24] G.R. No. 182626, December 4, 2009, 607 SCRA 752, 761-762.

there is no room for construction.[25] (Emphasis supplied; citations omitted.)

When the amount of bond may be reduced.

Notably, however, under Section 6, Rule VI of the NLRC's Revised Rules of Procedure, the bond may be reduced albeit only on meritorious grounds and upon posting of a partial bond in a reasonable amount in relation to the monetary award. Suffice it to state that while said Rules "allows the Commission to reduce the amount of the bond, the exercise of the authority is not a matter of right on the part of the movant, but lies within the sound discretion of the NLRC upon a showing of meritorious grounds."[26]

In *Nicol v. Footjoy Industrial Corporation*,[27] the Court reviewed the jurisprudence[28] respecting the bond requirement for perfecting appeal and summarized the guidelines under which

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[25] *Id.*

[26] *Id.* at 765.

[27] *Supra* note 1.

[28] *Star Angel Handicraft v. National Labor Relations Commission*, G.R. No. 108914, September 20, 1994, 236 SCRA 580; *Rural Bank of Coron (Palawan), Inc. v. Cortes*, G.R. No. 164888, December 6, 2006, 510 SCRA 443; *Postigo v. Philippine Tuberculosis Society, Inc.*, G.R. No. 155146, January 24, 2006, 479 SCRA 628; *Rosewood Processing, Inc. v. National Labor Relations Commission*, 352 Phil. 1013 (1998); *Blancaflor v. National Labor Relations Commission*, G.R. No. 101013, February 2, 1993, 218 SCRA 366; *Rada v. National Labor Relations Commission*, G.R. No. 96078, January 9, 1992, 205 SCRA 69; *YBL (Your Bus Line) v. National Labor Relations Commission*, G.R. No. 93381, September 28, 1990, 190 SCRA 160; *Nationwide Security and Allied Services, Inc. v. National Labor Relations Commission*, 341 Phil. 393 (1997); *Ong v. Court of Appeals*, G.R. No. 152494, September 22, 2004, 438 SCRA 668; *Calabash Garments, Inc. v. National Labor Relations Commission*, 329 Phil. 226 (1996); *Biogenerics Marketing and Research Corporation v. National Labor Relations Commission*, 372 Phil. 653 (1999); *Ciudad Fernandina Food Corporation (CFFC) Employees Union-Associated Labor Unions v. Court of Appeals*, G.R. No. 166594, July 20, 2006, 495 SCRA 807.

the NLRC must exercise its discretion in considering an appellant's motion for reduction of bond, *viz*:

> [T]he bond requirement on appeals involving monetary awards has been and may be relaxed in meritorious cases. These cases include instances in which (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.
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> Conversely the reduction of the bond is not warranted when no meritorious ground is shown to justify the same; the appellant absolutely failed to comply with the requirement of posting a bond, even if partial; or when the circumstances show the employer's unwillingness to ensure the satisfaction of its workers' valid claims.[29]

The NLRC is not precluded from conducting a preliminary determination of the merit or lack of merit of a motion to reduce bond.

In *Nicol*, the Labor Arbiter ordered the employer to pay the employees monetary award in the total amount of ₱51,956,314.00. When the employer appealed to the NLRC, it claimed that it was in dire financial condition and thus moved to reduce the bond to ₱10 million, for which it posted a surety bond. The NLRC however denied the motion and required the employer to file an additional bond of ₱41,956,314.00. Failing to do so, the NLRC dismissed the employer's appeal for non-perfection thereof.

On appeal, the CA held that the NLRC should have determined the merit of employer's grounds for the reduction of its appeal bond through the reception of evidence instead of requiring it to put up a bond in the equivalent amount of the award without regard to its reasons and arguments, and without determining for itself what amount would be reasonable under the

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[29] *Nicol v. Footjoy Industrial Corporation*, *supra* note 1 at 318.

circumstances. Hence, it directed the NLRC to consider the employer's motion to reduce bond after receiving evidence thereon, and upon a timely posting of the required reasonable *supersedeas* bond, to give due course to the appeal and to determine the merits of the case.

When the case reached this Court, we affirmed the CA's ruling that the NLRC gravely abused its discretion in denying the motion to reduce bond peremptorily without considering the evidence presented. We further ruled, *viz*:

> [T]he NLRC was not precluded from making a preliminary determination of their [the employer] financial capability to post the required bond, without necessarily passing upon the merits. Since the intention is merely to give the NLRC an idea of the justification for the reduced bond, the evidence for the purpose would necessarily be less than the evidence required for a ruling on the merits.
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> Indeed, it only bears stressing that the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases. On the contrary, the Labor Code explicitly mandates it to 'use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.[30]

The NLRC erred in not considering the merit or lack of merit of petitioner's Motion to Reduce Bond.

Petitioner attached to its Motion to Reduce Bond the SEC Orders dated August 23, 1999 and May 23, 2000. The Order of August 23, 1999 is a Cease and Desist Order which, among others, prohibited the officers and agents of petitioner from withdrawing from its trust funds or from making any disposition thereof and, ordered the freeze of all its assets and properties. On the other hand, the May 23, 2000 Order reads in part that:

> In view of the voluntary request for receivership of the University Plans, Inc. (UPI), after being found to have a Trust Fund and Capital Deficiency, unable to pay the same despite its commitment to pay,

[30] *Id*. at 312.

and pursuant to Presidential Decree No. 902-A, as amended, **University Plans, Inc. is therefore, placed under the management and control of a RECEIVER** x x x[31] (Emphasis supplied.)

From the said SEC Orders, it is unmistakable that petitioner was under receivership. And from the tenor and contents of said Orders, it is possible that petitioner has no liquid asset which it could use to post the required amount of bond. Also, it is quite understandable that because of petitioner's financial state, it cannot raise the amount of more than ₱3 million within a period of 10 days from receipt of the Labor Arbiter's judgment.

However, the NLRC ignored petitioner's allegations and instead remained adamant that since the amount of bond is fixed by law, petitioner must post an additional bond of more than ₱3 million. This, to us, is an utter disregard of the provision of the Labor Code and of the NLRC Revised Rules of Procedure allowing the reduction of bond in meritorious cases. While the NLRC tried to correct this error in its March 21, 2003 Resolution[32] by further explaining that it was not persuaded by petitioner's alleged incapability of posting the required amount of bond for failure to submit financial statement, list of sources of income and other details with respect to the alleged receivership, we still find the hasty denial of the motion to reduce bond not proper.

Notwithstanding petitioner's failure to submit its financial statement and list of sources of income and to give more details relative to its receivership, it was nevertheless able to show through the abovementioned SEC Orders that it was indeed under a state of receivership. This should have been sufficient reason for the NLRC to not outrightly deny petitioner's motion. As to the lacking documents and details on the receivership, it is true that they are needed by the NLRC in determining petitioner's capacity to post the required amount of bond. However, their absence should not lead to the outright denial

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[31] CA *rollo*, p. 161.

[32] In this Resolution, the NLRC denied petitioner's Motion for Reconsideration of the Order denying the Motion to Reduce Bond, and dismissed the appeal for non-perfection thereof.

of the motion since as earlier discussed, the NLRC is not precluded from conducting a preliminary determination on the merit or lack of merit of a motion to reduce bond. Here, considering the clear showing of petitioner's state of receivership, the NLRC should have conducted such preliminary determination and therein require the submission of said documents and other necessary evidence before proceeding to resolve the subject motion. After all, the present case falls under those cases where the bond requirement on appeal may be relaxed considering that (1) there was substantial compliance with the Rules;[33] (2) the surrounding facts and circumstances constitute meritorious grounds to reduce the bond; and (3) the petitioner, at the very least, exhibited its willingness and/or good faith by posting a partial bond during the reglementary period. Also, such a procedure would be in keeping with the Labor Code's mandate to 'use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.'[34] We thus find error on the part of the NLRC when it denied petitioner's Motion to Reduce Bond and likewise on the part of the CA when it affirmed said denial.

In view of the foregoing, a remand of this case to the NLRC for the conduct of preliminary determination of the merit or lack of merit of petitioner's Motion to Reduce Bond is proper. In so doing, the NLRC is also reminded to consider respondent Solano's allegation that petitioner is now under liquidation and to receive evidence thereon so that it may judiciously resolve the Motion to Reduce Bond. As regards the issues relating to the substantial merits of the case, we shall leave the same to the NLRC. This is because should the NLRC eventually find the Motion to Reduce Bond meritorious, it shall give due course to the appeal upon the timely posting of a reasonable amount

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[33] Petitioner filed a Memorandum on Appeal, paid the appeal fee, and posted a partial bond of ₱30,000.00 within the reglementary period; See the Memorandum on Appeal and the marginal notations thereon, *rollo*, pp. 112-124.

[34] *Nicol v. Footjoy Industrial Corporation, supra* note 1 at 312.

of *supersedeas* bond it deems appropriate under the circumstances, and shall then proceed to determine the merits of the case.

WHEREFORE, the petition is *GRANTED*. The assailed Decision dated October 27, 2004 and Resolution dated November 10, 2005 of the Court of Appeals in CA-G.R. SP No. 77397 are *REVERSED and SET ASIDE*. This case is ordered *REMANDED* to the National Labor Relations Commission for the conduct of preliminary determination of the merit or lack of merit of petitioner's Motion to Reduce Bond. Should the National Labor Relations Commission find the Motion to Reduce Bond meritorious, it is directed to give due course to the appeal upon timely filing of a reasonable *supersedeas* bond in an amount it deems appropriate under the circumstances, and to hear and resolve the case with dispatch.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Perez, and *Mendoza,*[**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 170646. June 22, 2011]

MA. LIGAYA B. SANTOS, *petitioner, vs.* **LITTON MILLS INCORPORATED and/or ATTY. RODOLFO MARIÑO,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITIONS FOR *CERTIORARI* BEFORE THE COURT OF APPEALS;

[**] Per Special Order No. 1022 dated June 10, 2011.

[*] Also referred as Atty. Rodolfo Marino in some parts of the records.

REQUIREMENTS. — Under Section 3, Rule 46 of the Rules of Court, petitions for *certiorari* shall contain, among others, the full names and actual addresses of all the petitioners and respondents. The petitioner should also submit together with the petition a sworn certification that (a) he has not theretofore commenced any other action 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, he must state the status of the same; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall promptly inform the court within five days therefrom. The Rule explicitly provides that failure to comply with these requirements shall be sufficient ground to dismiss the petition.

2. ID.; ID.; ID.; ID.; MENTION OF THE PARTIES' RESPECTIVE COUNSEL'S ADDRESSES CONSTITUTES SUBSTANTIAL COMPLIANCE WITH THE RULES.— In the petition for *certiorari* filed before the CA, petitioner indeed failed to indicate the actual addresses of the parties. However, she clearly mentioned that the parties may be served with the Court's notices or processes through their respective counsels whose addresses were clearly specified. x x x To us, the mention of the parties' respective counsel's addresses constitutes substantial compliance with the requirements of Section 3, Rule 46 of the Rules of Court which provides in part that "[t]he petition shall contain the full names and actual addresses of all the petitioners and respondents." Our observation further finds support in Section 2, Rule 13 which pertinently provides that "[i]f any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the Court." As we held in *Garrucho v. Court of Appeals*, "[n]otice or service made upon a party who is represented by counsel is a nullity. Notice to the client and not to his counsel of record is not notice in law." Moreover, in her motion for reconsideration, petitioner explained that she was of the honest belief that the mention of the counsel's address was sufficient compliance with the rules. At any rate, she fully complied with the same when she indicated in her Motion for Reconsideration the actual addresses of the parties.

3. ID.; ID.; ID.; ID.; CERTIFICATION OF NON-FORUM SHOPPING; RULE THEREON SUBSTANTIALLY COMPLIED WITH.— A reading of x x x Verification with Certification reveals that petitioner nonetheless certified therein that she has not filed a similar case before any other court or tribunal and that she would inform the court if she learns of a pending case similar to the one she had filed therein. This, to our mind is more than substantial compliance with the requirements of the Rules. It has been held that "with respect to the contents of the certification[,] x x x the rule on substantial compliance may be availed of." Besides, in her Motion for Reconsideration, petitioner rectified the deficiency in said Verification with Certification, x x x It is settled that "subsequent and substantial compliance may call for the relaxation of the rules of procedure." The Court has time and again relaxed the rigid application of the rules to offer full opportunity for parties to ventilate their causes and defenses in order to promote rather than frustrate the ends of justice. Because there was substantial and subsequent compliance in this case, we resolve to apply the liberal construction of the rules if only to secure the greater interest of justice. Thus, the CA should have given due course to the petition.

APPEARANCES OF COUNSEL

Carlo A. Domingo for petitioner.
Baizas Magsino Recinto Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

"Once again, we must stress that the technical rules of procedure should be used to promote, not frustrate, the cause of justice. While the swift unclogging of court dockets is a laudable aim, the just resolution of cases on their merits, however, cannot be sacrificed merely in order to achieve that objective. Rules of procedure are tools designed not to thwart but to facilitate the attainment of justice; thus, their strict and rigid application may, for good and deserving reasons, have to give

way to, and be subordinated by, the need to aptly dispense substantial justice in the normal course."[1]

This Petition for Review on *Certiorari*[2] assails the March 10, 2005 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 88601, which dismissed petitioner Ma. Ligaya B. Santos' (petitioner) Petition for *Certiorari* filed therewith for being defective in form, as well as the November 29, 2005 Resolution[4] which denied her Motion for Reconsideration. Likewise sought to be set aside are the August 27, 2004 and November 30, 2004 Resolutions[5] of the National Labor Relations Commission (NLRC) and the November 28, 2003 Decision[6] of Labor Arbiter Pablo C. Espiritu, Jr. in NLRC NCR Case No. 00-02-01560-2003, which dismissed petitioner's complaint for illegal dismissal against respondents Litton Mills, Inc. (respondent Litton Mills) and/or Atty. Rodolfo Mariño (respondent Atty. Mariño).

Factual Antecedents

Petitioner was hired on December 5, 1989 by respondent Litton Mills, a company engaged in the business of manufacturing textile materials. It used to sell its used sludge oil and other waste materials through its Plant Administration and Services Department, wherein petitioner was assigned as clerk.

On September 28, 2002,[7] respondent Atty. Mariño, personnel manager of respondent Litton Mills, directed petitioner to explain in writing why no disciplinary action should be imposed on her

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[1] *Fiel v. Kris Security Systems, Inc.*, 448 Phil.657, 662 (2003).

[2] *Rollo*, pp. 10-25.

[3] CA *rollo*, pp. 148-149; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr.

[4] *Id.* at 159.

[5] *Id.* at 18-27 and 28-29, respectively; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[6] *Id.* at 30-41.

[7] *Id.* at 94.

after having been caught engaging in an unauthorized arrangement with a waste buyer. Allegedly, petitioner has been demanding money from a certain Leonardo A. Concepcion (Concepcion) every time he purchases scrap and sludge oil from the company and threatening to withhold the release of the purchased materials by delaying the release of official delivery receipt and gate pass if he would not oblige. Respondent Atty. Mariño also informed petitioner that she will be placed under preventive suspension for 15 days pending investigation of her case.

In her letter-reply,[8] petitioner denied the accusation and explained that her job is merely clerical in nature and that she has no authority to hold the release of purchased waste items. Petitioner averred that the ₱2,000.00 she obtained from Concepcion was in payment for the loan she had extended to Concepcion's wife; and, that her practice of lending money to increase her income cannot be considered as an irregularity against her employer.

Meanwhile, a criminal complaint for robbery/extortion was lodged before the City Prosecutor of Pasig City against petitioner which was eventually filed in court.[9]

On October 1, 2002, respondent Atty. Mariño notified petitioner that an administrative investigation is scheduled on October 4, 2002 and requested her to appear and present her defenses on the charges. During the hearing, petitioner, represented by three officers of the union of which she was a member, submitted a Motion for Reinvestigation[10] (which she also filed in the criminal case for extortion), with a Counter-Affidavit[11] attached therein. She pointed out that it is not within her power to intimidate or threaten any buyer regarding the release of the company's waste items. Petitioner also presented a copy of her handwritten

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[8] Dated September 29, 2002, *id.* at 95-96.

[9] See Investigation Report of Police dated September 30, 2002, *id.* at 97.

[10] *Id.* at 107-109.

[11] *Id.* at 110-112.

notes[12] showing a list of entries representing the debts owed to her by different debtors including Concepcion's wife.

On October 11, 2002, petitioner received a Letter of Termination[13] from respondents for obtaining or accepting money as a result of an unauthorized arrangement with a waste buyer, an act considered as affecting company interests, in violation of Section 2.04 of the company's Code of Conduct for Employee Discipline.[14] On February 4, 2003, petitioner filed a Complaint[15] for illegal dismissal against respondents which was later amended to include a prayer for moral and exemplary damages and attorney's fees.

Ruling of the Labor Arbiter

In a Decision dated November 28, 2003, the Labor Arbiter dismissed the complaint after finding that there was just cause for dismissal and proper observance of due process. The Labor Arbiter ruled that the pendency of the criminal case for extortion is an indication that there is sufficient evidence that petitioner is responsible for the offense charged, and that only substantial evidence and not proof beyond reasonable doubt is necessary for a valid dismissal. The Labor Arbiter was not convinced that the money which petitioner received from Concepcion was intended as payment for a loan and even if it was, it is still unauthorized and prohibited by the company rules. The claim for damages was likewise dismissed for lack of merit.

Ruling of the National Labor Relations Commission

On appeal, petitioner argued that the Labor Arbiter erred in relying on the pending criminal case in finding her dismissal as valid and claimed that the charge should first be proven. She thereafter filed an Urgent Manifestation[16] to inform the tribunal

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[12] *Id.* at 113-115.

[13] *Id.* at 117.

[14] *Id.* at 121.

[15] *Id.* at 119-120.

[16] *Id.* at 143-146.

that on April 20, 2004, the Regional Trial Court of Pasig City, Branch 167 has rendered a Decision[17] acquitting her of the criminal charge and declaring that she merely demanded payment for a loan and thus did not illegally exact money from Concepcion.

The NLRC, however, affirmed the findings of the Labor Arbiter in its Resolution dated August 27, 2004.[18] It held that petitioner's acquittal in the criminal case has no bearing on the illegal dismissal case since she was dismissed for accepting money by reason of an unauthorized arrangement with a client. This, according to the NLRC, is an infraction of the company's Code of Conduct for employees punishable by dismissal even for the first violation.

In its Resolution dated November 30, 2004,[19] the NLRC denied petitioner's Motion for Reconsideration.

Ruling of the Court of Appeals

Petitioner filed a Petition for *Certiorari*[20] with the CA. However, in a Resolution dated March 10, 2005, the CA dismissed the petition for failure of the petitioner to indicate in the petition the actual addresses of the parties and to state in the Verification and Certification of non-forum shopping that there were no other pending cases between the parties at the time of filing. The March 10, 2005 Resolution reads:

> Petition is hereby DISMISSED due to the following jurisdictional flaws:
>
> 1. Actual addresses of the parties were not disclosed in the petition in contravention of Sec. 3, Rule 46, 1997 Rules of Civil Procedure;

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[17] *Id.* at 142-146.

[18] *Id.* at 18-27.

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

[20] *Id.* at 2-17.

2. Non-conformity to the required verification and certification of non-forum shopping by failure to state that there were no other pending cases between the parties at the time of filing (See Sections 4 and 5, Rule 7 and Sec. 1, Rule 65 in relation to Sec. 3, Rule 46 of the 1997 Rules of Civil Procedure). Deficiency is equivalent to the non-filing thereof.

SO ORDERED.[21]

Petitioner filed a Motion for Reconsideration[22] explaining that her petition substantially complied with the provisions of Section 3, Rule 46 of the Rules of Court because it indicated that the parties may be served with notices and processes of the Court through their respective counsels whose addresses were specifically mentioned therein. She also insisted that although the Verification and Certification attached to the petition was an abbreviated version, the same still substantially complied with the Rules. Nonetheless, she submitted her faithful compliance with the Rules by indicating the complete addresses of the parties and of their counsels and submitting a revised Verification and Certification of non-forum shopping. At the same time, she contended that her excusable lapse is not enough reason to dismiss her meritorious petition.

On November 29, 2005,[23] the CA rendered its Resolution denying the motion for reconsideration. The said Resolution reads:

Instead of [rectifying] the deficiencies of the petition, the petitioner chose to avoid compliance, arguing more than revising the mistakes explicitly pointed out.

WHEREFORE, for lack of merit, petitioner's March 31, 2005 Motion for Reconsideration is hereby DENIED.

SO ORDERED.[24]

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[21] *Id.* at 148.

[22] *Id.* at 152-158.

[23] *Id.* at 159.

[24] *Id.*

Issues

Hence, this petition anchored on the following grounds:

WITH DUE RESPECT, THE COURT OF APPEALS HAD SHOWN HOSTILITY AGAINST THE PETITIONER AND ACTED DESPOTICALLY BECAUSE THE DEFICIENCIES IN THE PETITION WERE DULY CORRECTED AND THE EXPLANATION MADE FOR THE ALLOWANCE OF THE PETITION IS MERELY TO POINT OUT THAT THIS HONORABLE SUPREME COURT HAD SHOWN LENIENCY EVEN IN MORE SERIOUS CASES AND THAT PETITIONER HAS A MERITORIOUS CASE.

WITH DUE RESPECT, THE NLRC AND THE LABOR ARBITER COMMITTED A SERIOUS ERROR AND ABUSED THEIR DISCRETION IN FINDING THAT PETITIONER OBTAINED OR ACCEPTED MONEY CONSEQUENT OF AN UNAUTHORIZED ARRANGEMENT WITH A WASTE BUYER DESPITE CLEAR EVIDENCE TO THE CONTRARY AND THE FINDINGS OF THE REGIONAL TRIAL COURT THAT THE ₱2,000.00 DEMANDED BY THE PETITIONER IS FOR THE PAYMENT OF A LOAN.[25]

Petitioner questions the propriety of the CA's dismissal of her petition despite correction of the deficiencies in faithful compliance with the rules. She prays for liberality and leniency for the minor lapses she committed so that substantial justice would not be sacrificed at the altar of technicalities.

Petitioner also questions the propriety of the labor tribunals' declaration that her dismissal from employment was legal. She contends that her act of extending a loan to a person and consequently demanding payment for the same should not be considered as sufficient ground for the imposition of the supreme penalty of dismissal.

Our Ruling

We partly grant the petition.

Rules of procedure should be relaxed when there is substantial and subsequent compliance.

[25] *Rollo*, p. 19.

Under Section 3, Rule 46 of the Rules of Court, petitions for *certiorari* shall contain, among others, the full names and actual addresses of all the petitioners and respondents. The petitioner should also submit together with the petition a sworn certification that (a) he has not theretofore commenced any other action 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, he must state the status of the same; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall promptly inform the court within five days therefrom. The Rule explicitly provides that failure to comply with these requirements shall be sufficient ground to dismiss the petition.

In the petition for *certiorari* filed before the CA, petitioner indeed failed to indicate the actual addresses of the parties. However, she clearly mentioned that the parties may be served with the Court's notices or processes through their respective counsels whose addresses were clearly specified, *viz*:

> Petitioner is of legal age, married, Filipino and may be served with notices, resolutions, decisions and other processes at the office address of the undersigned counsel.
>
> Public respondent National Labor Relations Commission (NLRC) is a quasi-judicial government agency clothed by law with exclusive appellate jurisdiction over all cases decided by labor arbiters (Article 217, b, P.D. 442, as amended). Respondent Labor Arbiter Pablo Espiritu, Jr. is a Labor Arbiter at the National Capital Region of the NLRC and clothed by law [with] the authority to hear and decide termination disputes and all claims arising from employer-employee relations (Article 217, Labor Code, as amended). They may be served with notices, resolutions, decisions and other processes at PPSTA Building, Banawe Street, Quezon City.
>
> Private respondent Litton Mills, Inc. (Company for short) is a domestic corporation engaged in the business of manufacturing textile materials. Individual respondent Atty. Rodolfo Marino is its personnel manager. They may be served with notices, resolutions, decisions and other processes through their counsel, Baizas Magsino Recinto

Law Offices, Suite 212 Cityland Pioneer, 128 Pioneer Street, Highway Hills, Mandaluyong City.[26]

To us, the mention of the parties' respective counsel's addresses constitutes substantial compliance with the requirements of Section 3, Rule 46 of the Rules of Court which provides in part that "[t]he petition shall contain the full names and actual addresses of all the petitioners and respondents." Our observation further finds support in Section 2, Rule 13 which pertinently provides that "[i]f any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the Court." As we held in *Garrucho v. Court of Appeals*,[27] "[n]otice or service made upon a party who is represented by counsel is a nullity. Notice to the client and not to his counsel of record is not notice in law."

Moreover, in her motion for reconsideration, petitioner explained that she was of the honest belief that the mention of the counsel's address was sufficient compliance with the rules. At any rate, she fully complied with the same when she indicated in her Motion for Reconsideration the actual addresses of the parties.[28] Hence, we are at a loss why the CA still proceeded to deny petitioner's petition for *certiorari* and worse, even declared that: "Instead of [rectifying] the deficiencies of the petition, the petitioner chose to avoid compliance, arguing more than revising the mistakes explicitly pointed out."[29]

The second ground for the CA's denial of petitioner's petition for *certiorari* was her alleged failure to indicate in her Verification and Certification of non-forum shopping that there were no other pending cases between the parties at the time of filing thereof. For reference, we reproduce below the pertinent portions of the said petition for *certiorari*, *viz*:

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[26] CA *rollo*, pp. 4-5.

[27] 489 Phil. 150, 156 (2005).

[28] CA *rollo*, p. 154.

[29] See Resolution of November 29, 2005, *id.* at 177.

Verification With Certification

I, LIGAYA B. SANTOS, subscribing under oath, depose and state:

1. I am the petitioner in the above-entitled case;

2. I have caused the preparation and filing of the foregoing petition;

3. I have read the contents of the same and declare that they are true and correct of my personal knowledge;

4. I certify that I have not caused the filing to the Court of Appeals, to the Supreme Court or to any other Court or body of a case similar to the instant petition and should I learn that the existence or pendency of a similar case at the Court of Appeals, the Supreme Court or any other Court or body, I undertake to inform this Court within five (5) days from knowledge.

(Sgd.) LIGAYA B. SANTOS[30]

A reading of said Verification with Certification reveals that petitioner nonetheless certified therein that she has not filed a similar case before any other court or tribunal and that she would inform the court if she learns of a pending case similar to the one she had filed therein. This, to our mind is more than substantial compliance with the requirements of the Rules. It has been held that "with respect to the contents of the certification[,] x x x the rule on substantial compliance may be availed of."[31] Besides, in her Motion for Reconsideration, petitioner rectified the deficiency in said Verification with Certification, *viz*:

VERIFICATION & CERTIFICATION
OF NON-FORUM SHOPPING

I, LIGAYA SANTOS, resident of 261 B Rodriguez Avenue, Manggahan, Pasig City, after being sworn in accordance with law, depose and state:

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[30] *Id.* at 16.

[31] *Ching v. The Secretary of Justice*, 517 Phil. 151, 166 (2006). See also *Ateneo de Naga University v. Manalo*, 497 Phil. 635, 646 (2005); *MC Engineering Inc. v. National Labor Relations Commission*, 412 Phil. 614, 622 (2001).

I am the petitioner in the above-entitled case;

I have caused the preparation and filing of the foregoing Motion for Reconsideration;

I have read the contents of the same and declare that they are true and correct of my personal knowledge;

I certify that I have 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 my knowledge, no such other action is pending therein and should I learn that the same or similar action or claim has been filed or is pending, I [shall] immediately inform this Honorable Court within five (5) days from knowledge or notice.

(Sgd.) LIGAYA B. SANTOS
Affiant[32]

It is settled that "subsequent and substantial compliance may call for the relaxation of the rules of procedure."[33] The Court has time and again relaxed the rigid application of the rules to offer full opportunity for parties to ventilate their causes and defenses in order to promote rather than frustrate the ends of justice.[34] Because there was substantial and subsequent compliance in this case, we resolve to apply the liberal construction of the rules if only to secure the greater interest of justice. Thus, the CA should have given due course to the petition.

Anent the arguments raised by petitioner pertaining to the merits of the case, we deem it proper to remand the adjudication thereof to the CA.

WHEREFORE, the Petition for Review on *Certiorari* is *PARTLY GRANTED*. The assailed March 10, 2005 and November 29, 2005 Resolutions of the Court of Appeals in CA-G.R. SP

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[32] CA *rollo*, p. 157.

[33] *Security Bank Corporation v. Indiana Aerospace University*, 500 Phil. 51, 60 (2005).

[34] *Quintano v. National Labor Relations Commission*, 487 Phil. 412, 426 (2004).

No. 88601, are hereby *SET ASIDE*. The case is *REMANDED* to the Court of Appeals which is directed to give due course to the petition and adjudicate the same on the merits with dispatch.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Perez, and *Mendoza,*[**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 170658. June 22, 2011]

ANICETO CALUBAQUIB, WILMA CALUBAQUIB, EDWIN CALUBAQUIB, ALBERTO CALUBAQUIB, and ELEUTERIO FAUSTINO CALUBAQUIB, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENTS; PROPER WHEN THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THE MOVING PARTY IS ENTITLED TO A JUDGMENT AS A MATTER OF LAW.— Summary judgments are proper when, ***upon motion*** of the plaintiff or the defendant, the court finds that the answer filed by the defendant does not tender a ***genuine issue*** as to any material fact and that one party is entitled to a judgment as a matter of law. x x x The test of the propriety of rendering summary judgments is the existence of a genuine issue of fact, "as distinguished from a sham, fictitious, contrived or false claim." "[A] factual issue raised by a party is considered as sham when by its nature it is evident that ***it cannot be proven***

[**] Per Special Order No. 1022 dated June 10, 2011.

or it is such that the party tendering the same has ***neither any sincere intention nor adequate evidence to prove it***. This usually happens in denials made by defendants merely for the sake of having an issue and thereby gaining delay, taking advantage of the fact that their answers are not under oath anyway."

2. ID.; ID.; ID.; FILING OF A MOTION AND THE CONDUCT OF A HEARING ON THE MOTION ARE NECESSARY FOR THE RENDITION OF SUMMARY JUDGMENT.— In determining the genuineness of the issues, and hence the propriety of rendering a summary judgment, the court is obliged to carefully study and appraise, not the tenor or contents of the pleadings, but the facts alleged under oath by the parties and/or their witnesses in the affidavits that they submitted ***with the motion and the corresponding opposition***. Thus, it is held that, even if the pleadings on their face appear to raise issues, a summary judgment is proper so long as "the affidavits, depositions, and admissions ***presented by the moving party*** show that such issues are not genuine." The filing of a motion and the conduct of a hearing on the motion are therefore important because these enable the court to determine if the parties' pleadings, affidavits and exhibits in support of, or against, the motion are sufficient to overcome the opposing papers and adequately justify the finding that, as a matter of law, the claim is clearly meritorious or there is no defense to the action. The non-observance of the procedural requirements of filing a motion and conducting a hearing on the said motion warrants the setting aside of the summary judgment.

3. ID.; ID.; ID.; ID.; NON-OBSERVANCE THEREOF IS A VIOLATION OF PETITIONER'S DUE PROCESS RIGHT TO A TRIAL; CASE AT BAR.— In the case at bar, the trial court proceeded to render summary judgment with neither of the parties filing a motion therefor. In fact, the respondent itself filed an opposition when the trial court directed it to file the motion for summary judgment. Respondent insisted that the case involved a genuine issue of fact. Under these circumstances, it was improper for the trial court to have persisted in rendering summary judgment. Considering that the remedy of summary judgment is in derogation of a party's right to a plenary trial of his case, the trial court cannot railroad the parties' rights over their objections. x x x It is clear that the guidelines and

safeguards for the rendition of a summary judgment were all ignored by the trial court. The sad result was a judgment based on nothing else but an unwarranted assumption and a violation of petitioners' due process right to a trial where they can present their evidence and prove their defense.

APPEARANCES OF COUNSEL

Remigio T. Danao for petitioners.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Due process rights are violated by a *motu proprio* rendition of a summary judgment.

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the September 21, 2005 Decision,[2] as well as the November 30, 2005 Resolution,[3] of the Court of Appeals (CA) in CA-G.R. CV No. 83073. The two issuances of the appellate court ruled against petitioners and ordered them to reconvey the subject properties to respondent Republic of the Philippines (Republic). The CA upheld the April 26, 2004 Decision[4] of Branch 1 of the Regional Trial Court (RTC) of Tuguegarao City, the dispositive portion of which decreed as follows:

WHEREFORE, in the light of the foregoing, the Court declares that the Republic of the Philippines is the owner of that certain property denominated as Lot No. 2470 of the Cadastral Survey of Tuguegarao with an area of three hundred ninety two thousand nine

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[1] *Rollo*, pp. 18-37.

[2] *Id.* at 45-56; penned by Associate Justice Martin S. Villarama, Jr. (now a Member of this Court) and concurred in by Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao.

[3] *Id.* at 57.

[4] *Id.* at 39-44; penned by Judge Jimmy H.F. Luczon, Jr.

hundred ninety six (392,996) square meters which is registered in its name as evidenced by Original Certificate No. 13562, and as such, is entitled to the possession of the same, and that the defendants illegally occupied a five (5) hectare portion thereof since 1992.

Defendants are then ordered to vacate the portion so occupied by them, and pay to the national government the amount of Five Thousand Pesos (₱5,000.00) per year of occupancy, from 1992 up to the time the property is vacated by them.

Defendants' counterclaim is dismissed.

No pronouncement as to cost.

IT IS SO ORDERED.[5]

Factual Antecedents

On August 17, 1936, President Manuel L. Quezon issued Proclamation No. 80,[6] which declared a 39.3996-hectare landholding located at Barangay Caggay, Tuguegarao, Cagayan, a military reservation site. The proclamation expressly stated that it was being issued "subject to private rights, if any there be." Accordingly, the respondent obtained an Original Certificate of Title No. 13562[7] over the property, which is more particularly described as follows:

A parcel of land (Lot No. 2470 of the Cadastral Survey of Tuguegarao), situated in the barrio of Caggay, Municipality of Tuguegarao. Bounded on the E. by Lot No. 2594: on the SE, by the Provincial Road: on the SW by Lot Nos. 2539, 2538, and 2535: and on NW, by Lot Nos. 2534, 2533, 2532, 2478 and 2594.

On January 16, 1995, respondent[8] filed before the RTC of Tuguegarao, Cagayan a complaint for recovery of possession[9]

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[5] RTC Decision, pp. 5-6; *id.* at 43-44.

[6] Records, pp. 50-51.

[7] *Id.* at 2.

[8] The Republic was represented by Commander Abelardo Arugay, who was appointed as Administrator of Camp Marcelo Adduru Military Reservation on April 15, 1994 (*id.* at 49).

[9] *Id.* at 1-6. The case was docketed as Civil Case No. 4846 (95-Tug.) and raffled to Branch 1 of the Regional Trial Court of Tuguegarao, Cagayan.

against petitioners alleging that sometime in 1992, petitioners unlawfully entered the military reservation through strategy and stealth and took possession of a five-hectare portion (subject property) thereof. Petitioners allegedly refused to vacate the subject property despite repeated demands to do so.[10] Thus, respondent prayed that the petitioners be ordered to vacate the subject property and to pay rentals computed from the time that they unlawfully withheld the same from the respondent until the latter is restored to possession.[11]

Petitioners filed an answer denying the allegation that they entered the subject property through stealth and strategy sometime in 1992.[12] They maintained that they and their predecessor-in-interest, Antonio Calubaquib (Antonio), have been in open and continuous possession of the subject property since the early 1900s.[13] Their occupation of the subject property led the latter to be known in the area as the Calubaquib Ranch. When Antonio died in 1918, his six children acknowledged inheriting the subject property from him in a private document entitled *Convenio*. In 1926, Antonio's children applied for a homestead patent but the same was not acted upon by the Bureau of Lands.[14] Nevertheless, these children continued cultivating the subject property.

Petitioners acknowledged the issuance of Proclamation No. 80 on August 17, 1936, but maintained that the subject property (the 5-hectare portion allegedly occupied by them since 1900s) was excluded from its operation. Petitioners cite as their basis a proviso in Proclamation No. 80, which exempts from the military reservation site "private rights, if any there be."[15] Petitioners prayed for the dismissal of the complaint against them.

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[10] *Id.* at 3.

[11] *Id.* at 4.

[12] Answer, pp. 1-2; *id.* at 17-18.

[13] *Id.* at 2; *id.* at 18.

[14] *Id.* at 3; *id.* at 19.

[15] *Id.* at 1; *id.* at 17.

The pre-trial conference conducted on August 21, 1995 yielded the following admissions of fact:

1. Lot No. 2470 of the Tuguegarao Cadastre is a parcel of land situated in Alimanao, Tuguegarao, Cagayan with an area of 392,996 square meters. On August 17, 1936, the President of the Philippines issued Proclamation No. 80 reserving the lot for military purposes. On the strength of this Proclamation, OCT No. 13562 covering said lot was issued in the name of the Republic of the Philippines.

2. The defendants are in actual possession of a 5-hectare portion of said property.

3. The Administrator of the Camp Marcelo Adduru Military Reservation demanded the defendants to vacate but they refused.

4. The defendants sought presidential assistance regarding their status on the land covered by the title in the name of the Republic of the Philippines. The Office of the President has referred the matter to the proper administrative agencies and up to now there has been no definite action on said request for assistance.[16]

Given the trial court's opinion that the basic facts of the case were undisputed, it advised the parties to file a motion for summary judgment.[17] Neither party filed the motion. In fact, respondent expressed on two occasions[18] its objection to a summary judgment. It explained that summary judgment is improper given the existence of a genuine and vital factual issue, which is the petitioners' claim of ownership over the subject property. It argued that the said issue can only be resolved by trying the case on the merits.

On January 31, 2001, the RTC issued an Order thus:

The Court noticed that the defendants in this case failed to raise any issue. For this reason, a summary judgment is in order.

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[16] Records, pp. 58-59.

[17] *Id.* at 61.

[18] Manifestation and Compliance dated July 28, 1999 (*id.* at 95) and Plaintiff's Memorandum dated November 18, 1999 (*id.* at 111-112).

Let this case be submitted for summary judgment.

SO ORDERED.[19]

Ruling of the Regional Trial Court[20]

Subsequently, without any trial, the trial court rendered its April 26, 2004 Decision[21] dismissing petitioners' claim of possession of the subject property in the concept of owner. The trial court held that while Proclamation No. 80 recognized and respected the existence of private rights on the military reservation, petitioners' position could "not be sustained, as there was no right of [petitioners] to speak of that was recognized by the government."[22]

Ruling of the Court of Appeals[23]

Petitioners appealed[24] to the CA, which affirmed the RTC Decision, in this wise:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed decision dated April 26, 2004 of the Regional Trial Court of Tuguegarao City, Cagayan Branch 1 in Civil Case No. 4846 is hereby AFFIRMED and UPHELD.

SO ORDERED.[25]

The CA explained that, in order to segregate the subject property from the mass of public land, it was imperative for petitioners to prove their and their predecessors-in-interest's occupation and cultivation of the subject property for more than 30 years prior to the issuance of the proclamation.[26] There

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[19] *Id.* at 124.

[20] *Id.* at 125-130.

[21] *Rollo*, pp. 39-44.

[22] *Id.* at 42.

[23] *Rollo*, pp. 45-56.

[24] CA *rollo*, pp. 18-21.

[25] CA Decision, p. 11; *rollo*, p. 55.

[26] *Id.* at 7-8; *id.* at 51-52.

must be clear, positive and absolute evidence that they had complied with all the requirements of the law for confirmation of an imperfect title before the property became a military reservation site.[27] Based on these standards, petitioners failed to establish any vested right pertaining to them with respect to the subject property.[28] The CA further held that petitioners did not say what evidence they had of an imperfect title under the Public Land Act.[29]

The CA denied reconsideration of its Decision, hence petitioners' appeal to this Court.

Petitioners' Arguments

Petitioners maintain that the subject property was alienable land when they, through their ancestors, began occupying the same in the early 1900s. By operation of law, they became owners of the subject parcel of land by extraordinary acquisitive prescription. Thus, when Proclamation No. 80 declared that "existing private rights, if there be any" are exempt from the military reservation site, the subject property remained private property of the petitioners.

Petitioners then ask that the case be remanded to the trial court for the reception of evidence. They maintain that the case presents several factual issues, such as the determination of the nature of the property (whether alienable or inalienable) prior to 1936 and of the veracity of petitioners' claim of prior and adverse occupation of the subject property.[30]

Respondent's Arguments

Respondent, through the Office of the Solicitor General, argues that petitioners were not able to prove that they had a vested right to the subject property *prior* to the issuance of Proclamation No. 80. As petitioners themselves admit, their application for

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[27] *Id.* at 10; *id.* at 54.

[28] *Id.*; *id.*

[29] *Id.* at 9; *id.* at 53.

[30] Petitioners' Memorandum, pp. 27-31; *id.* at 141-145.

homestead patent filed in 1926 was not acted upon, hence they did not acquire any vested right to the subject property. Likewise, petitioners did not prove their occupation and cultivation of the subject property for more than 30 years prior to August 17, 1936, the date when Proclamation No. 80 took effect.[31]

Issue[32]

The crux of the case is the propriety of rendering a summary judgment.

Our Ruling

The petition has merit.

Summary judgments are proper when, ***upon motion*** of the plaintiff or the defendant, the court finds that the answer filed by the defendant does not tender a ***genuine issue*** as to any material fact and that one party is entitled to a judgment as a matter of law.[33] A deeper understanding of summary judgments is found in *Viajar v. Estenzo*:[34]

> Relief by summary judgment is intended to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits. But if there be a doubt as to such facts and there be an issue or issues of fact joined by the parties, neither one of them can pray for a summary judgment. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.
>
> An examination of the Rules will readily show that a summary judgment is by no means a hasty one. It assumes a scrutiny of facts in a summary hearing after the filing of a motion for summary judgment by one party supported by affidavits, depositions, admissions, or other documents, with notice upon the adverse party who may file an opposition to the motion supported also by affidavits, depositions,

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[31] Respondent's Memorandum, pp. 5-8; *id.* at 100-103.

[32] Petition for Review, pp. 8-9; *id.* at 25-26.

[33] RULES OF COURT, Rule 35.

[34] 178 Phil. 561 (1979).

or other documents x x x. In spite of its expediting character, relief by summary judgment can only be allowed after compliance with the minimum requirement of vigilance by the court in a summary hearing considering that this remedy is in derogation of a party's right to a plenary trial of his case. At any rate, a party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is so patently unsubstantial as not to constitute a genuine issue for trial, and any doubt as to the existence of such an issue is resolved against the movant.[35]

"A summary judgment is permitted only if there is no genuine issue as to any material fact and [the] moving party is entitled to a judgment as a matter of law."[36] The test of the propriety of rendering summary judgments is the existence of a genuine issue of fact,[37] "as distinguished from a sham, fictitious, contrived or false claim."[38] "[A] factual issue raised by a party is considered as sham when by its nature it is evident that ***it cannot be proven*** or it is such that the party tendering the same has ***neither any sincere intention nor adequate evidence to prove it***. This usually happens in denials made by defendants merely for the sake of having an issue and thereby gaining delay, taking advantage of the fact that their answers are not under oath anyway."[39]

In determining the genuineness of the issues, and hence the propriety of rendering a summary judgment, the court is obliged to carefully study and appraise, not the tenor or contents of the pleadings, but the facts alleged under oath by the parties and/or their witnesses in the affidavits that they submitted ***with the motion and the corresponding opposition***. Thus, it is held

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[35] *Id.* at 572-573. Citations omitted.

[36] *Eland Philippines, Inc. v. Garcia,* G.R. No. 173289, February 17, 2010, 613 SCRA 66, 81-82.

[37] *Estrada v. Consolacion,* 163 Phil. 540, 549 (1976).

[38] *Eland Philippines, Inc. v. Garcia, supra* at 88.

[39] Concurring Opinion of Justice Barredo in *Estrada v. Consolacion, supra* at 554. Emphasis supplied.

that, even if the pleadings on their face appear to raise issues, a summary judgment is proper so long as "the affidavits, depositions, and admissions ***presented by the moving party*** show that such issues are not genuine."[40]

The filing of a motion and the conduct of a hearing on the motion are therefore important because these enable the court to determine if the parties' pleadings, affidavits and exhibits in support of, or against, the motion are sufficient to overcome the opposing papers and adequately justify the finding that, as a matter of law, the claim is clearly meritorious or there is no defense to the action.[41] The non-observance of the procedural requirements of filing a motion and conducting a hearing on the said motion warrants the setting aside of the summary judgment.[42]

In the case at bar, the trial court proceeded to render summary judgment with neither of the parties filing a motion therefor. In fact, the respondent itself filed an opposition when the trial court directed it to file the motion for summary judgment. Respondent insisted that the case involved a genuine issue of fact. Under these circumstances, it was improper for the trial court to have persisted in rendering summary judgment. Considering that the remedy of summary judgment is in derogation of a party's right to a plenary trial of his case, the trial court cannot railroad the parties' rights over their objections.

More importantly, by proceeding to rule against petitioners without any trial, the trial and appellate courts made a conclusion which was based merely on an assumption that petitioners' defense of acquisitive prescription was a sham, and that the ultimate facts pleaded in their Answer (*e.g.*, open and continuous possession of the property since the early 1900s) cannot be proven at all. This assumption is as baseless as it is premature and unfair. No reason was given why the said defense and ultimate facts cannot be proven during trial. The lower courts

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[40] *Eland Philippines, Inc. v. Garcia, supra* at 82. Emphasis supplied.

[41] *Estrada v. Consolacion, supra* note 37 at 550.

[42] *Caridao v. Hon. Estenzo,* 217 Phil. 93, 101-102 (1984).

merely assumed that petitioners would not be able to prove their defense and factual allegations, without first giving them an opportunity to do so.

It is clear that the guidelines and safeguards for the rendition of a summary judgment were all ignored by the trial court. The sad result was a judgment based on nothing else but an unwarranted assumption and a violation of petitioners' due process right to a trial where they can present their evidence and prove their defense.

WHEREFORE, premises considered, the petition is *GRANTED*. The April 26, 2004 summary judgment rendered by the Regional Trial Court of Tuguegarao City, Branch 1, and affirmed by the Court of Appeals, is *SET ASIDE*. The case is *REMANDED* to the Regional Trial Court of Tuguegarao City, Branch 1, for trial. The Presiding Judge is directed to proceed with dispatch.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Perez, and *Mendoza,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 176740. June 22, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CARLO DUMADAG *y* ROMIO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON ESPECIALLY

[*] Per Special Order No. 1022 dated June 10, 2011.

WHEN AFFIRMED BY THE APPELLATE COURT ARE ACCORDED THE HIGHEST DEGREE OF RESPECT AND ARE CONCLUSIVE AND BINDING ON THE SUPREME COURT.— The improbabilities alluded to by the appellant hinge on the assessment of the credibility of "AAA". When credibility is the issue that comes to fore, this Court generally defers to the findings of the trial court which had the first hand opportunity to hear the testimonies of witnesses and observe their demeanor, conduct and attitude during their presentation. Hence, the trial court's factual findings especially when affirmed by the appellate court are accorded the highest degree of respect and are conclusive and binding on this Court. A review of such findings by this Court is not warranted save upon a showing of highly meritorious circumstances "such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which[, if considered, would] affect the result of the case." Unfortunately for appellant, none of these recognized exceptions necessitating a reversal of the assailed Decision obtains in this instance.

2. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; GRAVAMEN OF THE OFFENSE IS SEXUAL INTERCOURSE WITH A WOMAN AGAINST HER WILL OR WITHOUT HER CONSENT.— The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent. On the basis of the records, the Court finds "AAA" candidly and categorically recounted the manner appellant threatened her and succeeded in having sexual intercourse with her against her will.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AS A RULE, TESTIMONIES OF CHILD VICTIMS OF RAPE ARE GIVEN FULL WEIGHT AND CREDIT FOR YOUTH AND IMMATURITY ARE BADGES OF TRUTH.— "AAA" consistently testified that while she was on her way home after hearing the midnight mass on December 24, 1998, appellant suddenly and unexpectedly grabbed her, placed his right hand around her neck and poked a knife at the left portion of her abdomen, threatening to kill her if she shouts. He made her walk towards the house of Boyet where she was forced to lie on a bed and with the knife aimed at her side succeeded in

having carnal knowledge of her. Reviewing the antecedents of this case, the Court, just as the courts below, is convinced of the truth and sincerity in the account of "AAA". It bears to stress that "[a]s a rule, testimonies of child victims of rape are given full weight and credit for youth and immaturity are badges of truth."

4. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; LUST IS NO RESPECTER OF TIME AND PLACE.— Neither is it improbable for appellant to employ such criminal design in the presence of his (appellant) own family especially when overcome by lust. "It is a common judicial experience that rapists are not deterred from committing their odious act by the presence of people nearby." "[L]ust is no respecter of time and place."

5. ID.; ID.; ID.; INTIMIDATION; WHERE THE VICTIM IS THREATENED WITH BODILY INJURY, AS WHEN THE RAPIST IS ARMED WITH A DEADLY WEAPON, SUCH CONSTITUTES INTIMIDATION SUFFICIENT TO BRING THE VICTIM TO SUBMISSION TO THE LUSTFUL DESIRES OF THE RAPIST.— The fact that there is no evidence of resistance on the part of "AAA" does not cloud her credibility. "The failure of a victim to physically resist does not negate rape when intimidation is exercised upon [her] and the latter submits herself, against her will, to the rapist's assault because of fear for life and physical safety." In this case, "AAA" was dragged by appellant with a knife pointed on her neck and warned not to shout or to reveal the incident to anyone or else she would be killed. That warning was instilled in "AAA's" mind such that even when appellant was just holding his weapon after the intercourse, she did not attempt to flee. The intimidations made by the appellant are sufficient since it instilled fear in her mind that if she would not submit to his bestial demands, something bad would befall her. "Well-settled is the rule that where the victim is threatened with bodily injury, as when the rapist is armed with a deadly weapon, such as a pistol, knife, ice pick or bolo, such constitutes intimidation sufficient to bring the victim to submission to the lustful desires of the rapist."

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY; "SWEETHEART DEFENSE" IN RAPE CASES; MUST BE SUBSTANTIATED BY SOME DOCUMENTARY OR OTHER EVIDENCE OF RELATIONSHIP TO BE CREDIBLE.— Other than his self-

serving assertions and those of his witnesses which were rightly discredited by the trial court, nothing supports appellant's claim that he and "AAA" were indeed lovers. "A 'sweetheart defense,' to be credible, should be substantiated by some documentary or other evidence of relationship [such as notes, gifts, pictures, mementos] and the like. Appellant failed to discharge this burden.

7. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; WHEN COMMITTED WITH USE OF DEADLY WEAPON; PROPER PENALTY IN CASE AT BAR.— Under Article 335 of the Revised Penal Code, whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death. At the time of the commission of the offense on December 25, 1998, Republic Act No. 8353 (otherwise known as the "Anti-Rape Law of 1997") was already in effect. The amendatory law, particularly Article 266-B thereof, provides an identical provision and imposes the same penalty when the crime of rape is committed with the use of a deadly weapon or by two or more persons. In this case, such circumstance was sufficiently alleged in the Information and established during the trial. In *People v. Macapanas,* the Court ruled that "[b]eing in the nature of a qualifying circumstance, 'use of a deadly weapon' increases the penalties by degrees, and cannot be treated merely as a generic aggravating circumstance which affects only the period of the penalty. This so-called qualified form of rape committed with the use of a deadly weapon carries a penalty of *reclusion perpetua* to death." Since the Information does not allege and the prosecution failed to prove any other attending circumstance in the commission of the offense, the imposable penalty is *reclusion perpetua* conformably with Article 63 of the Revised Penal Code. Consequently, the Court sustains the penalty of *reclusion perpetua* imposed by the courts below on appellant.

8. CIVIL LAW; DAMAGES; DAMAGES AWARDED IN CASE AT BAR, DISCUSSED.— As to damages, the Court affirms the grant by the appellate court to "AAA" of civil indemnity in the amount of ₱50,000.00 and its reduction of the amount of moral damages to ₱50,000.00 based on prevailing jurisprudence. "Civil indemnity, which is actually in the nature of actual or compensatory damages is mandatory upon the finding of the fact of rape." Moral damages, on the other hand, are

automatically granted to the rape victim without presentation of further proof other than the commission of the crime. The Court notes that both the courts below failed to award exemplary damages. Exemplary damages in the amount of ₱30,000.00 should be awarded by reason of the established presence of the qualifying circumstance of use of a deadly weapon as the Court recently ruled in *People v. Toriaga*. The Court further held in said case that under Article 2230 of the Civil Code, the rape victim is entitled to recover exemplary damages following the ruling in *People v. Catubig*. In addition, interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of finality of this judgment until fully paid likewise pursuant to prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

The fact of sexual intercourse in this case is undisputed. What confronts this Court is the question of whether the sexual congress between appellant and the private complainant was done through force and intimidation or was voluntary and consensual.

For review is the July 3, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01843 affirming with modification the Decision[2] dated April 16, 2001[3] of the Regional Trial Court (RTC), Branch 08, Aparri, Cagayan, finding Carlo Dumadag *y* Romio (appellant) guilty of the crime of rape.

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[1] CA *rollo*, pp. 103-147; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin, now Members of this Court.

[2] Records, pp. 156-165; penned by Judge Conrado F. Manauis.

[3] Promulgated on April 19, 2001, *id.* at 166.

Factual Antecedents

On June 14, 1999, an Information for rape was filed with the RTC against appellant, which contained the following accusations:

> The undersigned Provincial Prosecutor accuses CARLO DUMADAG *Y* ROMIO, upon complaint filed by the offended party, "AAA",[4] in the Municipal Trial Court of "CCC", "DDD" found on page one (1) of the records of the case and forming an integral part of this Information, of the crime of Rape, defined and penalized under Article 335 [sic], of the Revised Penal Code, as amended by Section 11, of Republic Act No. 7659, committed as follows:
>
> That on or about December 25, 1998, in the Municipality of "CCC", province of "DDD", and within the jurisdiction of the Honorable Court, the above-named accused, armed with a knife, with lewd design, by use of force or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the herein offended party, a woman below eighteen (18) years of age, all against her will and consent.
>
> CONTRARY TO LAW.[5]

During his arraignment on October 26, 1999, appellant, with the assistance of his counsel *de officio*, entered a negative plea to the charge. At the pre-trial conference, the prosecution and the defense made stipulation of facts as to the identities of the private complainant and the appellant and that a medical certificate was issued to the former. Shortly after termination of the conference, trial on merits commenced.

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

[5] Records, p. 1.

Version of the Prosecution

The evidence for the prosecution established the following facts:

"AAA", a young *barrio* lass, 16 years of age at the time she testified on February 21, 2000, declared that in the early morning of December 25, 1998, she was on her way home after hearing the midnight mass at "BBB", "CCC", "DDD". She was a little bit behind Thelma, Carlos and Clarence, all surnamed Dumadag. All of a sudden, appellant approached her from behind and poked a Batangas knife on her threatening to stab her if she shouts. He pulled her towards the house of Joel "Boyet" Ursulum (Boyet). Once inside, she was forced to remove her pants and panty because of fear. Appellant also removed his pants and brief and pushed her on a bamboo bed. Pointing the knife at the left portion of her abdomen, appellant ordered her to hold his penis against her vagina. Appellant succeeded in having carnal knowledge of her. After appellant was through, they stayed inside the house until six o'clock in the morning of December 25, 1998. All this time, appellant continued to hold the knife. Pleading that she be allowed to go home, appellant finally let her go after threatening to kill her if she reports the incident to her parents. "AAA" decided not to disclose what transpired because of fear. Nevertheless, "AAA's" uncle, "EEE" learned from appellant himself that the latter had sexual intercourse with her. Her uncle relayed the information to her father who confronted her about the incident. After confirming the same from "AAA", they decided to report the matter to the police where she was investigated and her sworn statement taken.

Dr. Jane Toribio-Berona (Dr. Toribio-Berona) conducted a physical examination on "AAA". She identified the medical certificate[6] issued by her wherein it was indicated that there was laceration on "AAA's" hymen.

Version of the Defense

On the other hand, appellant does not deny having had sexual intercourse with "AAA". Instead, he claimed that it was

[6] Exhibit "A", *id.* at 5.

voluntary and without the use of force since they were lovers. To support his claim that "AAA" was his girlfriend, appellant presented Boyet and Nieves Irish Oandasan (Nieves Irish) who both corroborated his sweetheart defense.

Ruling of the Regional Trial Court

After trial, the RTC declared appellant guilty beyond reasonable doubt of the charge lodged against him after finding "AAA's" testimony to be credible[7] as it was given in a candid and straightforward manner.[8] It rejected appellant's "sweetheart" defense holding that a sweetheart cannot be forced to have sex against her will.[9] Consequently he was condemned to suffer the penalty of *reclusion perpetua* and payment of damages, *viz*:

> WHEREFORE, the Court finds accused, CARLO DUMADAG *Y* ROMIO, guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and to pay "AAA" the amount of ONE HUNDRED THOUSAND PESOS (₱100,000.00) as moral damages and FIFTY THOUSAND PESOS (₱50,000.00) as civil indemnity.
>
> SO ORDERED.[10]

Appellant filed a Notice of Appeal[11] on April 24, 2001 with the trial court. The records of this case were transmitted to this Court. Both parties filed their respective Briefs.[12] Consistent however to this Court's pronouncement in *People v. Mateo*,[13] the case was referred to the CA for appropriate action and disposition.[14]

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[7] *Id.* at 162.

[8] *Id.* at 163.

[9] *Id.* at 165.

[10] *Id.*

[11] *Id.* at 169.

[12] Appellant's Brief, CA *rollo*, pp. 38-58; Appellee's Brief, *id.* at 73-97.

[13] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[14] CA *rollo*, p. 101.

In his brief, appellant assigned the following errors, *viz*:

I. The trial court erred in giving weight and credence to the testimony of [the] private complainant that accused poked a knife at the left side of her [abdomen] after she came out from [the] church.

II. The trial court erred in not acquitting accused-appellant on [the] ground of reasonable doubt.[15]

Ruling of the Court of Appeals

Resolving jointly the foregoing imputations against the trial court, the CA affirmed with modification the appealed judgment of conviction. The CA ruled that there is nothing on record which shows that the trial court had overlooked, misunderstood or misapplied a fact or circumstance of weight and substance which would have affected the case. The CA junked appellant's contentions that he and "AAA" were lovers; that no force or intimidation was employed on "AAA"; and that there was contradiction as to which of his hands was placed around the neck of "AAA". The CA further held that "AAA's" simple account of her ordeal evinces sincerity and truthfulness. It disposed of the appeal in its assailed Decision promulgated on July 3, 2006, thus:

WHEREFORE, premises considered, the assailed Decision promulgated on April 19, 2001 of the Regional Trial Court of Aparri, Cagayan, Branch 08, in Criminal Case No. 08-1157, finding the accused-appellant **Carlo Dumadag *y* Romio** guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* is hereby **AFFIRMED** with the **MODIFICATION** that appellant is ordered to pay the victim "AAA" the reduced amount of Php50,000.00 as moral damages, in addition to the Php50,000.00 civil indemnity awarded by the trial court.

SO ORDERED.[16]

Aggrieved, appellant is now before this Court submitting anew for resolution the same matters he argued before the CA. Per

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[15] *Id.* at 40.

[16] *Id.* at 144.

Resolution[17] dated June 4, 2007, the parties were notified that they may file their respective supplemental briefs if they so desire within 30 days from notice. Appellant informed the Court that he would no longer file a supplemental brief as all relevant matters were already taken up.[18] Appellee, for its part, opted not to file any supplemental brief.[19] Thus, this case was submitted for decision on the basis of their respective briefs filed with the CA.

In his bid for acquittal, appellant points out several circumstances purportedly showing that "AAA's" testimony is not worthy of credence. According to appellant, it is highly improbable for him to poke a knife on her without being noticed since the members of his (appellant) family were just a little bit ahead of her. He claims that from a distance of 200 meters from the church to the house of Boyet, it would be impossible that nobody saw them considering that his right arm was allegedly placed around her neck and at the same time a knife was poked on the left side of her body. He further asserts that she could have made an outcry considering that she was with his (appellant) parents in going home after the midnight mass.

Our Ruling

The appeal is bereft of merit.

The improbabilities alluded to by the appellant hinge on the assessment of the credibility of "AAA". When credibility is the issue that comes to fore, this Court generally defers to the findings of the trial court which had the first hand opportunity to hear the testimonies of witnesses and observe their demeanor, conduct and attitude during their presentation. Hence, the trial court's factual findings especially when affirmed by the appellate court are accorded the highest degree of respect and are conclusive and binding on this Court. A review of such findings by this Court is not warranted save upon a showing of highly

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[17] *Rollo,* p. 51.

[18] *Id.* at 52-55.

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

meritorious circumstances "such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which[, if considered, would] affect the result of the case."[20] Unfortunately for appellant, none of these recognized exceptions necessitating a reversal of the assailed Decision obtains in this instance.

The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent.[21] On the basis of the records, the Court finds "AAA" candidly and categorically recounted the manner appellant threatened her and succeeded in having sexual intercourse with her against her will. "AAA" consistently testified that while she was on her way home after hearing the midnight mass on December 24, 1998, appellant suddenly and unexpectedly grabbed her, placed his right hand around her neck and poked a knife at the left portion of her abdomen, threatening to kill her if she shouts. He made her walk towards the house of Boyet where she was forced to lie on a bed and with the knife aimed at her side succeeded in having carnal knowledge of her.[22] Reviewing the antecedents of this case, the Court, just as the courts below, is convinced of the truth and sincerity in the account of "AAA". It bears to stress that "[a]s a rule, testimonies of child victims of rape are given full weight and credit for youth and immaturity are badges of truth."[23]

Neither is it improbable for appellant to employ such criminal design in the presence of his (appellant) own family especially when overcome by lust. "It is a common judicial experience that rapists are not deterred from committing their odious act

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[20] *People v. Coja*, G.R. No. 179277, June 18, 2008, 555 SCRA 176, 186.

[21] *People v. Mateo*, G.R. No. 170569, September 30, 2008, 567 SCRA 244, 255.

[22] TSN, February 21, 2000, pp. 4-6.

[23] *People v. Veluz*, G.R. No. 167755, November 28, 2008, 572 SCRA 500, 514.

by the presence of people nearby."[24] "[L]ust is no respecter of time and place."[25] As established, "AAA" was silenced by appellant's threat of killing her with a knife.[26] Thus, the reason for "AAA's" failure to shout or cry for help is because she was overcame by fear. It has been held that minors, like "AAA", could be easily intimidated and cowed into silence even by the mildest threat against their lives.[27]

Also it is not impossible for them to walk from the church to the house of Boyet unnoticed. Except for his bare argument, nothing was adduced that church goers passed through that road about the same time as the incident. In fact, "AAA" testified that she did not encounter other persons on the way to the house of Boyet.[28]

In trying to discredit further "AAA's" testimony, appellant assails her behavior before, during and after the rape incident. He contends that in all these instances, "AAA" had all the chances to escape but she did not. He argues that "AAA" had the opportunity to run when they were entering the house of Boyet and during their more or less five hours stay inside the house yet she decided to remain. He claims that such behavior is unnatural, incredible and beyond human experience.

Appellant's contentions fail to persuade.

The failure of "AAA" to flee despite opportunity does not necessarily deviate from natural human conduct. It bears emphasis that human reactions vary and are unpredictable when facing a shocking and horrifying experience such as sexual assault. There is no uniform behavior expected of victims after

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[24] *People v. Rebato*, 410 Phil. 470, 479 (2001).

[25] *People v. Montesa*, G.R. No. 181899, November 27, 2008, 572 SCRA 317, 337.

[26] TSN, February 21, 2000, p. 6.

[27] *People v. Canete*, G.R. No. 182193, November 7, 2008, 570 SCRA 549, 558-559 citing *People v. Santos*, 452 Phil. 1046, 1061 (2003).

[28] *Supra* note 26 at 9.

being raped.[29] Moreover, "[n]ot all rape victims can be expected to act conformably to the usual expectations of everyone."[30] "AAA", being then a minor and subjected to a threat to her life, should not be judged by the norms of behavior expected of mature persons.

The fact that there is no evidence of resistance on the part of "AAA" does not cloud her credibility. "The failure of a victim to physically resist does not negate rape when intimidation is exercised upon [her] and the latter submits herself, against her will, to the rapist's assault because of fear for life and physical safety."[31] In this case, "AAA" was dragged by appellant with a knife pointed on her neck and warned not to shout or to reveal the incident to anyone or else she would be killed. That warning was instilled in "AAA's" mind such that even when appellant was just holding his weapon after the intercourse, she did not attempt to flee. The intimidations made by the appellant are sufficient since it instilled fear in her mind that if she would not submit to his bestial demands, something bad would befall her. "Well-settled is the rule that where the victim is threatened with bodily injury, as when the rapist is armed with a deadly weapon, such as a pistol, knife, ice pick or bolo, such constitutes intimidation sufficient to bring the victim to submission to the lustful desires of the rapist."[32]

There is no question that "AAA" underwent sexual intercourse as admitted by appellant himself and as shown by the medical findings of Dr. Toribio-Berona.[33] However, appellant denies having raped her and instead, claims that he and "AAA" were lovers and the act of sexual intercourse was a free and voluntary act between them. In short, he interposes the

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[29] *People v. Crespo*, G.R. No. 180500, September 11, 2008, 564 SCRA 613, 637.

[30] *People v. Madia*, 411 Phil. 666, 673 (2001).

[31] *People v. Marcos*, 368 Phil.143, 158 (1999).

[32] *People v. Oga*, G.R. No. 152302, June 8, 2004, 431 SCRA 354, 361.

[33] *Supra* note 6.

"sweetheart" theory to exculpate himself from the rape charge filed against him.

Appellant's claim that they are lovers is untenable. For one, such claim was not substantiated by the evidence on the record. The only evidence adduced by appellant were his testimony and those of his relatives Boyet and Nieves Irish. According to Boyet, he knows of their relationship because they were conversing and writing each other[34] while Nieves Irish saw them once walking in the street.[35] To the mind of the Court, these are not enough evidence to prove that a romantic relationship existed between appellant and "AAA". In *People v. Napudo*[36] where the accused likewise invoked the sweetheart defense, this Court held that:

> [T]he fact alone that two people were seen seated beside each other, conversing during a jeepney ride, without more, cannot give rise to the inference that they were sweethearts. Intimacies such as loving caresses, cuddling, tender smiles, sweet murmurs or any other affectionate gestures that one bestows upon his or her lover would have been seen and are expected to indicate the presence of the relationship.

Other than his self-serving assertions and those of his witnesses which were rightly discredited by the trial court, nothing supports appellant's claim that he and "AAA" were indeed lovers. A 'sweetheart defense,' to be credible, should be substantiated by some documentary or other evidence of relationship [such as notes, gifts, pictures, mementos] and the like.[37] Appellant failed to discharge this burden.

Besides, even if it were true that appellant and "AAA" were sweethearts, this fact does not necessarily negate rape. "Definitely, a man cannot demand sexual gratification from a

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[34] TSN, July 11, 2000, p. 10.

[35] TSN, December 5, 2000, p. 4.

[36] G.R. No. 168448, October 8, 2008, 568 SCRA 213, 225.

[37] *People v. Gabelinio*, G.R. Nos. 132127-29, March 31, 2004, 426 SCRA 608, 621.

fiancée and worse, employ violence upon her on the pretext of love. Love is not a license for lust."[38] But what destroyed the veracity of appellant's "sweetheart" defense were the credible declaration of "AAA" that she does not love him[39] and her categorical denial that he is her boyfriend.[40]

With the credibility of "AAA" having been firmly established, the courts below did not err in finding appellant guilty beyond reasonable doubt of rape committed through force and intimidation. The "sweetheart" theory interposed by appellant was correctly rejected for lack of substantial corroboration.

The Proper Penalty

Under Article 335 of the Revised Penal Code, whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death. At the time of the commission of the offense on December 25, 1998, Republic Act No. 8353 (otherwise known as the "Anti-Rape Law of 1997") was already in effect. The amendatory law, particularly Article 266-B thereof, provides an identical provision and imposes the same penalty when the crime of rape is committed with the use of a deadly weapon or by two or more persons. In this case, such circumstance was sufficiently alleged in the Information and established during the trial. In *People v. Macapanas*,[41] the Court ruled that "[b]eing in the nature of a qualifying circumstance, 'use of a deadly weapon' increases the penalties by degrees, and cannot be treated merely as a generic aggravating circumstance which affects only the period of the penalty. This so-called qualified form of rape committed with the use of a deadly weapon carries a penalty of *reclusion perpetua* to death." Since the Information does not allege and the prosecution failed to prove any other attending circumstance in the commission of the offense, the

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[38] *People v. Manallo*, 448 Phil 149, 166 (2003).

[39] TSN, February 21, 2000, p. 16.

[40] TSN, March 12, 2001, p. 3.

[41] G.R. No. 187049, March 4, 2010, 620 SCRA 54, 76.

imposable penalty is *reclusion perpetua*[42] conformably with Article 63[43] of the Revised Penal Code. Consequently, the Court sustains the penalty of *reclusion perpetua* imposed by the courts below on appellant.

As to damages, the Court affirms the grant by the appellate court to "AAA" of civil indemnity in the amount of ₱50,000.00 and its reduction of the amount of moral damages to ₱50,000.00 based on prevailing jurisprudence.[44] "Civil indemnity, which is actually in the nature of actual or compensatory damages is mandatory upon the finding of the fact of rape."[45] Moral damages, on the other hand, are automatically granted to the rape victim without presentation of further proof other than the commission of the crime.[46]

The Court notes that both the courts below failed to award exemplary damages. Exemplary damages in the amount of ₱30,000.00 should be awarded by reason of the established presence of the qualifying circumstance of use of a deadly weapon as the Court recently ruled in *People v. Toriaga*.[47]

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[42] *Id.*

[43] Article 63. *Rules for the application of indivisible penalties*. – In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

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:

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2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

x x x x x x x x x

[44] *People v. Macapanas*, *supra* note 40.

[45] *People v. Arivan*, G.R. No. 176065, April 22, 2008, 552 SCRA 448, 470.

[46] *People v. Diocado*, G.R. No. 170567, November 14, 2008, 571 SCRA 123, 139.

[47] G.R. No. 177145, February 9, 2011. See also *People v. Macapanas*, *supra* note 40 at 76-77.

The Court further held in said case that under Article 2230 of the Civil Code, the rape victim is entitled to recover exemplary damages following the ruling in *People v. Catubig*.[48]

In addition, interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of finality of this judgment until fully paid likewise pursuant to prevailing jurisprudence.[49]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01843 is *AFFIRMED with MODIFICATIONS* that appellant Carlo Dumadag *y* Romio is ordered to further pay "AAA" ₱30,000.00 as exemplary damages and interest at the rate of 6% per annum is imposed on all the damages awarded in this case from the date of the finality of this judgment until fully paid.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Perez, and *Mendoza,*[*] *JJ.,* concur.

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[48] 416 Phil. 102, 119-120 (2001).

[49] *People v. Galvez*, G.R. No. 181827, February 2, 2011; *People v. Alverio*, G.R. No. 194259, March 16, 2011.

[*] Per Special Order No. 1022 dated June 10, 2011.

FIRST DIVISION

[G.R. No. 182236. June 22, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHITO GRATIL *y* GUELAS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF PROHIBITED OR REGULATED DRUGS; ELEMENTS; PRESENT IN CASE AT BAR.— In prosecutions involving the illegal sale of drugs, what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug as evidence. For conviction of the crime of illegal sale of prohibited or regulated drugs, the following elements must concur: (1) the identities of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it. A perusal of the records would reveal that the foregoing requisites are present in the case at bar.

2. ID.; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; NON-COMPLIANCE THEREWITH IS IRRELEVANT TO THE PROSECUTION OF ILLEGAL SALE OF PROHIBITED DRUGS; CASE AT BAR.— [T]he failure to conduct an inventory and to photograph the confiscated items in the manner prescribed under the x x x law applicable at the time of appellant's arrest and which is now incorporated as Section 21(1) of Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act of 2002) that repealed Republic Act No. 6425 cannot be used as a ground for appellant's exoneration from the charge against him. In *People v. De Los Reyes*, a case which also involved an objection regarding the non-compliance with the chain of custody rule, we held that: The failure of the arresting police officers to comply with said DDB Regulation No. 3, Series of 1979 is a matter strictly between the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the prosecution of the criminal case for the reason that the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale

or transaction is established (*People v. Santiago*, 206 SCRA 733[1992]) and the prosecution thereof is not undermined by the failure of the arresting officers to comply with the regulations of the Dangerous Drugs Board. Moreover, in *People v. Agulay*, we held that: Non-compliance with [Section 21, 19 Article II of Republic Act No. 9165] is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. In *People v. Del Monte*, this Court held that 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. x x x. Notwithstanding the minor lapse in procedure committed by the police officers in the handling of the illegal drugs taken from appellant, the identity and integrity of the evidence was never put into serious doubt in the course of the proceedings of this case.

3. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL OR FRAME-UP; MUST BE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.— As we have time and again held, the defense of denial or frame-up, like alibi, has been invariably viewed with disfavor for it can easily be concocted and is a common defense in most prosecutions for violation of the Dangerous Drugs Act. Charges of extortion and frame-up are frequently made in this jurisdiction. Courts are, thus, cautious in dealing with such accusations, which are quite difficult to prove in light of the presumption of regularity in the performance of the police officers' duties. To substantiate such defense, which can be easily concocted, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit. In the case at bar, no clear and convincing evidence to support the defense of frame-up was put forward by appellant. Neither was there any imputation or proof of ill motive on the part of the arresting police officers. Even the testimony of defense witness Imelda Revoldina failed to establish any irregularity in the conduct of the apprehending police officers in this case. In fact, her neutral testimony that she saw the police officers hold the collar of appellant while leading him into a vehicle tended to support the prosecution's assertion that appellant

was arrested in plain view as a consequence of his act of selling illegal drugs.

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.*:

This is an appeal of the Decision[1] dated October 15, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02338, entitled *People of the Philippines v. Chito Gratil y Guelas*, which affirmed with modification the Decision[2] dated September 25, 2003 of the Regional Trial Court (RTC) of Manila, Branch 53, in Criminal Case No. 97-159609, finding appellant Chito Gratil *y* Guelas guilty beyond reasonable doubt for violation of Section 15, Article II in relation to Section 20, Article IV of Republic Act No. 6425 (The Dangerous Drugs Act of 1972), as amended, and imposing upon him the penalty of *reclusion perpetua*.

The conflicting versions of the events which led to the arrest and detention of the appellant were summarized by the trial court, to wit:

Culled from the prosecution's evidence, at around 8:00 o'clock in the morning of said day, a confidential informant arrived at the PNP Central Narcotics Office at EDSA, Quezon City and talked to P/Insp. Nolasco Cortez in the presence of SPO2 Manglo, SPO2 Welmer Antonio, and PO1 Roger Molino regarding the alleged illegal drug activity of one Chito Gratil who is a resident of 765 Agno Bataan, Malate, Manila. Immediately, P/Insp. Cortez formed a team for the purpose of conducting a buy bust operation. SPO2 Manglo was designated as poseur buyer and was given a P500 bill the serial number of which he took and which he also marked with his initial

[1] *Rollo*, pp. 2-16; penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Edgardo P. Cruz and Normandie B. Pizarro, concurring.

[2] CA *rollo*, pp. 17-21.

on the side of the face of the person on the bill and also a dot on the nose (Exh. K, K-1, K-2 and K-3). The genuine P500 bill was put on top of boodle money.

At 11:40 o'clock of that same morning, SPO2 Manglo and the confidential informant proceeded to the house of accused Chito Gratil at Agno Bataan, Malate, Manila. The informant entered the house of accused Gratil while SPO2 Manglo waited outside. When the informant emerged from the house, they proceeded to McDonald's at Harrison Plaza where, according to the informant, they would meet with accused Gratil for the final arrangement. After about 5 or 10 minutes, or at around noontime, accused Gratil arrived at the McDonald's Harrison Plaza and talked to the confidential informant. The confidential informant told accused Gratil that the money for the purchase of *shabu* was already available. Accused Gratil instructed the confidential informant to go to Gratil's house at 4:00 o'clock in the afternoon so that the transaction on the *shabu* could be completed and that it should be fast because after the transaction he would be going to Bulacan. After the meeting at McDonald's Harrison Plaza, SPO2 Manglo and the informant returned to the Central Narcotics Office and reported to P/Insp. Cortez.

That afternoon, the team composed of P/Insp. Cortez, PO1 Molina, SPO2 Antonio, and SPO2 Manglo together with the confidential informant proceeded to the house of accused Gratil on board a vehicle. At around 4:30 p.m. they reached the vicinity of Bataan, Malate, Manila and the vehicle was parked a distance away from the house of accused Gratil. SPO2 Manglo who was in T-shirt and *maong* pants and the confidential informant went to the two-storey house of accused Gratil on foot while the three (3) other policemen who were to act as back up stayed behind. At the ground floor, accused Gratil was waiting. The confidential informant introduced SPO2 Manglo as the buyer to accused Gratil. Upon learning that SPO2 Manglo was the buyer of the 400 grams of *shabu* which the confidential informant earlier confirmed that morning to be available, accused Gratil begged leave to get the stuff outside: ***"Saglit lang at kukunin ko"*** and then left SPO2 Manglo and the confidential informant in the sala of the groundfloor. Ten minutes after, more or less, accused returned and handed over a white plastic bag with the Mercury Drug label to SPO2 Manglo which the latter verified if it contained *shabu*. He found four heat sealed plastic bags containing crystalline substance. When accused Gratil asked for the money, SPO2 Manglo opened the black clutch bag wherein the boodle money which was about 5 to 6 inches

thick with the ₱500 bill on top was put in and showed it and then handed it to the accused. After accused Gratil received the bag and before he could start counting the money, SPO2 Manglo introduced himself as a NARCOM policeman and then he pulled out his Icom radio which was tucked behind his back and called for back up. Accused Gratil was momentarily shocked by the disclosure of the poseur buyer's true identity and when he recovered his wits and attempted to escape, the back up police officers who were positioned just 15 meters away from the house had arrived in response to the radio call of SPO2 Manglo. Accused Gratil was arrested for selling *shabu* to a poseur buyer by the team of policemen and in the process SPO2 Antonio recovered from the accused the marked money. SPO2 Manglo turned over the Mercury Bag containing the four heat sealed plastic bags with crystalline substance to P/Insp. Cortez even before they left the house of the accused. From there, they brought the accused together with the *shabu* and the marked money back to the Central Narcotics Command where the apprehending policemen executed their affidavit of arrest and other related documents in relation to the apprehension of the accused as a consequence of the buy bust operation. To identify the *shabu* that he purchased from the accused, SPO2 Manglo placed his initials on the plastic bags and after which the letter request for laboratory examination was prepared. The specimen were immediately forwarded to the PNP Crime Laboratory for examination on the same day.

P/Insp. Mary Leocy Jabonillo, a Forensic Chemist of the PNP Crime Laboratory at Camp Crame testified that on August 25, 1997, she performed a laboratory examination of specimen submitted to the PNP Crime Laboratory by way of a letter request dated August 24, 1997 from the Central Narcotics District, PNP NARC GRP, QC (Exh. B). The specimen was contained in One (1) white plastic bag with the "Mercury Drug" label and inside were contained four (4) heatsealed transparent plastic bags with crystalline substance. After a visual examination of the specimen, P/Insp. Jabonillo weighed the four crystalline substance contained in each of the heat sealed plastic bags and came out with the following results:

> Exh. 'A-1a' – 96.82 grams;
> Exh. 'A-1b' – 97.02 grams;
> Exh. 'A-1c' – 96.49 grams;
> Exh. 'A-1d' – 97.21 grams.
> (Exhibit C)

After weighing the specimen, she proceeded to take representative samples from each of the plastic bags which she used in performing a Chemical examination, otherwise known as the color test or screening test. Using the representative samples which she treated with an organic solvent, the specimen reacted with a positive result for methamphetamine hydrochloride, a regulated drug. After conducting the chemical examination, she performed the Confirmatory examination using the Chromatographic technique. Again, the Confirmatory examination showed the presence of methamphetamine hydrochloride, a regulated drug. Immediately after conducting the aforedescribed examinations, she reduced the results into writing which are contained in Chemistry Report No. D-2182-97 (Exh. C) and in the Physical Sciences Report (Exh. G).

On the other hand, accused Gratil and Imelda Redolvina testified for the defense. In his defense, accused Gratil gave this version. On August 24, 1997 as early as 8:00 o'clock in the morning, he and his brothers Ricardo, Victor, Norberto, and Armando Gratil were repairing their mother's house at 765 Agno Bataan, Malate, Manila. In the afternoon of the same day, at around 4:00 to 5:00 o'clock, accused Gratil was on his way to his cousin's house to claim a ***bareta*** which was borrowed by said cousin. As he walked towards his cousin's house, he saw people running at an alley (*eskinita*) going towards him. Suddenly someone grabbed him by the collar and told accused Gratil: ***"Putangina mo sama ka."*** Accused Gratil asked: ***"Bakit po?"*** And the man holding him said: ***"Doon ka sa presinto magpaliwanag."*** He could not do anything and so he was boarded on a vehicle which was parked about a hundred meters away from where he was picked up (*nadakma*). Inside the vehicle, accused Gratil was threateningly ordered: ***"Magturo ka!"*** He answered: ***"Sino po ang ituturo ko?"*** He was given a blow to the chest and then threatened: ***"Isasalvage kita!"*** Then, he, together with four other persons who were already inside the vehicle before he was boarded were brought to the Narcotics Office at Kamuning, Quezon City.

Imelda Revoldina testified that on August 24, 1997 between the hours of 4:00 and 5:00 in the afternoon she and others were undergoing training for soap making business in front of the Alay Kapwa center. The center was located at the corner of Agno Bataan, Malate, Manila where the house of the accused was also located. At around that time, there was an unusual incident that she witnessed. There were people shouting and running towards them. After the first group of people passed by her, she saw Chito Gratil collared and held by the

police. The three policemen who were with accused Gratil were in white T-shirts and dark pants and brought him to a vehicle. Imelda went to the mother of Chito Gratil and told her: ***"Aling Pasit baka hindi ninyo alam, si Chito nahuli."*** Chito's mother talked to the policemen but she was told that she can just follow her son to the police station.[3]

The Information[4] dated August 27, 1997 charging appellant with violation of Section 15, Article III, in relation to Section 2(e), (f), (m), and (o), Article I of Republic Act No. 6425, as amended, reads:

That on or about August 24, 1997, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug, did then and there willfully, unlawfully and feloniously sell or offer for sale One (1) white bag labeled Mercury Drug containing four (4) heatsealed transparent plastic bags each weighing ninety[-]six point eighty[-]two (96.82) grams, ninety[-]seven point zero two (97.02) grams, ninety[-]six point forty[-]nine (96.49) grams and ninety[-]seven point twenty[-]one (97.21) grams, respectively, or a total of three hundred eighty[-]seven point fifty[-]four (387.54) grams of white crystalline substance known as "*SHABU*" containing methamphetamine hydrochloride, which is a regulated drug.

Upon arraignment on October 23, 1997, appellant pleaded "not guilty" to the charge leveled against him.[5] Thereafter, trial commenced.

In its Decision dated September 25, 2003, the trial court convicted appellant of violation of Section 15, Article III in relation to Section 21, Article I of Republic Act No. 6425, as amended. The dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused Chito Gratil GUILTY beyond reasonable doubt for violation of Section 15, Article III in relation to Section 21, Article I of Republic Act No. 6425, as amended, and is hereby

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[3] *Id.* at 17-20.

[4] *Id.* at 8.

[5] Records, p. 28.

sentenced to ***Reclusion Perpetua*** and to pay a fine in the amount of ₱500,000.00.

Costs against the accused.[6]

On appeal, the Court of Appeals, in its Decision dated October 15, 2007 affirmed the ruling of the trial court but modified the incorrect reference to Section 21, Article I in the dispositive portion of the trial court decision, as follows:

WHEREFORE, the appealed Decision dated September 25, 2003 is affirmed, subject to the correction of the cited Section of RA 6425 as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused Chito Gratil GUILTY beyond reasonable doubt for violation of Section 15, Article III in relation to Section 20, Article IV of Republic Act No. 6425, as amended, and is hereby sentenced to *Reclusion Perpetua* and to pay a fine in the amount of ₱500,000.00.
>
> Costs against the accused.[7]

Hence, the present appeal where appellant puts forward a single assignment of error, to wit:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 15, ARTICLE III, REPUBLIC ACT NO. 6425 DESPITE THE FAILURE OF THE PROSECUTION TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.[8]

Appellant argues that the evidence on record does not fully sustain the trial court's findings and conclusions. He maintains that his guilt has not been proven beyond reasonable doubt because of the alleged failure of the prosecution to establish the identity of the prohibited drugs which constitute the *corpus delicti* of the charges against him, since the proper procedure

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[6] CA *rollo*, p. 21.

[7] *Rollo*, p. 15.

[8] CA *rollo*, p. 78.

for taking custody of the seized prohibited drugs was not faithfully followed.

The argument fails to persuade.

In prosecutions involving the illegal sale of drugs, what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug as evidence. For conviction of the crime of illegal sale of prohibited or regulated drugs, the following elements must concur: (1) the identities of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it.[9]

A perusal of the records would reveal that the foregoing requisites are present in the case at bar. The proof of the *shabu* transaction was established by prosecution witness Senior Police Officer (SPO) 2 William Manglo, the poseur-buyer, who made a positive identification of the appellant as the one who gave him the "Mercury Drug" bag and to whom he gave the marked money during the buy-bust operation. The following are the pertinent portions of his testimony made in court:

q: Will you tell us how did you happen to have buy bust operation against Chito Gratil on August 24, 1997?

a: On August 24, 1997 according to a confidential agent at 8:00 in the morning the confidential agent told us that he has a contact with *alias* Chito who is residing at 765 Agno Bataan, Malate, Manila, sir.

Court

q: This is the residence of Chito Gratil?

a: Yes, sir.

Fiscal Formoso

q: You said that it was Pol. Inspector Nolasco who receive the claim from the confidential informant?

a: We were present when he was about to receive that message, sir.

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[9] *People v. Ventura*, G.R. No. 184957, October 27, 2009, 604 SCRA 543, 554-555.

q: How was that received?
a: He came personally in the office, sir.

q: And when he went did he talk personally with Nolasco Cortez with the presence of who?
a: SPO2 Welmer Antonio, PO1 Roger Molino and myself, sir.

q: What time was that when your confidential informant went to your office and talk to Cortez?
a: August 24 at 8:00 in the morning, sir.

q: After your confidential informant told Police Inspector Cortez that there is a certain person by the name of Chito Gratil to sell *shabu*, what did he do?
a: Chief Nolasco organized a team for operation to conduct operation against Chito Gratil, sir.

q: What is your specific role as member of the team?
a: As poseur buyer, sir.

q: What did you do as poseur buyer?
a: I was given money to use for our operation, sir.

q: What is the denomination of that money?
a: ₱500.00 bill, sir.

q: What did you do with the money?
a: I kept it with me together with the original of the boodle money, sir.

q: I made a mark on the original of the ₱500.00 bill, sir.

q: What part of the ₱5[0]0.00 bill?
a: I affixed initial on the side of the face of the person and a dot on the nose, sir.

q: Aside from making this point on the nose and initial on the face of the person, what else did you do?
a: I took the serial number, sir.

q: You took the serial number?
a: Yes, sir.

q: If you will see that money again, will you be able to recognize it?
a: Yes, sir.

x x x x x x x x x

q: You said you place a mark or point on the nose, will you tell us where is that point or "*tuldok*"?

Interpreter

Witness pointing at the tip of the nose of the person and also the initial near the collar of the person.

x x x x x x x x x

q: Where is the initial that you placed?
a: Here it is, sir.

q: What is the initial?
a: WEM, sir.

x x x x x x x x x

q: After you were able to mark this money, what else did you do?
a: At about 11:50 in the morning the confidential informant and myself went to the house of the accused, sir.

q: You and the confidential informant were the one who went to the house of Gratil?
a: Yes, sir.

x x x x x x x x x

q: When you reached the place what did you do there?
a: We proceeded at Bataan, Malate, Manila, sir.

Court

q: Did you find him there?

a: Our confidential informant went inside the house and he was just standing at the street, sir.

Fiscal Formoso

q: What happened after that?
a: My confidential informant told me that we will be meeting at Mcdonald's Harrison Plaza that is the place where our final transaction took place, sir.

q: What time did you report by the way at Mcdonald Harrison?
a: Almost 11:40 or 11:45 a.m., sir.

q: What time did this Chito Gratil arrive?
a: After five minutes about 11:50 a.m., sir.

q: When Chito Gratil arrived, what happened?
a: Our confidential informant and this *alias* Chito were talking to each other that the money to buy *shabu* is available, sir.

q: Were you present when this Chito Gratil were talking?
a: I was about 2 ½ meters, sir.

q: Were you able to hear what these two (2) were talking about?
a: Yes, sir.

q: What did you hear?
a: Our confidential informant said that the money is ready, sir for *shabu* and *alias* Chito Gratil said that you come to my house at 4:00 o'clock in the afternoon and to get avail of the *shabu* because at that time he will be going to Bulacan, sir.

q: After this was told by Chito that you have to go in his house did you go there?
a: After that conversation she went back to our office and I reported them to our team leader P/Insp. Nolasco Cortez, sir.

x x x x x x x x x

q: What happened next?
a: He told me that it is first class *shabu* and he told me to wait for a while because he will get the *shabu* and he returned for around 10 minutes, sir.

q: Where did he go?
a: He went out of the house, sir.

q: Were there other persons present when you talked to the accused?
a: No, sir.

q: You mean to say that only the three (3) of you went inside the house?
a: Yes, sir.

q: After 10 minutes he returned?
a: Yes, sir, and he has with him with the logo of Mercury and handed to me and told me that that is the 400 grams of *shabu*, sir.

q: Then what did you do?
a: So, when I opened the mercury bag I noticed that there is something that is wrapped in a Chinese newspaper and I opened and examined the contents and I found that it is *shabu*, sir.

Court

q: What did you see when you opened the newspaper?
a: *Shabu* in four (4) plastic bag and wrapped in a Chinese newspaper, sir.

q: How big is this?
a: Ordinary about 3 by 5 inches, sir.

q: How many bags?
a: Four (4), sir.

q: And these bags are transparent?
a: Yes, sir.

q: So, it was handed to you this *shabu* by the accused, what did you do next?
a: He asked for the payment, so, what I did is to open the bag and handed to him the money, sir.[10]

A comparison with the Joint Affidavit of Arrest[11] executed earlier by SPO2 Manglo, SPO2 Wilmer Antonio and Police Officer (PO) 1 Roger R. Molino and the foregoing testimony, would reveal that both aver the same narrative with regard to the arrest of appellant. The pertinent portions of the said affidavit read as follows:

That on 24 Aug 97, at around 8:00 o'clock in the morning, our male Confidential Informant appeared in our Office and reported to POL INSPECTOR NOLASCO V. CORTEZ PNP that he was able to get in contact with a certain *Alyas* "CHITO" of 765 Agnoo-Bataan,

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[10] TSN, April 15, 1998, pp. 6-24.

[11] Records, pp. 9-10.

Malate, Manila and managed to order four hundred (400) grams of *shabu* in the amount of four hundred thousand (₱400,000.00) pesos. That he further stressed that the stuff will be available in the afternoon of the same date. That relative to this report, POL INSP NOLASCO V. CORTEZ PNP organized a team composed of herein affiants with SPO2 Wilmer G. Antonio PNP and PO1 Roger R. Molino PNP as back-up/arresting officer and SPO2 William E. Manglo PNP as the poseur-buyer and furnished with one (1) five hundred (₱500.00) peso bill (marked money) with serial number AT485382 and the rest as boodle money representing the amount of Four Hundred Thousand (₱400,000.00) pesos to be used in the buy-bust operation;

x x x x x x x x x

x x x That upon arrival at the house of *Alyas* "CHITO", I (SPO2 Manglo) was introduced by our CI as the buyer of *shabu*. Aka "CHITO" then asked me how much quantity of *shabu* I am going to purchase. That I told him that I am in need of at least four hundred (400) grams of *shabu*. That Aka "CHITO" told me that the price of 400 grams of *shabu* is four hundred thousand (₱400,000.00) pesos. That I acknowledged his offer and informed him that I am willing to purchase only 400 grams of *shabu*, if it is already available. That Aka "CHITO" stated that he had 400 grams of *shabu* available and he asked me if I have with me the money as payment for said stuff, that at this juncture, I opened my bag and showed to him the bundle of buy-money (boodle money) consisting of one (1) genuine five hundred (₱500.00) peso bill placed at the top of the bundle of boodle money. When Aka "CHITO" saw the said bundle of purported money, I asked him if I could also examine the *shabu* before I made the payment and he gave me assurance that his stuff was of good quality, then Aka "Chito" went out of his house to get the stuff while SPO2 Manglo together with the CI stayed inside of the house **and after a few minutes, Aka "CHITO" returned back to his house and immediately without further hesitation, handed one (1) white bag (labeled Mercury Drug) containing four (4) heatsealed transparent plastic bag each with brownish crystalline substance wrapped in a Chinese newsprint and informed the undersigned poseur-buyer that the content of said heatsealed transparend plastic bag is 400 grams of *shabu* and after examining the content of it, which turn out to be *shabu*, I took hold of it and Aka "CHITO" demanded the payment. That I handed the buy-bust money (boodle) to him** and at this juncture, I introduced to him that I am a Police Officer

and before he could get outside of the house in attempting to elude arrest, I called the back-up/arresting officer thru a handheld who responded and effected the arrest of the suspect and SPO2 Antonio recovered from him (Aka "CHITO") custody/possession and control the buy-bust/boodle money.

x x x x x x x x x

x x x That the suspect was brought to our Office together with the confiscated/seized evidence for proper disposition. (Emphasis supplied.)

Furthermore, the alleged procedural infirmity pointed out by appellant does not prove fatal to the prosecution's case. Section 1 of Dangerous Drugs Board Regulation No. 3, Series of 1979, as amended by Board Regulation No. 2, Series of 1990, which was cited by appellant as the rule of procedure which the arresting police officers did not strictly observe, provides that all prohibited and regulated drugs shall be physically inventoried and photographed in the presence of the accused who shall be required to sign the copies of the inventory and be given a copy thereof, to wit:

Section 1. All prohibited and regulated drugs, instruments, apparatuses and articles specially designed for the use thereof when unlawfully used or found in the possession of any person not authorized to have control and disposition of the same, or when found secreted or abandoned, shall be seized or confiscated by any national, provincial or local law enforcement agency. Any apprehending team having initial custody and control of said drugs and/or paraphernalia, should immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and/or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. Thereafter, the seized drugs and paraphernalia shall be immediately brought to a properly equipped government laboratory for a qualitative and quantitative examination.

The apprehending team shall: (a) within forty-eight (48) hours from the seizure inform the Dangerous Drugs Board by telegram of said seizure, the nature and quantity thereof, and who has present custody of the same, and (b) submit to the Board a copy of the mission

investigation report within fifteen (15) days from completion of the investigation.[12]

However, the failure to conduct an inventory and to photograph the confiscated items in the manner prescribed under the said provision of law applicable at the time of appellant's arrest and which is now incorporated as Section 21(1) of Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act of 2002)[13] that repealed Republic Act No. 6425 cannot be used as a ground for appellant's exoneration from the charge against him.

In *People v. De Los Reyes*,[14] a case which also involved an objection regarding the non-compliance with the chain of custody rule, we held that:

> The failure of the arresting police officers to comply with said DDB Regulation No. 3, Series of 1979 is a matter strictly between the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the prosecution of the criminal case for the reason that the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale or transaction is established (*People v. Santiago*, 206 SCRA 733[1992]) and the prosecution thereof is not undermined by the failure of the arresting officers to comply with the regulations of the Dangerous Drugs Board.[15]

Moreover, in *People v. Agulay*,[16] we held that:

> Non-compliance with [Section 21, 19 Article II of Republic Act No. 9165] is not fatal and will not render an accused's arrest illegal or

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[12] Cited in *People v. Gonzaga*, G.R. No. 184952, October 11, 2010; *People v. Kimura*, 471 Phil. 895, 918 (2004).

[13] (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.

[14] G.R. No. 106874, January 21, 1994, 229 SCRA 439.

[15] *Id.* at 447.

[16] G.R. No. 181747, September 26, 2008, 566 SCRA 571.

the items seized/confiscated from him inadmissible. In *People v. Del Monte*, this Court held that 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. x x x.[17]

The *ponente* of *Agulay* would further observe in a separate opinion that the failure by the buy-bust team to comply with the procedure in Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165,[18] which replicated Section 21(1) of Republic Act No. 9165, did not overcome the presumption of regularity accorded to police authorities in the performance of their official duties, to wit:

First, it must be made clear that in several cases decided by the Court, failure by the buy-bust team to comply with said section did not prevent the presumption of regularity in the performance of duty from applying.

Second, even prior to the enactment of R.A. 9165, the requirements contained in Section 21(a) were already there per Dangerous Drugs Board Regulation No. 3, Series of 1979. Despite the presence of such regulation and its non-compliance by the buy-bust team, the Court still applied such presumption. x x x.[19] (Citations omitted.)

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[17] *Id.* at 595.

[18] (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

[19] *People v. Agulay*, *supra* note 16 at 622-623.

Notwithstanding the minor lapse in procedure committed by the police officers in the handling of the illegal drugs taken from appellant, the identity and integrity of the evidence was never put into serious doubt in the course of the proceedings of this case. In fact, SPO2 Manglo categorically testified that the confiscated plastic sachets of "*shabu*" were marked, turned-over to the police headquarters for investigation, and subjected to laboratory examination. To quote the relevant portion of the transcript:

q: Kindly examine carefully these separate plastic sachet containing *shabu* if that is the plastic sachet containing *shabu* that you bought from the accused Chito Gratil?

a: Yes, this is the plastic of *shabu* that I bought from the accused, sir.

q: Kindly tell us your distinguishing mark?

a: My initial, sir.

q: Kindly point to us you initial in these four (4) plastic bags?

Interpreter

Witness pointing to his initial appearing in each four (4) bags which previously marked as Exhibits A-1, A-2, A-3 and A-4.

x x x x x x x x x

q: What did you do then in order to identify the *shabu* the subject of your sale and in order to identify the seller of the *shabu*?

a: What we [did] after the sale consummated we placed the marking our initial on the *shabu* that we bought and we made the corresponding request for the examination in the laboratory where we indicate the name and source of the *shabu* or the name of the one selling the *shabu*.

q: Aside from this referral letter where else did you place the name of the accused?

a: In the documents prepared by our investigator such as the Booking sheet and Arrest Report, sir.[20]

[20] TSN, August 29, 2001, pp. 6-16.

The marking, turn-over, and laboratory examination of the evidence of illegal drugs were all done on the same day the "*shabu*" transaction at issue occurred, as indicated in the Memorandum[21] dated August 24, 1997 signed by Police Superintendent Pedro Ongsotto Alcantara PNP who was then the Chief of the Central Narcotics District Office, EDSA, Quezon City. The said memorandum contained a request by P/Supt. Alcantara to the Philippine National Police (PNP) Criminal Investigation Service in Camp Crame, Quezon City for laboratory examination of the items seized from appellant.

Likewise, SPO2 Manglo's testimony was corroborated by Police Inspector Mary Leocy Jabonillo, a forensic chemist of the PNP Crime Laboratory Office in Camp Crame, Quezon City, who testified that when she received the "Mercury Drug" bag containing four plastic bags filled with white crystalline substance, they were already marked and that she also later marked them. Her account on this matter follows:

q: Will you tell us if what is that specimen which was referred to you for examination?

a: We received a plastic bag labeled Mercury Drug, sir, containing newspaper and four (4) plastic with white bags containing yellowish substance with the following weights:

Exhibit A-1-A 96.82 grams
Exhibit A-1-B 97.02 grams
Exhibit A-1-C 96.49 grams
Exhibit A-1-D 97.21 grams
with a total of 387.54 grams, sir.

Fiscal Formoso

q: How was this specimen referred to you for examination?

a: There was a letter request from the Chief of Narcotics Drug Division, Office, Quezon City, sir.

x x x x x x x x x

[21] Records, p. 192.

Fiscal Formoso

q: Now, will you tell this Honorable Court if what did you do after you received the specimen?
a: I put my markings on the specimen, sir.

q: Where is that specimen that you received?

Interpreter

Witness is opening the mercury bag and brings out specimen in four (4) separate plastic bags and wrapped in Chinese newspaper.

Fiscal Formoso

q: Will you tell this honorable court if that was the very condition of this specimen when you received it?
a: Yes, sir.

q: And it was already marked when you received it?
a: Yes, sir, and I have also my own markings.

x x x x x x x x x

Fiscal Formoso

q: Now, when you received these four (4) plastic bags, what did you do then?
a: After putting my marking, I got a sample and proceeded to physical examination, Your Honor, and after conducting that physical examination all specimen gave positive result, sir, for methamphetamine hydrochloride.[22]

In response to the accusation leveled against him, appellant only managed to set up the defense of bare denial. According to his version of the story, appellant maintains that he was forcibly abducted while on his way to a cousin's house and was later thrown inside a vehicle where he was beaten up and threatened with execution before he was brought to the police station. In short, appellant insists that he was a victim of frame-up.

As we have time and again held, the defense of denial or frame-up, like alibi, has been invariably viewed with disfavor for it can easily be concocted and is a common defense in most

[22] TSN, April 2, 1998, pp. 3-7.

prosecutions for violation of the Dangerous Drugs Act.[23] Charges of extortion and frame-up are frequently made in this jurisdiction. Courts are, thus, cautious in dealing with such accusations, which are quite difficult to prove in light of the presumption of regularity in the performance of the police officers' duties. To substantiate such defense, which can be easily concocted, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit.[24]

In the case at bar, no clear and convincing evidence to support the defense of frame-up was put forward by appellant. Neither was there any imputation or proof of ill motive on the part of the arresting police officers. Even the testimony of defense witness Imelda Revoldina failed to establish any irregularity in the conduct of the apprehending police officers in this case. In fact, her neutral testimony that she saw the police officers hold the collar of appellant while leading him into a vehicle tended to support the prosecution's assertion that appellant was arrested in plain view as a consequence of his act of selling illegal drugs.

As appellant failed to show any reversible error on the part of the lower courts in the resolution of this case, his conviction must be upheld.

WHEREFORE, premises considered, the Decision dated October 15, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02338 is hereby *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), del Castillo, Perez, and *Mendoza,*[*] *JJ.,* concur.

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[23] *People v. Gutierrez,* G.R. No. 177777, December 4, 2009, 607 SCRA 377, 390.

[24] *People v. Capalad,* G.R. No. 184174, April 7, 2009, 584 SCRA 717, 727.

[*] Per Special Order No. 1022 dated June 10, 2011.

SPECIAL THIRD DIVISION

[G.R. No. 182645. June 22, 2011]

In the Matter of the Heirship (Intestate Estates) of the Late Hermogenes Rodriguez, Antonio Rodriguez, Macario J. Rodriguez, Delfin Rodriguez, and Consuelo M. Rodriguez and Settlement of their Estates, RENE B. PASCUAL, *petitioner, vs.* **JAIME M. ROBLES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AGGRIEVED PARTY, EXPLAINED; A NON-PARTY IN THE PROCEEDINGS BEFORE THE LOWER COURTS HAS NO PERSONALITY TO FILE THE PETITION IN THE SUPREME COURT; CASE AT BAR.— [P]etitioner has no personality to file the instant petition. The requirement of personality is sanctioned by Section 1, Rule 65 of the Rules of Court, which essentially provides that a person aggrieved by any act of a tribunal, board or officer exercising judicial or quasi-judicial functions rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction may file a petition for *certiorari*. This Court has held that: An aggrieved party under Section 1, Rule 65 [of the Rules of Court] is **one who was a party to the original proceedings that gave rise to the original action for *certiorari* under Rule 65.** x x x. Although Section 1 of Rule 65 provides that the special civil action of *certiorari* may be availed of by a "person aggrieved" by the orders or decisions of a tribunal, **the term "person aggrieved" is not to be construed to mean that any person who feels injured by the lower court's order or decision can question the said court's disposition via *certiorari*.** x x x Thus, a person not a party to the proceedings in the trial court or in the CA cannot maintain an action for *certiorari* in the Supreme Court to have the judgment reviewed. Stated differently, if a petition for *certiorari* or prohibition is filed by one who was not a party in the lower court, he has no standing to question the assailed order. In the present case,

petitioner was never a party to the proceedings in the RTC and the CA. In fact, he admits that he is a third party insofar as the instant case is concerned. There is no dispute that it was only in January 2005 that he acquired interest in a portion of the properties subject of the estate proceedings when he bought a real property located in San Fernando, Pampanga, which belonged to the Rodriguez estate. Petitioner claims that he filed the instant petition for *certiorari* only after learning of the assailed Decision of the CA and the Order of the RTC on March 13, 2008, implying that he could not have intervened earlier. This, however, is not an excuse or justification to allow petitioner to file the instant petition. To do so would put into the hands of the litigants in a case the power to resurrect or to introduce anew, with the assistance of intervenors, issues to a litigation which have already been long settled on appeal.

2. ID.; CIVIL PROCEDURE; INTERVENTION; TIME TO INTERVENE; RATIONALE OF THE AMENDED RULE THEREON.— Section 2, Rule 19 of the Rules of Court clearly provides that a motion to intervene may be filed at **any time before rendition of judgment by the trial court**. In *The Learning Child, Inc. v. Ayala Alabang Village Association*, this Court's disquisition on the significance of the abovementioned Section is instructive, to wit: This section is derived from the former Section 2, Rule 12, which then provided that the motion to intervene may be filed "before or during a trial." Said former phraseology gave rise to ambiguous doctrines on the interpretation of the word "trial," with one decision holding that said Motion may be filed up to the day the case is submitted for decision, while another stating that it may be filed at any time before the rendition of the final judgment. This ambiguity was eliminated by the present Section 2, Rule 19 by clearly stating that the same may be filed "at any time before rendition of the judgment by the trial court," in line with the second doctrine above-stated. The clear import of the amended provision is that intervention cannot be allowed when the trial court has already rendered its Decision, and much less, as in the case at bar, when even the Court of Appeals had rendered its own Decision on appeal. In his book on remedial law, former Supreme Court Associate Justice Florenz D. Regalado explained the rationale behind the amendments introduced in Section 2, Rule 19 of the Rules of Court as follows: The justification advanced

for this is that before judgment is rendered, the court for good cause shown, may still allow the introduction of additional evidence and that is still within a liberal interpretation of the period for trial. Also, since no judgment has yet been rendered, the matter subject of the intervention may still be readily resolved and integrated in the judgment disposing of all claims in the case, and would not require an overall reassessment of said claims as would be the case if the judgment had already been rendered.

3. ID.; ID.; JUDGMENTS; IMMUTABILITY OF FINAL JUDGMENTS; EXCEPTIONS; CASE AT BAR.— It is also worthy to note that the disputed Decision was promulgated way back on April 16, 2002. The respondents in the said case, namely, Henry Rodriguez, Certeza Rodriguez and Rosalina Pellosis, did not appeal. Herein respondent, on the other hand, who was the petitioner in the case, filed a petition for review on *certiorari* with this Court assailing a portion of the CA Decision. However, the petition was denied *via* a Resolution issued by the Court dated August 1, 2005, and that the same had become final and executory on November 10, 2005. Hence, by the time herein petitioner filed the instant petition on the sole basis that he acquired an interest in a portion of the disputed estate, the assailed CA Decision had long become final and executory. In *Mocorro, Jr. v. Ramirez,* this Court reiterated the long-standing rule governing finality of judgments, to wit: 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. 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. x x x Unlike the August 13, 1999 Amended Decision of the RTC, Iriga City, Branch 34, which was found by the CA

to be a complete nullity, there is no showing that the instant case falls under any of the exceptions enumerated above.

APPEARANCES OF COUNSEL

Salva Salva & Salva and *Larry L. Pernito* for petitioner.
Sansaet Masendo Cadiz & Banosia Law Offices and *Alentajan Law Office* for Henry Rodriguez, *etc*.

D E C I S I O N

PERALTA, *J.*:

On December 15, 2010, this Court promulgated a Resolution[1] which set aside its Decision[2] earlier issued on December 4, 2009 on the ground that herein petitioner, Rene B. Pascual failed to implead herein respondent Jaime M. Robles, who is an indispensable party to the present case.

After receiving respondent's Comment and Opposition,[3] as well as petitioner's Reply[4] thereto, the Court will now proceed to determine the merits of the instant petition for *certiorari*.

Again, the Court finds it *apropros* to restate the pertinent antecedent facts and proceedings as set forth in the December 4, 2009 Decision as well as in the December 15, 2010 Resolution, to wit:

On 14 September 1989, a petition for Declaration of Heirship and Appointment of Administrator and Settlement of the Estates of the Late Hermogenes Rodriguez (Hermogenes) and Antonio Rodriguez (Antonio) was filed before the [Regional Trial Court] RTC [of Iriga City]. The petition, docketed as Special Proceeding No. IR-1110, was filed by Henry F. Rodriguez (Henry), Certeza F. Rodriguez (Certeza), and Rosalina R. Pellosis (Rosalina). Henry, Certeza and

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[1] *Rollo*, pp. 422-431.

[2] *Id*. at 193-213.

[3] *Id*. at 656-701.

[4] *Id.* at 705-711.

Rosalina sought that they be declared the sole and surviving heirs of the late Antonio Rodriguez and Hermogenes Rodriguez. They alleged they are the great grandchildren of Antonio based on the following genealogy: that Henry and Certeza are the surviving children of Delfin M. Rodriguez (Delfin) who died on 8 February 1981, while Rosalina is the surviving heir of Consuelo M. Rodriguez (Consuelo); that Delfin and Consuelo were the heirs of Macario J. Rodriguez (Macario) who died in 1976; that Macario and Flora Rodriguez were the heirs of Antonio; that Flora died without an issue in 1960 leaving Macario as her sole heir.

Henry, Certeza and Rosalina's claim to the intestate estate of the late Hermogenes Rodriguez, a former *gobernadorcillo*, is based on the following lineage: that Antonio and Hermogenes were brothers and the latter died in 1910 without issue, leaving Antonio as his sole heir.

At the initial hearing of the petition on 14 November 1989, nobody opposed the petition. Having no oppositors to the petition, the RTC entered a general default against the whole world, except the Republic of the Philippines. After presentation of proof of compliance with jurisdictional requirements, the RTC allowed Henry, Certeza and Rosalina to submit evidence before a commissioner in support of the petition. After evaluating the evidence presented, the commissioner found that Henry, Certeza and Rosalina are the grandchildren in the direct line of Antonio and required them to present additional evidence to establish the alleged fraternal relationship between Antonio and Hermogenes.

Taking its cue from the report of the commissioner, the RTC rendered a Partial Judgment dated 31 May 1990 declaring Henry, Certeza and Rosalina as heirs in the direct descending line of the late Antonio, Macario and Delfin and appointing Henry as regular administrator of the estate of the decedents Delfin, Macario and Antonio, and as special administrator to the estate of Hermogenes.

Henry filed the bond and took his oath of office as administrator of the subject estates.

Subsequently, six groups of oppositors entered their appearances either as a group or individually, namely:

(1) The group of Judith Rodriguez;
(2) The group of Carola Favila-Santos;

(3) Jaime Robles;
(4) Florencia Rodriguez;
(5) Victoria Rodriguez; and
(6) Bienvenido Rodriguez

Only the group of Judith Rodriguez had an opposing claim to the estate of Antonio, while the rest filed opposing claims to the estate of Hermogenes.

In his opposition, Jaime Robles likewise prayed that he be appointed regular administrator to the estates of Antonio and Hermogenes and be allowed to sell a certain portion of land included in the estate of Hermogenes covered by OCT No. 12022 located at Barrio Manggahan, Pasig, Rizal.

After hearing on Jamie Robles' application for appointment as regular administrator, the RTC issued an Order dated 15 December 1994 declaring him to be an heir and next of kin of decedent Hermogenes and thus qualified to be the administrator. Accordingly, the said order appointed Jaime Robles as regular administrator of the entire estate of Hermogenes and allowed him to sell the property covered by OCT No. 12022 located at Barrio Manggahan, Pasig Rizal.

On 27 April 1999, the RTC rendered a decision declaring Carola Favila-Santos and her co-heirs as heirs in the direct descending line of Hermogenes and reiterated its ruling in the partial judgment declaring Henry, Certeza and Rosalina as heirs of Antonio. The decision dismissed the oppositions of Jamie Robles, Victoria Rodriguez, Bienvenido Rodriguez, and Florencia Rodriguez, for their failure to substantiate their respective claims of heirship to the late Hermogenes.

On 13 August 1999, the RTC issued an Amended Decision reversing its earlier finding as to Carola Favila-Santos. This time, the RTC found Carola Favila-Santos and company not related to the decedent Hermogenes. The RTC further decreed that Henry, Certeza and Rosalina are the heirs of Hermogenes. The RTC also re-affirmed its earlier verdict dismissing the oppositions of Jaime Robles, Victoria Rodriguez, Bienvenido Rodriguez, and Florencia Rodriguez.[5]

Robles then appealed the August 13, 1999 Decision of the RTC by filing a notice of appeal, but the same was denied by the trial

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[5] *Id*. at 228-231.

court in its Order dated November 22, 1999 for Robles' failure to file a record on appeal.

Robles questioned the denial of his appeal by filing a petition for review on *certiorari* with this Court.

In a Resolution dated February 14, 2000, this Court referred the petition to the [Court of Appeals (CA)] for consideration and adjudication on the merits on the ground that the said court has jurisdiction concurrent with this Court and that no special and important reason was cited for this Court to take cognizance of the said case in the first instance.

On April 16, 2002, the CA rendered judgment annulling the August 13, 1999 Amended Decision of the RTC.

Henry Rodriguez (Rodriguez) and his group moved for the reconsideration of the CA decision, but the same was denied in a Resolution dated January 21, 2004. Rodriguez and his co-respondents did not appeal the Decision and Resolution of the CA.

On the other hand, Robles filed an appeal with this Court assailing a portion of the CA Decision. On August 1, 2005, this Court issued a Resolution denying the petition of Robles and, on November 10, 2005, the said Resolution became final and executory.

On May 13, 2008, the instant petition was filed.[6]

Petitioner posits the following reasons relied upon for the allowance of his petition:

I

THE HONORABLE COURT OF APPEALS' DECISION DATED APRIL 16, 2002 WAS ISSUED IN GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION, HENCE, A PATENT NULLITY.

II

THE ORDER DATED FEBRUARY 21, 2007 ISSUED BY THE HONORABLE REGIONAL TRIAL COURT, BRANCH 34, IRIGA CITY, BASED ON THE COURT OF APPEALS' APRIL 16, 2002 DECISION WAS ISSUED IN GRAVE ABUSE OF DISCRETION

[6] *Id*. at 425-426.

TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION, HENCE, A PATENT NULLITY.

III

THE AFOREMENTIONED COURT OF APPEALS' APRIL 16, 2002 DECISION AND FEBRUARY 21, 2007 ORDER OF THE REGIONAL TRIAL COURT, BRANCH 34, IRIGA CITY, WERE NULL AND VOID *AB INITIO* AS THEY CONTRAVENED, INCONSISTENT WITH AND CONTRADICTORY TO THE FINAL AND EXECUTORY DECISIONS AND RESOLUTIONS OF THE SUPREME COURT, WHICH IS IN GROSS VIOLATION OF THE RULE THAT ALL COURTS SHOULD TAKE THEIR BEARINGS FROM THE SUPREME COURT.[7]

The Court finds that there are compelling reasons to dismiss the present petition, as discussed below.

First, petitioner has no personality to file the instant petition. The requirement of personality is sanctioned by Section 1, Rule 65 of the Rules of Court, which essentially provides that a person aggrieved by any act of a tribunal, board or officer exercising judicial or quasi-judicial functions rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction may file a petition for *certiorari*.[8]

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

[8] The complete text of Section 1, Rule 65 reads as follows*:*

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 its or his 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.

This Court has held that:

An aggrieved party under Section 1, Rule 65 [of the Rules of Court] is **one who was a party to the original proceedings that gave rise to the original action for *certiorari* under Rule 65.** x x x.

> Although Section 1 of Rule 65 provides that the special civil action of *certiorari* may be availed of by a "person aggrieved" by the orders or decisions of a tribunal, **the term "person aggrieved" is not to be construed to mean that any person who feels injured by the lower court's order or decision can question the said court's disposition via *certiorari*.** To sanction a contrary interpretation would open the floodgates to numerous and endless litigations which would undeniably lead to the clogging of court dockets and, more importantly, the harassment of the party who prevailed in the lower court.
>
> In a situation wherein the order or decision being questioned underwent adversarial proceedings before a trial court, the "person aggrieved" referred to under Section 1 of Rule 65 who can avail of the special civil action of *certiorari* pertains to one who was a party in the proceedings before the lower court. The correctness of this interpretation can be gleaned from the fact that a special civil action for *certiorari* may be dismissed *motu proprio* if the party elevating the case failed to file a motion for reconsideration of the questioned order or decision before the lower court. Obviously, only one who was a party in the case before the lower court can file a motion for reconsideration since a stranger to the litigation would not have the legal standing to interfere in the orders or decisions of the said court. In relation to this, **if a non-party in the proceedings before the lower court has no standing to file a motion for reconsideration, logic would lead us to the conclusion that he would likewise have no standing to question the said order or decision before the appellate court via *certiorari*.**[9]

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[9] *Concepcion, Jr. v. Commission on Elections*, G.R. No. 178624, June 30, 2009, 591 SCRA 420, 434-435, citing *Tang v. Court of Appeals*, 382 Phil. 277, 287-288 (2000). (Emphasis supplied.)

Thus, a person not a party to the proceedings in the trial court or in the CA cannot maintain an action for *certiorari* in the Supreme Court to have the judgment reviewed.[10] Stated differently, if a petition for *certiorari* or prohibition is filed by one who was not a party in the lower court, he has no standing to question the assailed order.[11]

In the present case, petitioner was never a party to the proceedings in the RTC and the CA. In fact, he admits that he is a third party insofar as the instant case is concerned. There is no dispute that it was only in January 2005 that he acquired interest in a portion of the properties subject of the estate proceedings when he bought a real property located in San Fernando, Pampanga, which belonged to the Rodriguez estate. Petitioner claims that he filed the instant petition for *certiorari* only after learning of the assailed Decision of the CA and the Order of the RTC on March 13, 2008, implying that he could not have intervened earlier. This, however, is not an excuse or justification to allow petitioner to file the instant petition. To do so would put into the hands of the litigants in a case the power to resurrect or to introduce anew, with the assistance of intervenors, issues to a litigation which have already been long settled on appeal.

Indeed, petitioner may not be allowed to intervene at this late a stage. Section 2, Rule 19 of the Rules of Court clearly provides that a motion to intervene may be filed at **any time before rendition of judgment by the trial court**.

In *The Learning Child, Inc. v. Ayala Alabang Village Association*,[12] this Court's disquisition on the significance of the abovementioned Section is instructive, to wit:

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[10] *Government Service Insurance System v. Court of Appeals*, G.R. Nos. 183905 and 184275, April 16, 2009, 585 SCRA 679, 697; Regalado, *Remedial Law Compendium*, Vol. I, Sixth Revised Edition, p. 724, citing *Ramos v. Lampa*, 63 Phil. 215 (1936).

[11] *Macias v. Lim*, G.R. No. 139284, June 4, 2004, 431 SCRA 20, 36.

[12] G.R. No. 134269, July 7, 2010, 624 SCRA 258.

This section is derived from the former Section 2, Rule 12, which then provided that the motion to intervene may be filed "before or during a trial." Said former phraseology gave rise to ambiguous doctrines on the interpretation of the word "trial," with one decision holding that said Motion may be filed up to the day the case is submitted for decision, while another stating that it may be filed at any time before the rendition of the final judgment. This ambiguity was eliminated by the present Section 2, Rule 19 by clearly stating that the same may be filed "at any time before rendition of the judgment by the trial court," in line with the second doctrine above-stated. The clear import of the amended provision is that intervention cannot be allowed when the trial court has already rendered its Decision, and much less, as in the case at bar, when even the Court of Appeals had rendered its own Decision on appeal.[13]

In his book on remedial law, former Supreme Court Associate Justice Florenz D. Regalado explained the rationale behind the amendments introduced in Section 2, Rule 19 of the Rules of Court as follows:

The justification advanced for this is that before judgment is rendered, the court for good cause shown, may still allow the introduction of additional evidence and that is still within a liberal interpretation of the period for trial. Also, since no judgment has yet been rendered, the matter subject of the intervention may still be readily resolved and integrated in the judgment disposing of all claims in the case, and would not require an overall reassessment of said claims as would be the case if the judgment had already been rendered.[14]

It is also worthy to note that the disputed Decision was promulgated way back on April 16, 2002. The respondents in the said case, namely, Henry Rodriguez, Certeza Rodriguez and Rosalina Pellosis, did not appeal. Herein respondent, on the other hand, who was the petitioner in the case, filed a petition for review on *certiorari* with this Court assailing a portion of the CA Decision. However, the petition was denied *via* a Resolution issued by the Court dated August 1, 2005, and that the same had become final and executory on November 10, 2005.

[13] *Id.* at 280.

[14] Regalado, *Remedial Law Compendium*, Vol. I, Sixth Revised Edition, p. 293.

Hence, by the time herein petitioner filed the instant petition on the sole basis that he acquired an interest in a portion of the disputed estate, the assailed CA Decision had long become final and executory.

In *Mocorro, Jr. v. Ramirez,*[15] this Court reiterated the long-standing rule governing finality of judgments, to wit:

> 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. 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. x x x[16]

Unlike the August 13, 1999 Amended Decision of the RTC, Iriga City, Branch 34, which was found by the CA to be a complete nullity, there is no showing that the instant case falls under any of the exceptions enumerated above.

Considering the foregoing, the Court no longer finds it necessary to address the issues raised by petitioner.

WHEREFORE, the instant petition for *certiorari* is *DISMISSED* for lack of merit.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Mendoza, and *Perez,*[*] *JJ.,* concur.

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[15] G.R. No. 178366, July 28, 2008, 560 SCRA 362.

[16] *Id.* at 372-373.

[*] Designated as an additional member per Special Order No. 1008 dated June 10, 2011.

SECOND DIVISION

[G.R. No. 182819. June 22, 2011]

MAXIMINA A. BULAWAN, *petitioner, vs.* **EMERSON B. AQUENDE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENTS; GROUNDS; EXPOUNDED.— In a petition for annulment of judgment, the judgment may be annulled on the grounds of extrinsic fraud and lack of jurisdiction. Fraud is extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured. The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court. On the other hand, lack of jurisdiction refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim, and in either case the judgment or final order and resolution are void. Where the questioned judgment is annulled, either on the ground of extrinsic fraud or lack of jurisdiction, the same shall be set aside and considered void.

2. ID.; ID.; ID.; AN ACTION FOR ANNULMENT OF JUDGMENT MAY BE AVAILED OF EVEN IF THE JUDGMENT TO BE ANNULLED HAD BEEN FULLY EXECUTED OR IMPLEMENTED.— In his petition for annulment of judgment, Aquende alleged that there was extrinsic fraud because he was prevented from protecting his title when Bulawan and the trial court failed to implead him as a party. Bulawan also maintained that the trial court did not acquire jurisdiction over his person and, therefore, its 26 November 1996 Decision is not binding on him. In its 26 November 2007 Decision, the Court of Appeals found merit in Aquende's petition and declared that the trial court did not acquire jurisdiction over Aquende, who was adversely affected by its 26 November 1996 Decision. We find no error in the findings of the Court of Appeals. Moreover, annulment of judgment is a remedy in law independent of the

case where the judgment sought to be annulled was rendered. Consequently, an action for annulment of judgment may be availed of even if the judgment to be annulled had already been fully executed or implemented. Therefore, the Court of Appeals did not err when it took cognizance of Aquende's petition for annulment of judgment and overturned the trial court's 26 November 1996 Decision even if another division of the Court of Appeals had already affirmed it and it had already been executed.

3. ID.; ID.; PARTIES TO CIVIL ACTIONS; COMPULSORY JOINDER OF INDISPENSABLE PARTIES; THE BURDEN TO IMPLEAD OR ORDER THE IMPLEADING OF INDISPENSABLE PARTIES IS PLACED ON THE PLAINTIFF AND ON THE TRIAL COURT, RESPECTIVELY.— Section 7, Rule 3 of the Rules of Court defines indispensable parties as parties in interest without whom no final determination can be had of an action. An indispensable party is one whose interest will be affected by the court's action in the litigation. As such, they must be joined either as plaintiffs or as defendants. In *Arcelona v. Court of Appeals*, we said: The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties where possible, and the joinder of all indispensable parties under any and all conditions, their presence being a *sine qua non* for the exercise of judicial power. It is precisely "when an indispensable party is not before the court (that) the action should be dismissed." The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. During the proceedings before the trial court, the answers of Yap and the Register of Deeds should have prompted the trial court to inquire further whether there were other indispensable parties who were not impleaded. The trial court should have taken the initiative to implead Aquende as defendant or to order Bulawan to do so as mandated under Section 11, Rule 3 of the Rules of Court. The burden to implead or to order the impleading of indispensable parties is placed on Bulawan and on the trial court, respectively. However, even if Aquende were not an indispensable party, he could still file a petition for annulment of judgment. We have consistently held that a person need not be a party to the judgment sought to be annulled. What is

essential is that he can prove his allegation that the judgment was obtained by the use of fraud and collusion and that he would be adversely affected thereby.

4. ID.; ID.; ID.; ID.; A PERSON WHO WAS NOT IMPLEADED IN THE COMPLAINT CANNOT BE BOUND BY THE DECISION RENDERED THEREIN, FOR NO MAN SHALL BE AFFECTED BY A PROCEEDING IN WHICH HE IS A STRANGER.— We agree with the Court of Appeals that Bulawan obtained a favorable judgment from the trial court by the use of fraud. Bulawan prevented Aquende from presenting his case before the trial court and from protecting his title over his property. We also agree with the Court of Appeals that the 26 November 1996 Decision adversely affected Aquende as he was deprived of his property without due process. Moreover, a person who was not impleaded in the complaint cannot be bound by the decision rendered therein, for no man shall be affected by a proceeding in which he is a stranger. In *National Housing Authority v. Evangelista*, we said: In this case, it is undisputed that respondent was never made a party to Civil Case No. Q-91-10071. It is basic that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court. Yet, the assailed paragraph 3 of the trial court's decision decreed that "(A)ny transfers, assignment, sale or mortgage of whatever nature of the parcel of land subject of this case made by defendant Luisito Sarte or his/her agents or assigns before or during the pendency of the instant case are hereby declared null and void, together with any transfer certificates of title issued in connection with the aforesaid transactions by the Register of Deeds of Quezon City who is likewise ordered to cancel or cause the cancellation of such TCTs." Respondent is adversely affected by such judgment, as he was the subsequent purchaser of the subject property from Sarte, and title was already transferred to him. **It will be the height of inequity to allow respondent's title to be nullified without being given the opportunity to present any evidence in support of his ostensible ownership of the property. Much more, it is tantamount to a violation of the constitutional guarantee that no person shall be deprived of property without due process of law.** Clearly, the trial court's judgment is void insofar as paragraph 3 of its dispositive portion is

concerned. Likewise, Aquende was never made a party in Civil Case No. 9040. Yet, the trial court ordered the cancellation of Psd-187165 and any other certificate of title issued pursuant to Psd-187165, including Aquende's TCT No. 40067. Aquende was adversely affected by such judgment as his title was cancelled without giving him the opportunity to present his evidence to prove his ownership of the property.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes Law Office for petitioner.
Aquende Ralla & Associates for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 26 November 2007 Decision[2] and 7 May 2008 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 91763. In its 26 November 2007 Decision, the Court of Appeals granted respondent Emerson B. Aquende's (Aquende) petition for annulment of judgment and declared the 26 November 1996 Decision[4] of the Regional Trial Court, Legazpi City, Branch 6 (trial court) void. In its 7 May 2008 Resolution, the Court of Appeals denied petitioner Maximina A. Bulawan's[5] (Bulawan) motion for reconsideration.

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

[2] *Rollo*, pp. 57-81. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Conrado M. Vasquez, Jr. and Mariano C. Del Castillo (now a member of this Court) concurring.

[3] *Id.* at 83-85.

[4] CA *rollo*, pp. 65-76. Penned by Judge Vladimir B. Brusola.

[5] Substituted by her legal heirs, namely: Helena A. Bulawan, Araceli B. Vargas, Henry A. Bulawan, Mario A. Bulawan and Cesar A. Bulawan. Bulawan died on 23 April 2009.

The Facts

On 1 March 1995, Bulawan filed a complaint for annulment of title, reconveyance and damages against Lourdes Yap (Yap) and the Register of Deeds before the trial court docketed as Civil Case No. 9040.[6] Bulawan claimed that she is the owner of Lot No. 1634-B of Psd-153847 covered by Transfer Certificate of Title (TCT) No. 13733 having bought the property from its owners, brothers Santos and Francisco Yaptengco (Yaptengco brothers), who claimed to have inherited the property from Yap Chin Cun.[7] Bulawan alleged that Yap claimed ownership of the same property and caused the issuance of TCT No. 40292 in Yap's name.

In her Answer,[8] Yap clarified that she asserts ownership of Lot No. 1634-A of Psd-187165, which she claimed is the controlling subdivision survey for Lot No. 1634. Yap also mentioned that, in Civil Case No. 5064, the trial court already declared that Psd-153847 was simulated by the Yaptengco brothers and that their claim on Lot No. 1634-B was void.[9]

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[6] CA *rollo*, pp. 165-168.

[7] *Alias* Antonio Luna.

[8] CA *rollo*, pp. 184-185.

[9] *Id.* at 158-160. The dispositive portion of the trial court's 31 October 1990 Decision reads:

> WHEREFORE, as prayed for, the plaintiff (Yap Chin Cun) is hereby declared the owner of Lot No. 1634-B of the cadastral survey of Legazpi described in the technical description marked as Exhibit N and his title thereto is quieted and the defendants (Yaptengco brothers) are hereby forever enjoined not to disturb the right of ownership and possession of the plaintiff. That the document denominated as Extrajudicial Settlement of Estate and Partition executed by and among the Yaptengcos is hereby declared null and void, as Yap Chin Cun is presently much alive, hence, there is no reason for its execution. That TCT No. 13733 issued to Santos Yaptengco and Francisco Yaptengco for Lot No. 1634-B is ordered cancelled. That all the defendants be ordered to pay to plaintiff ₱5,000 for attorney's fees and ₱1,000 for miscellaneous expenses. The Register of Deeds is hereby directed to register and implement this decision. Let a copy of this decision be furnished the Register of Deeds of Legazpi.

The trial court likewise adjudged Yap Chin Cun as the rightful owner of Lot No. 1634-B. Yap also stated that Lot No. 1634-B was sold by Yap Chin Cun to the Aquende family.

On 26 November 1996, the trial court ruled in favor of Bulawan. The trial court's 26 November 1996 Decision reads:

> WHEREFORE, premises considered, decision is hereby rendered in favor of the plaintiff (Bulawan) and against the defendant (Yap) declaring the plaintiff as the lawful owner and possesor of the property in question, particularly designated as Lot 1634-B of Plan Psd-153847. The defendant Lourdes Yap is hereby ordered to respect the plaintiff's ownership and possession of said lot and to desist from disturbing the plaintiff in her ownership and possession of said lot.
>
> Subdivision Plan Psd-187165 for Lot 1634 Albay Cadastre as well as TCT No. 40292 in the name of plaintiff[10] over Lot 1634-A of Plan Psd-187165 are hereby declared null and void and the Register of Deeds of Legazpi City is hereby ordered to cancel as well as any other certificate of title issued pursuant to said Plan Psd-187165.
>
> Defendant Lourdes Yap is hereby ordered to pay plaintiff ₱10,000.00 as reasonable attorney's fees, ₱5,000.00 as litigation and incidental expenses and the costs.
>
> SO ORDERED.[11]

Yap appealed. On 20 July 2001, the Court of Appeals dismissed Yap's appeal.

On 7 February 2002, the trial court's 26 November 2006 Decision became final and executory per entry of judgment dated 20 July 2001. On 19 July 2002, the trial court issued a writ of execution.[12]

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[10] *Rollo*, p. 247. In its 13 December 1996 Order, the trial court corrected the typographical error. It should have been "defendant Lourdes Yap" instead of plaintiff.

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

[12] *Id.* at 262-263.

In a letter dated 24 July 2002,[13] the Register of Deeds informed Aquende of the trial court's writ of execution and required Aquende to produce TCT No. 40067 so that a memorandum of the lien may be annotated on the title. On 25 July 2002, Aquende wrote a letter to the Register of Deeds questioning the trial court's writ of execution against his property.[14] Aquende alleged that he was unaware of any litigation involving his property having received no summons or notice thereof, nor was he aware of any adverse claim as no notice of *lis pendens* was inscribed on the title.

On 2 August 2002, Aquende filed a Third Party Claim[15] against the writ of execution because it affected his property and, not being a party in Civil Case No. 9040, he argued that he is not bound by the trial court's 26 November 1996 Decision. In a letter dated 5 August 2002,[16] the Clerk of Court said that a Third Party Claim was not the proper remedy because the sheriff did not levy upon or seize Aquende's property. Moreover, the property was not in the sheriff's possession and it was not about to be sold by virtue of the writ of execution.

Aquende then filed a Notice of Appearance with Third Party Motion[17] and prayed for the partial annulment of the trial court's 26 November 1996 Decision, specifically the portion which ordered the cancellation of Psd-187165 as well as any other certificate of title issued pursuant to Psd-187165. Aquende also filed a Supplemental Motion[18] where he reiterated that he was not a party in Civil Case No. 9040 and that since the action was *in personam* or *quasi in rem*, only the parties in the case are bound by the decision.

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[13] CA *rollo*, p. 78.

[14] *Id.* at 188-189.

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

[16] *Id.* at 192-193.

[17] *Id.* at 194-222.

[18] *Id.* at 249-259.

In its 19 February 2003 Order,[19] the trial court denied Aquende's motions. According to the trial court, it had lost jurisdiction to modify its 26 November 1996 Decision when the Court of Appeals affirmed said decision.

Thereafter, Aquende filed a petition for annulment of judgment before the Court of Appeals on the grounds of extrinsic fraud and lack of jurisdiction.[20] Aquende alleged that he was deprived of his property without due process of law. Aquende argued that there was extrinsic fraud when Bulawan conveniently failed to implead him despite her knowledge of the existing title in his name and, thus, prevented him from participating in the proceedings and protecting his title. Aquende also alleged that Bulawan was in collusion with Judge Vladimir B. Brusola who, despite knowledge of the earlier decision in Civil Case No. 5064 on the ownership of Lot No. 1634-B and Aquende's interest over the property, ruled in favor of Bulawan. Aquende added that he is an indispensable party and the trial court did not acquire jurisdiction over his person because he was not impleaded as a party in the case. Aquende also pointed out that the trial court went beyond the jurisdiction conferred by the allegations on the complaint because Bulawan did not pray for the cancellation of Psd-187165 and TCT No. 40067. Aquende likewise argued that a certificate of title should not be subject to collateral attack and it cannot be altered, modified or canceled except in direct proceedings in accordance with law.

The Court of Appeals ruled in favor of Aquende. The 26 November 2007 Decision of the Court of Appeals reads:

WHEREFORE, the petition is **GRANTED**. The Decision dated November 26, 1996 in Civil Case No. 9040 is hereby declared **NULL** and **VOID**. Transfer Certificate of Title No. 40067 registered in the name of petitioner Emerson B. Aquende and (LRC) Psd-187165 are hereby ordered **REINSTATED**. Entry Nos. 3823 – A, B and C annotated by the Register of Deeds of Legazpi City on TCT No. 40067 are hereby ordered **DELETED**.

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[19] *Id.* at 260.

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

The parties are hereby DIRECTED to respect and abide by the Decision dated October 31, 1990 in Civil Case No. 5064 quieting title over Lot No. 1634-B (LRC) Psd-187165, now registered in the name of Emerson Aquende under TCT No. 40067.

SO ORDERED.[21]

On 8 January 2008, Bulawan filed a motion for reconsideration.[22] In its 7 May 2008 Resolution, the Court of Appeals denied Bulawan's motion.

Hence, this petition.

The Ruling of the Court of Appeals

The Court of Appeals ruled that it may still entertain the petition despite the fact that another division of the Court of Appeals already affirmed the trial court's 26 November 1996 Decision. The other division of the Court of Appeals was not given the opportunity to rule on the issue of Aquende being an indispensable party because that issue was not raised during the proceedings before the trial court and on appeal.

The Court of Appeals declared that Aquende was an indispensable party who was adversely affected by the trial court's 26 November 1996 Decision. The Court of Appeals said that the trial court should have impleaded Aquende under Section 11, Rule 3[23] of the Rules of Court. Since jurisdiction was not properly acquired over Aquende, the Court of Appeals declared the trial court's 26 November 1996 Decision void. According to the Court of Appeals, Aquende had no other recourse but to seek the nullification of the trial court's 26 November 1996 Decision that unduly deprived him of his property.

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[21] *Rollo*, pp. 80-81.

[22] CA *rollo*, pp. 427-438.

[23] Sec. 11. Misjoinder and non-joinder of parties. - Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded separately.

The Court of Appeals added that the trial court's 26 November 1996 Decision was void because the trial court failed to note that the Extrajudicial Settlement of Estate and Partition, from where the Yaptengco brothers derived their ownership over Lot No. 1634-B of Psd-153847 allegedly as heirs of Yap Chin Cun and now being claimed by Bulawan, had already been declared void in Civil Case No. 5064.[24] The Court of Appeals also said that a reading of Bulawan's complaint showed that the trial court had no jurisdiction to order the nullification of Psd-187165 and TCT No. 40067 because this was not one of the reliefs that Bulawan prayed for.

The Issues

Bulawan raises the following issues:

I.

The Former Third Division of the Court of Appeals decided contrary to existing laws and jurisprudence when it declared the Decision, dated 26 November 1996, in Civil Case No. 9040 null and void considering that a petition for annulment [of judgment] under Rule 47 of the Rules of Court is an equitable remedy which is available only under extraordinary circumstances.

II.

The Former Third Division of the Court of Appeals decided contrary to law when it considered Respondent Emerson B. Aquende as an indispensable party in Civil Case No. 9040.

III.

The Former Third Division of the Court of Appeals sanctioned a departure from the accepted and usual course of judicial proceedings when it overturned a final and executory decision of another Division thereof.[25]

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[24] The Yaptengco brothers appealed the trial court's 31 October 1990 Decision to the Court of Appeals. However, in its 6 December 1991 Resolution, the Court of Appeals considered the appeal abandoned and dismissed the same. There was entry of judgment on 1 January 1992. The trial court issued a writ of execution on 6 July 1992.

[25] *Rollo*, p. 16.

The Ruling of the Court

The petition has no merit.

Petition for Annulment of Judgment is the Proper Remedy

Bulawan argues that the Court of Appeals erred in granting Aquende's petition for annulment of judgment in the absence of extrinsic fraud and the existence of jurisdiction on the part of the trial court. Bulawan adds that the Court of Appeals erred because it annulled a decision which had already been considered and affirmed by another division of the Court of Appeals. According to Bulawan, the trial court's 26 November 1996 Decision is already final and had been fully executed.

In a petition for annulment of judgment, the judgment may be annulled on the grounds of extrinsic fraud and lack of jurisdiction.[26] Fraud is extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured.[27] The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court.[28] On the other hand, lack of jurisdiction refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim, and in either case the judgment or final order and resolution are void.[29] Where the questioned judgment is annulled, either on the ground of extrinsic fraud or lack of jurisdiction, the same shall be set aside and considered void.[30]

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[26] RULES OF COURT, Rule 47, Sec. 2.

[27] *Alaban v. Court of Appeals*, 507 Phil. 682 (2005).

[28] *Carillo v. Court of Appeals*, G.R. No. 121165, 26 September 2006, 503 SCRA 66; *Alaban v. Court of Appeals*, *supra*.

[29] *National Housing Authority v. Evangelista*, 497 Phil. 762 (2005); *Capacete v. Baroro*, 453 Phil. 392 (2003).

[30] RULES OF COURT, Rule 47, Sec. 7.

In his petition for annulment of judgment, Aquende alleged that there was extrinsic fraud because he was prevented from protecting his title when Bulawan and the trial court failed to implead him as a party. Bulawan also maintained that the trial court did not acquire jurisdiction over his person and, therefore, its 26 November 1996 Decision is not binding on him. In its 26 November 2007 Decision, the Court of Appeals found merit in Aquende's petition and declared that the trial court did not acquire jurisdiction over Aquende, who was adversely affected by its 26 November 1996 Decision. We find no error in the findings of the Court of Appeals.

Moreover, annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled was rendered.[31] Consequently, an action for annulment of judgment may be availed of even if the judgment to be annulled had already been fully executed or implemented.[32]

Therefore, the Court of Appeals did not err when it took cognizance of Aquende's petition for annulment of judgment and overturned the trial court's 26 November 1996 Decision even if another division of the Court of Appeals had already affirmed it and it had already been executed.

The Court also notes that when the Court of Appeals affirmed the trial court's 26 November 1996 Decision, it had not been given the occasion to rule on the issue of Aquende being an indispensable party and, if in the affirmative, whether the trial court properly acquired jurisdiction over his person. This question had not been raised before the trial court and earlier proceedings before the Court of Appeals.

Aquende is a Proper Party to Sue for the Annulment of the Judgment

Bulawan argues that Aquende was not an indispensable party in Civil Case No. 9040 because the lot Aquende claims ownership

[31] *Islamic Da'wah Council of the Philippines v. Court of Appeals*, 258 Phil. 802 (1989), *Alaban v. Court of Appeals*, *supra* note 27; *Carillo v. Court of Appeals*, *supra* note 28.

[32] *Islamic Da'Wah Council of the Philippines*, *supra*.

of is different from the subject matter of the case. Bulawan clarifies that she claims ownership of Lot No. 1634-B of Psd-153847, while Aquende claims ownership of Lot No. 1634-B of Psd-187165. Bulawan argues that even if Aquende will be affected by the trial court's 26 November 1996 Decision, this will not make him an indispensable party.

Contrary to Bulawan's argument, it appears that Aquende's Lot No. 1634-B of Psd-187165 and Bulawan's Lot No. 1634-B of Psd-153847 actually refer to the same Lot No. 1634-B originally owned by Yap Chin Cun. Both Aquende and Bulawan trace their ownership of the property to Yap Chin Cun. Aquende maintains that he purchased the property from Yap Chin Cun, while Bulawan claims to have purchased the property from the Yaptengco brothers, who alleged that they inherited the property from Yap Chin Cun. However, as the Court of Appeals declared, the title of the Yaptengco brothers over Lot No. 1634-B of Psd-153847 had already been cancelled and they were forever enjoined not to disturb the right of ownership and possession of Yap Chin Cun.

Section 7, Rule 3 of the Rules of Court defines indispensable parties as parties in interest without whom no final determination can be had of an action. An indispensable party is one whose interest will be affected by the court's action in the litigation.[33] As such, they must be joined either as plaintiffs or as defendants. In *Arcelona v. Court of Appeals*,[34] we said:

> The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties where possible, and the joinder of all indispensable parties under any and all conditions, their presence being a sine qua non for the exercise of judicial power. It is precisely "when an indispensable party is not before the court (that) the action should be dismissed." The absence of an indispensable party renders all subsequent actions of the court

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[33] *Servicewide Specialists, Incorporated v. Court of Appeals*, G.R. No. 103301, 8 December 1995, 251 SCRA 70.

[34] 345 Phil. 250 (1997).

null and void for want of authority to act, not only as to the absent parties but even as to those present.[35]

During the proceedings before the trial court, the answers of Yap[36] and the Register of Deeds[37] should have prompted the trial court to inquire further whether there were other indispensable parties who were not impleaded. The trial court should have taken the initiative to implead Aquende as defendant or to order Bulawan to do so as mandated under Section 11, Rule 3 of the Rules of Court.[38] The burden to implead or to order the impleading of indispensable parties is placed on Bulawan and on the trial court, respectively.[39]

However, even if Aquende were not an indispensable party, he could still file a petition for annulment of judgment. We have consistently held that a person need not be a party to the judgment sought to be annulled.[40] What is essential is that he can prove his allegation that the judgment was obtained by the use of fraud and collusion and that he would be adversely affected thereby.[41]

We agree with the Court of Appeals that Bulawan obtained a favorable judgment from the trial court by the use of fraud. Bulawan prevented Aquende from presenting his case before the trial court and from protecting his title over his property.

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[35] *Id.* at 267-268.

[36] *Rollo*, pp. 198-199.

[37] *Id.* at 201-202.

[38] Sec. 11. Misjoinder and non-joinder of parties. - Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded separately.

[39] *Arcelona v. Court of Appeals, supra*.

[40] *Islamic Da'Wah Council of the Philippines, supra* note 31; *Alaban v. Court of Appeals, supra* note 27.

[41] *Id.*

We also agree with the Court of Appeals that the 26 November 1996 Decision adversely affected Aquende as he was deprived of his property without due process.

Moreover, a person who was not impleaded in the complaint cannot be bound by the decision rendered therein, for no man shall be affected by a proceeding in which he is a stranger.[42] In *National Housing Authority v. Evangelista*,[43] we said:

> In this case, it is undisputed that respondent was never made a party to Civil Case No. Q-91-10071. It is basic that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court. Yet, the assailed paragraph 3 of the trial court's decision decreed that "(A)ny transfers, assignment, sale or mortgage of whatever nature of the parcel of land subject of this case made by defendant Luisito Sarte or his/her agents or assigns before or during the pendency of the instant case are hereby declared null and void, together with any transfer certificates of title issued in connection with the aforesaid transactions by the Register of Deeds of Quezon City who is likewise ordered to cancel or cause the cancellation of such TCTs." Respondent is adversely affected by such judgment, as he was the subsequent purchaser of the subject property from Sarte, and title was already transferred to him. **It will be the height of inequity to allow respondent's title to be nullified without being given the opportunity to present any evidence in support of his ostensible ownership of the property. Much more, it is tantamount to a violation of the constitutional guarantee that no person shall be deprived of property without due process of law.** Clearly, the trial court's judgment is void insofar as paragraph 3 of its dispositive portion is concerned.[44] (Emphasis supplied)

Likewise, Aquende was never made a party in Civil Case No. 9040. Yet, the trial court ordered the cancellation of Psd-187165 and any other certificate of title issued pursuant to Psd-

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[42] *National Housing Authority v. Evangelista*, *supra* note 29; *Heirs of Pael v. Court of Appeals*, 382 Phil. 222 (2000); *Arcelona v. Court of Appeals*, *supra* note 34.

[43] *Supra* note 29.

[44] *Id.* at 770-771.

187165, including Aquende's TCT No. 40067. Aquende was adversely affected by such judgment as his title was cancelled without giving him the opportunity to present his evidence to prove his ownership of the property.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 26 November 2007 Decision and 7 May 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 91763.

SO ORDERED.

Leonardo-de Castro,[*] *Peralta, Abad,* and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 182980. June 22, 2011]

BIENVENIDO CASTILLO, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED (R.A. NO. 26); SOURCES FROM WHICH TRANSFER CERTIFICATES OF TITLE SHALL BE RECONSTITUTED; REQUIREMENTS FOR A PETITION FOR RECONSTITUTION.— Section 3 of R.A. No. 26 enumerates the sources from which transfer certificates of title shall be reconstituted. Section 3 reads: Sec. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order: (a) The owner's duplicate of the certificate of title; (b) The co-owner's, mortgagee's, or lessee's duplicate

[*] Designated additional member per Special Order No. 1006 dated 10 June 2011.

of the certificate of title; (c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof; (d) The deed of transfer or other document, on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued; (e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased, or encumbered, or an authenticated copy of said document showing that its original had been registered; and (f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title. Bienvenido already admitted that he cannot comply with Section 3(a) to 3(e), and that 3(f) is his last recourse. Bienvenido, through Fernando's testimony, presented a photocopy of TCT No. T-16755 before the trial court. The owner's original duplicate copy was lost, while the original title on file with the Register of Deeds of Malolos, Bulacan was burned in a fire on 7 March 1987. The property was neither mortgaged nor leased at the time of Bienvenido's loss of the owner's original duplicate copy. Section 12 of R.A. No. 26 describes the requirements for a petition for reconstitution. Section 12 reads: Sec. 12. Petitions for reconstitution from sources enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), and/or 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's, mortgagee's, or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location and boundaries of the property; (d) the nature and description of the building or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have any interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the

property have been presented for registration, or if there be any, the registration thereof has not been accomplished, as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support to the petition for reconstitution shall be attached thereto and filed with the same: *Provided*, That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration office (now Commission of Land Registration) or with a certified copy of the description taken from a prior certificate of title covering the same property.

2. ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIREMENTS PRESCRIBED IN SECTIONS 12 OF R.A. NO. 26 IS FATAL SINCE THE TRIAL COURT DID NOT ACQUIRE JURISDICTION OVER THE PETITION FOR RECONSTITUTION.— We compared the requirements of Section 12 to the allegations in Bienvenido's petition. Bienvenido's petition complied with items (a), (b), (f) and (g): in paragraph 5 of the petition, he alleged the loss of his copy of TCT No. T-16755; paragraph 6 declared that no co-owner's copy of the duplicate title has been issued; paragraph 10 stated that the property covered by the lost TCT is free from liens and encumbrances; and paragraph 11 stated that there are no deeds or instruments presented for or pending registration with the Register of Deeds. There was substantial compliance as to item (c): the location of the property is mentioned in paragraph 2; while the boundaries of the property, although not specified in the petition, refer to an annex attached to the petition. The petition did not mention anything pertaining to item (d). There was a failure to fully comply with item (e). By Fernando's admission, there exist two other co-owners of the property covered by TCT No. T-16755. Fernando's siblings Emma and Elpidio were not mentioned anywhere in the petition. Section 13 of R.A. No. 26 prescribes the requirements for a notice of hearing of the petition. x x x The trial court's 4 October 2002 Order was indeed posted in the places mentioned in Section 13, and published twice in successive issues of the Official Gazette: Volume 99, Number 2 dated 13 January 2003 and Volume 99, Number 3 dated 20 January 2003. The last issue

was released by the National Printing Office on 21 January 2003. The notice, however, did not state Felisa as a registered co-owner. Neither did the notice identify Fernando's siblings Emma and Elpidio as interested parties. The non-compliance with the requirements prescribed in Sections 12 and 13 of R.A. No. 26 is fatal. Hence, the trial court did not acquire jurisdiction over the petition for reconstitution. We cannot stress enough that our jurisprudence is replete with rulings regarding the mandatory character of the requirements of R.A. No. 26. As early as 1982, we ruled: Republic Act No. 26 entitled "An act providing a special procedure for the reconstitution of Torrens Certificates of Title lost or destroyed" approved on September 25, 1946 confers jurisdiction or authority to the Court of First Instance to hear and decide petitions for judicial reconstitution. The Act specifically provides the special requirements and mode of procedure that must be followed before the court can properly act, assume and acquire jurisdiction or authority over the petition and grant the reconstitution prayed for. These requirements and procedure are mandatory. The Petition for Reconstitution must allege certain specific jurisdictional facts; the notice of hearing must be published in the Official Gazette and posted in particular places and the same sent or notified to specified persons. Sections 12 and 13 of the Act provide specifically the mandatory requirements and procedure to be followed.

3. ID.; ID.; ID.; LIBERAL CONSTRUCTION OF THE RULES OF COURT DOES NOT APPLY TO LAND REGISTRATION CASES; WHEN THE TRIAL COURT LACKS JURISDICTION TO TAKE COGNIZANCE OF A CASE, IT LACKS AUTHORITY OVER THE WHOLE CASE AND ITS ASPECTS.— We cannot simply dismiss these defects as "technical." Liberal construction of the Rules of Court does not apply to land registration cases. Indeed, to further underscore the mandatory character of these jurisdictional requirements, the Rules of Court do not apply to land registration cases. In all cases where the authority of the courts to proceed is conferred by a statute, and when the manner of obtaining jurisdiction is prescribed by a statute, the mode of proceeding is mandatory, and must be strictly complied with, or the proceeding will be utterly void. When the trial court lacks jurisdiction to take cognizance of a case, it lacks authority over the whole case and all its aspects. All the proceedings before the trial court,

including its order granting the petition for reconstitution, are void for lack of jurisdiction.

APPEARANCES OF COUNSEL

Mondragon & Montoya Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Petitioner Bienvenido Castillo (Bienvenido) filed the present petition for review on *certiorari*[1] of the Decision[2] dated 23 October 2007 as well as the Resolution[3] dated 7 May 2008 of the Court of Appeals (appellate court) in CA-G.R. CV No. 81916. The appellate court reversed the Decision[4] dated 3 October 2003 of Branch 22, Regional Trial Court of Malolos, Bulacan (trial court) in P-111-2002. The trial court ordered the reconstitution of the original copy of Transfer Certificate of Title (TCT) No. T-16755 as well as the issuance of another owner's duplicate copy, in the name of the registered owner and in the same terms and conditions as the original, in lieu of the lost original copy.

The Facts

Bienvenido filed on 7 March 2002 a Petition for Reconstitution and Issuance of Second Owner's Copy of Transfer Certificate of Title No. T-16755. The petition reads as follows:

1. That petitioner is of legal age, Filipino, widower and with residence and postal address at Poblacion, Pulilan, Bulacan;

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[1] Under Rule 45 of the Rules of Court. *Rollo*, pp. 9-32.

[2] *Rollo*, pp. 34-38. Penned by Justice Estela M. Perlas-Bernabe with Justices Portia Aliño-Hormachuelos and Lucas P. Bersamin, concurring.

[3] *Id.* at 44-45.

[4] *Id.* at 40-42.

2. That petitioner is the registered owner of a parcel of land situated at Paltao, Pulilan, Bulacan covered by Transfer Certificate of Title No. T-16755, a zerox [sic] copy of which is hereto attached as Annex "A";

3. That the zerox [sic] copy of technical description and subdivision plan of the parcel of land with an area of 50,199 [square meters] (Lot 6-A) are hereto attached as Annexes "B" and "C";

4. That the original copy of the said certificate of title on file with the Register of Deeds of Bulacan was lost and/or destroyed during the fire on March 7, 1987 in the Office of the Register of Deeds of Bulacan, certification from the said office is hereto attached as Annex "D";

5. That, the owner's copy of the said certificate of title was likewise lost and all efforts to locate the same proved futile and in vain, copy of the the [sic] "Affidavit of Loss" is hereto attached as Annex "E";

6. That no co-owner's copy of duplicate of the same certificate has been issued;

7. The names and addresses of the boundary owners of said lot are the following:

a. West - Jorge Peralta
b North - Lorenzo Calderon
c. South - Lorenzo Calderon
d. East - Melvin & Marlon Reyes

with postal address at Poblacion, Pulilan, Bulacan;

8. That said property has been declared for taxation purposes under Tax Declaration No. 97-19001-00019, zerox [sic] copy of which is hereto attached as Annex "F";

9. That the real estate tax for the current year has been paid per official receipt no. 0287074, zerox [sic] copy of which is hereto attached as Annex "G";

10. That said property is free from all liens and encumbrances;

11. That there exist no deeds or instruments affecting the said property which has been presented for and pending registration with the Register of Deeds of Bulacan;

WHEREFORE, it is most respectfully prayed of this Honorable Court that after due notice and hearing judgment be rendered:

1. Declaring the Original Owner's Duplicate Certificate of Title No. T-16755 that was lost as null and void;

2. Ordering the Register of Deeds of Bulacan to issue second owner's duplicate copy of the said certificate of title upon payment of proper fees.[5]

The trial court furnished the Land Registration Authority (LRA) with a duplicate copy of Bienvenido's petition and its Annexes, with a note stating that "No Tracing Cloth of Plan [sic] and Blue print of plan attached."[6] As requested by the LRA in its letter dated 17 April 2002,[7] the trial court ordered Bienvenido to submit within 15 days from receipt of the order (a) the original of the technical description of the parcel of land covered by the lost/destroyed certificate of title, certified by the authorized officer of the Land Management Bureau/ Land Registration Authority and two duplicate copies thereof, and (b) the sepia film plan of the subject parcel of land prepared by a duly licensed Geodetic Engineer, who shall certify thereon that its preparation was made on the basis of a certified technical description, and two blue print copies thereof.[8] Bienvenido complied with the order.[9]

The trial court, in an order dated 7 August 2002, ordered Bienvenido to supply the names and addresses of the occupants of the subject property.[10] Bienvenido manifested that there is no actual occupant in the subject property.[11]

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[5] Records, pp. 3-5.

[6] *Id.* at 15.

[7] *Id.* at 16.

[8] *Id.* at 18.

[9] *Id.* at 19-27.

[10] *Id.* at 28.

[11] *Id.* at 32.

On 4 October 2002, the trial court issued an order which found Bienvenido's petition sufficient in form and substance and set the same for hearing.[12]

Copies of the 4 October 2002 order were posted on three bulletin boards: at the Bulacan Provincial Capitol Building, at the Pulilan Municipal Building, and at the Bulacan Regional Trial Court.[13] The 4 October 2002 order was also published twice in the Official Gazette: on 13 January 2003 (Volume 99, Number 2, Pages 237 to 238), and on 20 January 2003 (Volume 99, Number 3, Pages 414 to 415).[14] After two cancellations,[15] a hearing was conducted on 12 March 2003.

During the hearing, the following were marked in evidence for jurisdictional requirements:

Exhibit "A"	-	Order of the Court dated 4 October 2002
Exhibit "A-1"	-	Second page of the Order of the Court dated 4 October 2002
Exhibit "A-2"	-	Third page of the Order of the Court dated 4 October 2002
Exhibit "A-3"	-	Registry return receipt of notice to the Office of the Solicitor General
Exhibit "A-4"	-	Registry return receipt of notice to the Land Registration Authority
Exhibit "A-5"	-	Registry return receipt of notice to the Register of Deeds
Exhibit "A-6"	-	Registry return receipt of notice to the Public Prosecutor
Exhibit "A-7"	-	Registry return receipt of notice to boundary owner Jorge Peralta

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

[13] *Id.* at 39.

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

[15] *Id.* at 46-48.

Exhibit "A-8"	-	Registry return receipt of notice to boundary owner Lorenzo Calderon
Exhibit "A-9"	-	Registry return receipt of notice to boundary owners Melvin and Marlon Reyes
Exhibit "B"	-	Certificate of Posting
Exhibit "C"	-	Certificate of Publication from the Director of the National Printing Office
Exhibit "D"	-	Official Gazette, Volume 99, Number 2, 13 January 2003
Exhibit "D-1"	-	Page 237, Publication of the trial court's Order dated 4 October 2002
Exhibit "D-2"	-	Page 238, Publication of the trial court's Order dated 4 October 2002
Exhibit "E"	-	Official Gazette, Volume 99, Number 3, 20 January 2003
Exhibit "E-1"	-	Page 414, Publication of the trial court's Order dated 4 October 2002
Exhibit "E-2"	-	Page 415, Publication of the trial court's Order dated 4 October 2002[16]

Fernando Castillo (Fernando), Bienvenido's son and attorney-in-fact, testified on his father's behalf. During the course of his testimony, Fernando identified the following:

Exhibit "F"	-	Photocopy of TCT No. T-16755
Exhibit "G"	-	Blueprint of the subject property
Exhibit "H"	-	Technical description of theproperty
Exhibit "I"	-	Affidavit of Loss executed by Bienvenido Castillo
Exhibit "I-1"	-	Entry of the Affidavit of Loss in the book of the Register of Deeds

[16] TSN, 12 March 2003, p. 2.

Exhibit "J"	-	Certification issued by the Office of the Register of Deeds, Malolos, Bulacan that TCT No. T-16755 was burned in a fire on 7 March 1987
Exhibit "K"	-	Tax declaration
Exhibit "L"	-	2002 Real Estate Tax Receipt

Upon presentation of the photocopy of TCT No. T-16755, Fernando stated that the title was issued in the names of his parents, Bienvenido Castillo and Felisa Cruz (Felisa), and that his mother died in 1982. Fernando did not mention any sibling. Fernando further testified that on 6 February 2002, Bienvenido executed an Affidavit of Loss which stated that he misplaced the owner's copy of the certificate of title sometime in April 1993 and that all efforts to locate the same proved futile. The title is free from all liens and encumbrances, and there are no other persons claiming interest over the land.[17]

The LRA submitted a Report dated 25 July 2003, portions of which the trial court quoted in its Decision. The LRA stated that:

(2) The plan and technical description of Lot 6-A of the subdivision plan Psd-37482 were verified correct by this Authority to represent the aforesaid lot and the same have been approved under (LRA) PR-03-00321-R pursuant to the provisions of Section 12 of Republic Act No. 26.

WHEREFORE, the foregoing information anent the lot in question is respectfully submitted for consideration in the resolution of the instant petition, and if the Honorable Court, after notice and hearing, finds justification pursuant to Section 15 of Republic Act No. 26 to grant the same, the plan and technical description having been approved, may be used as basis for the inscription of the technical description on the reconstituted certificate. Provided, however, that in case the petition is granted, the reconstituted title should be made subject to such encumbrances as may be subsisting; and provided further, that no certificate of title covering the same parcel of land exists in the office of the Register of Deeds concerned.[18]

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[17] *Id.* at 3-15.

[18] Records, p. 69.

The Trial Court's Ruling

On 3 October 2003, the trial court promulgated its Decision in favor of Bienvenido. The trial court found valid justifications to grant Bienvenido's petition as the same is in order and meritorious.

The dispositive portion reads:

> WHEREFORE, the Register of Deeds for the province of Bulacan is hereby ordered, upon payment of the prescribed fees, to reconstitute the original copy of Original Certificate of Title No. 16755 and to issue another owner's duplicate copy thereof, in the name of the registered owner and in the same terms and conditions as the original thereof, pursuant to the provisions of R.A. No. 26, as amended by P.D. No. 1529, in lieu of the lost original copy. The new original copy shall in all respects be accorded the same validity and legal effect as the lost original copy for all intents and purposes. Provided, that no certificate of title covering the same parcel of land exists in the office of the Register of Deeds concerned.
>
> SO ORDERED.[19]

The Office of the Solicitor General (OSG) filed its Notice of Appeal on 18 November 2003. The OSG stated that it was grave error for the trial court to order reconstitution despite absence of any prayer seeking such relief in the petition and on the basis of a mere photocopy of TCT No. T-16755. Counsel for Bienvenido filed a motion for early resolution on 25 January 2006.

The Appellate Court's Ruling

On 23 October 2007, the appellate court rendered its Decision which reversed the 3 October 2003 Decision of the trial court. Bienvenido's counsel withdrew from the case on 11 October 2007 and was substituted by Mondragon and Montoya Law Offices.

The appellate court ruled that even if Bienvenido failed to specifically include a prayer for the reconstitution of TCT No.

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[19] *Rollo*, p. 42.

T-16755, the petition is captioned as "In re: Petition for Reconstitution and Issuance of Second Owner's Copy of Transfer Certificate of Title No. T-16755, Bienvenido Castillo, Petitioner." The prayer for "such other reliefs and remedies just and proper under the premises" is broad and comprehensive enough to justify the extension of a remedy different from that prayed for.

However, the appellate court still ruled that the trial court erred in ordering the reconstitution of the original copy of TCT No. T-16755 and the issuance of another owner's duplicate copy thereof in the name of the registered owner. Section 3 of Republic Act No. 26 specified the order of sources from which transfer certificates of title may be reconstituted, and Bienvenido failed to comply with the order. Moreover, the documentary evidences presented before the trial court were insufficient to support reconstitution. The loss of the original copy on file with the Registry of Deeds of Bulacan may be credible, but Bienvenido failed to adequately explain the circumstances which led to the loss of the owner's copy. The tax declaration presented is not a conclusive evidence of ownership, but merely indicates possession. The plan and technical description of the property are merely additional documents that must accompany the petition for the LRA's verification and approval.

The dispositive portion of the appellate court's Decision reads:

> WHEREFORE, the instant appeal is GRANTED. The assailed Decision dated October 3, 2003 of Branch 22, RTC of Malolos, Bulacan in P-111-2002 is hereby SET ASIDE and a new judgment is entered dismissing the Petition therein.
>
> SO ORDERED.[20]

On 3 December 2007, Bienvenido's counsel filed a Motion for Reconsideration and/or for New Trial.[21] The motion asserted that Bienvenido presented sufficient documents to warrant reconstitution of TCT No. T-16755. Aside from the

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[20] *Rollo*, p. 38.

[21] CA *rollo*, pp. 111-119.

photocopy of TCT No. T-16755, Fernando presented the plan and technical description approved by the LRA. Moreover, to support the Motion for New Trial, Fernando went through Bienvenido's papers and found the Deed of Absolute Sale[22] from the original owner, Elpidio Valencia, to spouses Bienvenido and Felisa. Fernando also found the cancellation of mortgage[23] of the property covered by TCT No. T-16755 issued by the Development Bank of the Philippines. Fernando also submitted a copy of the Extra-Judicial Partition[24] by and among the heirs of his mother. The property covered by TCT No. T-16755 was partitioned among Bienvenido, Fernando, and Fernando's siblings Emma Castillo Bajet (Emma) and Elpidio Castillo (Elpidio).

In Fernando's affidavit attached to the Motion for Reconsideration and/or for New Trial, Fernando stated, but without presenting any proof, that Bienvenido passed away at the age of 91 on 14 February 2006.

The Republic, through the OSG, opposed the Motion for Reconsideration and/or for New Trial. Bienvenido's petition failed to satisfy Section 3(f) of R.A. No. 26. The Affidavit of Loss is hearsay because Bienvenido failed to affirm it in court. Therefore, the loss of the owner's duplicate copy of TCT No. T-16755 is not established. The plan and technical description approved by the LRA are not independent sources of reconstitution and are mere supporting documents. The documents submitted in support of the Motion for New Trial are not newly discovered, but could have been discovered earlier by exercise of due diligence.

In its Resolution[25] dated 7 May 2008, the appellate court denied the Motion for Reconsideration and/or for New Trial.

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[22] *Id.* at 124-125.

[23] *Id.* at 126.

[24] *Id.* at 127-130.

[25] *Id.* at 158-159.

Issues

The following were assigned as errors of the appellate court:

I. The Honorable Court of Appeals erred in holding that the documentary evidence presented by petitioner in the lower court are insufficient to support the reconstitution prayed for.

II. The Honorable Court of Appeals erred in finding that petitioner failed to establish the circumstances which led to the loss of his duplicate owner's copy of TCT No. T-16755.

III. The Honorable Court of Appeals erred in finding that there is no merit in the motion for new trial filed by petitioner.[26]

The Court's Ruling

The petition must fail. There can be no reconstitution as the trial court never acquired jurisdiction over the present case.

Process of Reconstitution of Transfer Certificates of Title under R.A. No. 26

Section 3 of R.A. No. 26 enumerates the sources from which transfer certificates of title shall be reconstituted. Section 3 reads:

Sec. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) The deed of transfer or other document, on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued;

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[26] *Rollo*, pp. 16-17.

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased, or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

Bienvenido already admitted that he cannot comply with Section 3(a) to 3(e), and that 3(f) is his last recourse. Bienvenido, through Fernando's testimony, presented a photocopy of TCT No. T-16755 before the trial court. The owner's original duplicate copy was lost, while the original title on file with the Register of Deeds of Malolos, Bulacan was burned in a fire on 7 March 1987. The property was neither mortgaged nor leased at the time of Bienvenido's loss of the owner's original duplicate copy.

Section 12 of R.A. No. 26 describes the requirements for a petition for reconstitution. Section 12 reads:

Sec. 12. Petitions for reconstitution from sources enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), and/or 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's, mortgagee's, or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location and boundaries of the property; (d) the nature and description of the building or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have any interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or if there be any, the registration thereof has not been accomplished, as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support to the petition for reconstitution shall be

attached thereto and filed with the same: *Provided*, That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration office (now Commission of Land Registration) or with a certified copy of the description taken from a prior certificate of title covering the same property.

We compared the requirements of Section 12 to the allegations in Bienvenido's petition. Bienvenido's petition complied with items (a), (b), (f) and (g): in paragraph 5 of the petition, he alleged the loss of his copy of TCT No. T-16755; paragraph 6 declared that no co-owner's copy of the duplicate title has been issued; paragraph 10 stated that the property covered by the lost TCT is free from liens and encumbrances; and paragraph 11 stated that there are no deeds or instruments presented for or pending registration with the Register of Deeds. There was substantial compliance as to item (c): the location of the property is mentioned in paragraph 2; while the boundaries of the property, although not specified in the petition, refer to an annex attached to the petition. The petition did not mention anything pertaining to item (d). There was a failure to fully comply with item (e). By Fernando's admission, there exist two other co-owners of the property covered by TCT No. T-16755. Fernando's siblings Emma and Elpidio were not mentioned anywhere in the petition.

Section 13 of R.A. No. 26 prescribes the requirements for a notice of hearing of the petition:

Sec. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of the hearing. Said notice shall state, among other things, the number of the lost

or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

The trial court's 4 October 2002 Order was indeed posted in the places mentioned in Section 13, and published twice in successive issues of the Official Gazette: Volume 99, Number 2 dated 13 January 2003 and Volume 99, Number 3 dated 20 January 2003. The last issue was released by the National Printing Office on 21 January 2003.[27] The notice, however, did not state Felisa as a registered co-owner. Neither did the notice identify Fernando's siblings Emma and Elpidio as interested parties.

The non-compliance with the requirements prescribed in Sections 12 and 13 of R.A. No. 26 is fatal. Hence, the trial court did not acquire jurisdiction over the petition for reconstitution. We cannot stress enough that our jurisprudence is replete with rulings regarding the mandatory character of the requirements of R.A. No. 26. As early as 1982, we ruled:

> Republic Act No. 26 entitled "An act providing a special procedure for the reconstitution of Torrens Certificates of Title lost or destroyed" approved on September 25, 1946 confers jurisdiction or authority to the Court of First Instance to hear and decide petitions for judicial reconstitution. The Act specifically provides the special requirements and mode of procedure that must be followed before the court can properly act, assume and acquire jurisdiction or authority over the petition and grant the reconstitution prayed for. These requirements and procedure are mandatory. The Petition for Reconstitution must allege certain specific jurisdictional facts; the notice of hearing must be published in the Official Gazette and posted in particular places and the same sent or notified to specified persons. Sections 12

[27] Records, p. 41. Certified by Director IV Melanio S. Torio.

and 13 of the Act provide specifically the mandatory requirements and procedure to be followed.[28]

We cannot simply dismiss these defects as "technical." Liberal construction of the Rules of Court does not apply to land registration cases.[29] Indeed, to further underscore the mandatory character of these jurisdictional requirements, the Rules of Court do not apply to land registration cases.[30] In all cases where the authority of the courts to proceed is conferred by a statute, and when the manner of obtaining jurisdiction is prescribed by a statute, the mode of proceeding is mandatory, and must be strictly complied with, or the proceeding will be utterly void.[31] When the trial court lacks jurisdiction to take cognizance of a case, it lacks authority over the whole case and all its aspects.[32] All the proceedings before the trial court, including its order granting the petition for reconstitution, are void for lack of jurisdiction.[33]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 23 October 2007 and the Resolution dated 7 May 2008 of the Court of Appeals in CA-G.R. CV No. 81916.

SO ORDERED.

Leonardo-de Castro,[*] *Abad, Mendoza,* and *Sereno,*[**] *JJ.,* concur.

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[28] *Tahanan Development Corp. v. Court of Appeals*, 203 Phil. 652, 681 (1982).

[29] Section 6, Rule 1 of the 1997 Rules of Civil Procedure.

[30] Section 4, Rule 1 of the 1997 Rules of Civil Procedure.

[31] *Caltex Filipino Managers & Supervisors Ass'n. v. CIR*, 131 Phil. 1022, 1030 (1968).

[32] *Register of Deeds of Malabon v. RTC, Malabon, MM, Br. 170*, G.R. No. 88623, 5 February 1990, 181 SCRA 788, citing *Pinza v. Aldovino*, 134 Phil. 217 (1968).

[33] *Allama v. Republic*, G.R. No. 88226, 26 February 1992, 206 SCRA 600.

[*] Designated additional member per Special Order No. 1006 dated 10 June 2011.

[**] Designated additional member per Raffle dated 15 June 2011.

FIRST DIVISION

[G.R. No. 183676. June 22, 2011]

RUEL AMPATUAN "*Alias* RUEL," *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; "DANGEROUS DRUGS ACT OF 1972" AS AMENDED BY REPUBLIC ACT NO. 9175 OR THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002"; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS THAT MUST BE PROVEN; EXPLAINED.— In a prosecution for illegal sale of dangerous drugs, the following elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. The presence of these elements is sufficient to support the trial court's finding of appellants' guilt. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. The delivery of the contraband to the *poseur*-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused. The presentation in court of the *corpus delicti* — the body or substance of the crime – establishes the fact that a crime has actually been committed.

2. ID.; ID.; ID.; ID.; ID.; ELEMENTS OF THE CRIME ESTABLISHED IN CASE AT BAR.— This Court is convinced that there was complete compliance with all the requisites under the law. The prosecution established that at 1 p.m. of 13 October 1997, a buy-bust operation was conducted by the members of the police force to entrap a drug pusher named Ibrahim. However, despite his absence in the target area, the entrapment operation ensued within the same place between the police officers who acted as *poseur*-buyers and the accused-appellant Mr. Ampatuan. This was shown in the direct testimony of PO2 Caslib. x x x We find credit to the straight-forward testimony of PO2 Caslib. Absence of any ill-will on the part of the prosecution witnesses who were the best witnesses in

prosecution for illegal sale of drugs, we sustain the findings of the lower courts.

3. ID.; ID.; ID.; ID.; ID.; LEGALITY OF BUY-BUST OPERATION, UPHELD.— A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. In this jurisdiction, the operation is legal and has been proved to be an effective method of apprehending drug peddlers, provided that due regard to constitutional and legal safeguards is undertaken.

4. ID.; ID.; IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9165; CHAIN OF CUSTODY RULE; LINKS THAT MUST BE ESTABLISHED.— The following are the links that must be established in the chain of custody in a buy-bust situation: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

5. ID.; ID.; ID.; ID.; CHAIN OF CUSTODY REQUIREMENT ENSURES THAT UNNECESSARY DOUBTS CONCERNING THE IDENTITY OF THE EVIDENCE ARE REMOVED.— As testified by PO2 Caslib, the *marijuana* came from the black bag and was handed by Mr. Ampatuan to them. The *marijuana* was eventually turned over to the police station. It was positively identified by PO2 Caslib in open court. x x x The *corpus delicti* of the crime which was the illicit drug was tested by Forensic Chemist Austero who later testified and confirmed that the sales confiscated during the sale was *marijuana*. x x x Indeed, in every prosecution for illegal sale of prohibited drugs, the presentation in evidence of the seized drug, as an integral part of the *corpus delicti*, is most material. Thus, it is vital that the identity of the prohibited drug be proved with moral certainty. The fact that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit must also be established with the same degree of certitude. It is in this respect that the chain of custody requirement performs

its function. It ensures that unnecessary doubts concerning the identity of the evidence are removed.

6. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; TESTIMONIES OF POLICE OFFICERS WHO CONDUCTED THE BUY-BUST ARE GENERALLY ACCORDED FULL FAITH AND CREDIT IN VIEW OF THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF PUBLIC DUTIES.— In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. Moreover, in the absence of proof of motive to falsely impute such a serious crime against the appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over appellant's self-serving and uncorroborated denial. Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. It is a fundamental rule that findings of the trial courts, which are factual in nature and which involve credibility, are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies 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. Further, the testimonies of the police officers who conducted the buy-bust are generally accorded full faith and credit, in view of the presumption of regularity in the performance of public duties. Hence, when lined against an unsubstantiated denial or claim of frame-up, the testimony of the officers who caught the accused red-handed is given more weight and usually prevails. In order to overcome the presumption of regularity, jurisprudence teaches us that there must be clear and convincing evidence that the police officers did not properly perform their duties or that they were prompted with ill-motive.

7. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; VIEWED WITH DISFAVOR AND ARE COMMON PLOYS IN MOST PROSECUTIONS ARISING FROM VIOLATIONS OF THE COMPREHENSIVE DANGEROUS DRUGS ACT.— Denial and *alibi* are defenses invariably viewed by the Court with disfavor, for they can easily be concocted but difficult to prove, and they are common and standard defense ploys in most prosecutions arising from violations of the Comprehensive Dangerous Drugs Act. Unfortunately, the accused-appellant failed to present any evidence to prove that there was indeed irregularity in the performance of duties or there was an improper motive on the part of the police officers. His mere testimony alone cannot be considered by this court as a clear and convincing evidence to rule otherwise for the same is self-serving on his part. This Court finds the version of facts of the prosecution more credible to sustain than the version of facts of the accused-appellant denying any knowledge of the illegal sale.

APPEARANCES OF COUNSEL

Buihon-Campoamor and Campoamor Law and Realty Offices for petitioner.

The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

For review through this appeal[1] is the Decision[2] dated 25 June 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00343 which affirmed the conviction of herein accused-appellant RUEL AMPATUAN "*Alias* Ruel" under Section 4[3] of Republic

[1] *Via* notice of appeal, pursuant to Section 2(c) of Rule 122 of the Rules of Court.

[2] Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Edgardo A. Camello and Edgardo T. Lloren, concurring. *Rollo*, pp. 34-45.

[3] ***Section 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs***. The penalty of imprisonment ranging from twelve years and one day to twenty years and a fine ranging from

Act No. 6425, otherwise known as the "Dangerous Drugs Act of 1972" as amended by Republic Act No. 9165 or the "Comprehensive Dangerous Drugs Act of 2002." The dispositive portion of the assailed decision reads:

WHEREFORE, premises considered, the assailed Judgment of the Regional Trial Court (RTC), 11th Judicial Region, Branch 4, Panabo City, in Criminal Case No. 98-76, finding appellant Ruel Ampatuan *alias* "Ruel" guilty beyond reasonable doubt of violation of Section 4 of Republic Act No. 6425 (RA 6425), otherwise known as the Dangerous Drugs Act of 1972, as amended by BP 179 and further amended by Republic Act No. 7659 (RA 7659) [as further amended by Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002] is hereby **AFFIRMED**.[4]

The facts as presented by the prosecution before the appellate court, follows:

On 13 October 1997, at around 10:00 a.m., police operatives PO1 Arnel Micabalo (PO1 Micabalo) and PO2 Francisco S. Caslib (PO2 Caslib) together with around fifteen (15) to sixteen (16) police members belonging from the Philippine National Police (PNP) Compound in Tagum City and Panabo Police Station were given a briefing by their team leader, a certain SPO1 Derrayal, regarding a buy-bust operation they would later conduct that day against a certain suspected drug pusher by the name of Totong Ibrahim (Ibrahim) who lives near the Coca-Cola warehouse at *Barangay* Cagangohan, Panabo City, Davao del Norte.[5]

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twelve thousand to twenty thousand pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any such transactions. In case of a practitioner, the additional penalty of the revocation of his license to practice his profession shall be imposed. If the victim of the offense is a minor, the maximum of the penalty shall be imposed.

Should a prohibited drug involved in any offense under this Section, be the proximate cause of the death of a victim thereof, the penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon the pusher.

[4] Court of Appeals Decision. *Rollo,* p. 44.

[5] Testimony of PO2 Francisco S. Caslib. TSN, 8 March 2000, pp. 5-8.

The buy-bust operation was conducted at around 1:00 p.m. of the same day. Police officers PO1 Micabalo and PO2 Caslib, prepared marked money in the amount of ₱500.00[6] and went to the house of Ibrahim posing as buyers. The rest of the team positioned themselves at the grassy area nearby awaiting for the pre-arranged signal from PO1 Micabalo and PO2 Caslib. The policemen saw the accused-appellant Ruel Ampatuan (Mr. Ampatuan) and his wife Linda, at the gate of the fence.[7] They talked to the couple and pretended to buy for a party, *marijuana* worth ₱500.00.[8] The couple told them to wait outside the fence and then went inside the house. Several minutes later, the couple came out with another man identified as Maguid Lumna (Lumna). Mr. Ampatuan asked for the payment. The *poseur*-buyers handed the marked money to Mr. Ampatuan, who in turn handed it to his wife, Linda. Mr. Ampatuan then showed the police officers the *marijuana* contained in one pack. This was placed inside a black bag and given to the *poseur*-buyers. The pre-arranged signal of talking aloud was made and the rest of the police officers proceeded to the scene. The couple and Lumna were arrested and brought to the Panabo Police Station.[9]

On 23 October 1997, the confiscated object was turned over by the Panabo Police Station to Forensic Chemist Noemi Austero (Austero) of the PNP Crime Laboratory of Davao City.[10] Upon examination, the sample taken yielded positive result for the presence of *marijuana*. The total weight of the confiscated specimen as testified by Austero was approximately 1.3 kilos.[11]

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[6] Broken down to five (5) ₱100.00 bill.

[7] Testimony of Arnel Micabalo. TSN, 10 March 1999, p. 6.

[8] Decision of the Court of Appeals. *Rollo*, p. 36.

[9] Testimony of PO2 Francisco S. Caslib. TSN, 8 March 2000, pp. 9-13.

[10] Testimony of Forensic Chemist Noemi Austero. TSN, 19 January 2000, pp. 5-19.

[11] *Id.* at 8-10.

The version of the defense is:

On 13 October 1997, Mr. Ampatuan, his wife Linda and bodyguard Lumna went to the house of one Arnulfo Morales (Morales) in Tagum City to inquire about reports that the town of Asuncion was impassable because of flooding. Mr. Ampatuan explained in his testimony that the alleged flooding was the reason given by his debtor Muker Ganda (Muker) to explain the belated payment of a loan. Morales advised them that they should go directly to the house of Muker at Panabo City, Davao del Norte to collect the amount due in his favor.[12]

Upon boarding a bus going to Panabo City, the three met Arlene, the wife of Ibrahim. Arlene, Linda's classmate in elementary, invited them for lunch at her house, which was near Muker's residence. When they reached Muker's house, the latter was not able to pay for his loan, hence they just acceded to the invitation of Arlene. While inside the house, they saw Ibrahim outside with two companions. At that point, five police officers entered the premises where Ibrahim was and one of them fired his gun. Ibrahim and his companions ran, were chased by the police but were not apprehended. Failing to capture Ibrahim, the police officers then barged back to the house where the couple, Lumna, and Arlene were. They accused Mr. Ampatuan to be the owner of the black bag containing *marijuana* samples carried by the police officers. Mr. Ampatuan vehemently denied the ownership of the same and his participation in the sale and/or possession of illegal drugs. He explained that he and his companions were merely visitors of Arlene. Nevertheless, the police officers insisted that he owned the samples and the black bag and they were eventually brought to the police station.[13]

An Information was filed against Mr. Ruel Ampatuan, Linda Ampatuan and Maguid Lumna dated 17 March 1998 which reads:

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[12] Testimony of Ruel Ampatuan. TSN, 15 August 2001, pp. 4-6.

[13] Decision of the Court of Appeals. *Rollo,* pp. 37-38.

The undersigned accuses RUEL AMPATUAN *alias* "Ruel," LINDA AMPATUAN *alias* "LINDA" and MAGUID LUMNA of the crime of violation of Section 4 of Republic Act 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended by BP 179 and further amended by Section 13 of Republic Act 7659, committed as follows:

> That on or about October 13, 1997, in the Municipality of Panabo, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deal and distribute two (2) packs of dried *Marijuana* leaves weighing one (1) kilo and three hundred fifty nine & 3/100 grams.[14]

Upon arraignment, the couple and Lumna entered a plea of not guilty.

On 31 January 2002, the trial court found Mr. Ampatuan guilty but acquitted Linda and Lumna of the offense charged. The dispositive portion reads:

> WHEREFORE, the Court finds accused Ruel Ampatuan *alias* "Ruel" "GUILTY" beyond reasonable doubt of the crime charged and hereby sentences him to *Reclusion Perpetua* and to pay a fine of ₱500,000.00 pursuant to law. Accused Linda Ampatuan *alias* "Linda" and accused Maguid Lumna are ACQUITTED for reasons of reasonable doubt. The two packs of dried *marijuana* leaves weighing a total of 1.3 kilos are ordered confiscated in favor of the government and to be destroyed in accordance with law. Costs *de oficio.*[15]

On appeal, the Court of Appeals agreed with the judgment of the trial court.[16] The appellate court ruled that the prosecution proved the requisites for illegal sale of prohibited drugs under Section 4 of the Dangerous Drugs Act, to wit: (1) that the accused sold and delivered the prohibited drugs to another, and (2) that the accused knew that what was sold and delivered was a dangerous

[14] Records, p. 1.

[15] *Id.* at 114-115.

[16] Decision of the Court of Appeals. *Rollo*, p. 44.

drug.[17] It noted that the prosecution presented as evidence in court the *corpus delicti*.

Hence, this Petition for Review on *Certiorari*.

In this petition, the accused-appellant Mr. Ampatuan raised two assignments of errors:

First, Whether or not there was a correct application of the law and jurisprudence by the lower courts on the matter; and,

Second, Whether or not the conclusions drawn by the lower courts leaning on the guilt of petitioner beyond reasonable doubt are correct.[18]

The accused-appellant questions the regularity of the performance of duties of the police officers related to his apprehension. He likewise invokes denial of any knowledge and ownership of the black bag which contained the *marijuana* samples and asserts that he was mauled by the police officers to admit the ownership thereof and of the purported illegal sale of dangerous drugs.

The Court's Ruling

In a prosecution for illegal sale of dangerous drugs, the following elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[19] The presence of these elements is sufficient to support the trial court's finding of appellants' guilt.[20] What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. The delivery of the contraband to the *poseur*-buyer and the receipt of the marked money consummate the

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[17] *Id.* at 41.

[18] Petition. *Id.* at 21.

[19] *People v. Orteza*, G.R. No. 173051, 31 July 2007, 528 SCRA 750, 757 citing *People v. Bandang*, G.R. No. 151314, 3 June 2004, 430 SCRA 570, 579.

[20] *People v. Miranda*, G.R. No. 174773, 2 October 2007, 534 SCRA 552, 567.

buy-bust transaction between the entrapping officers and the accused.[21] The presentation in court of the *corpus delicti* — the body or substance of the crime – establishes the fact that a crime has actually been committed.[22]

As per record of the case, this Court is convinced that there was complete compliance with all the requisites under the law.

The prosecution established that at 1 p.m. of 13 October 1997, a buy-bust operation was conducted by the members of the police force to entrap a drug pusher named Ibrahim. However, despite his absence in the target area, the entrapment operation ensued within the same place between the police officers who acted as *poseur*-buyers and the accused-appellant Mr. Ampatuan. This was shown in the direct testimony[23] of PO2 Caslib:

Q: So what did you do with the money when they asked for it?
A: I gave the money personally and then the other person gave to us the *marijuana*.

Q: When you said the other person, is that male or female?
A: He is male, sir.

Q: You said you handed the money, to whom did you hand the money?
A: I handed it to Ruel.

Q: Now tell us, if this Ruel and Linda that you mentioned are in court, will you able to identify them?
A: Yes, sir.

Q: Please point to the court this Ruel Ampatuan.
A: That man, sir.

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[21] *People v. Nazareno*, G.R. No. 174771, 11 September 2007, 532 SCRA 630, 636-637 citing *People v. Orteza, supra* note 16 at 758 citing further *People v. Zeng Hua Dian*, G.R. No. 145348, 14 June 2004, 432 SCRA 25, 34.

[22] *People v. Gutierrez*, G.R. No. 179213, 3 September 2009, 598 SCRA 92, 101 citing *People v. Del Mundo*, G.R. No. 169141, 6 December 2006, 510 SCRA 554, 562.

[23] Direct testimony of PO2 Francisco S. Caslib. TSN, 8 March 2000, pp. 11-13.

(Witness is pointing to a person wearing *maong* pants and maroon long sleeves and when asked, identified himself as Ruel Ampatuan.)

x x x x x x x x x

Q: After you handed the money to Ruel Ampatuan, what did you do next, if any?
A: I handed the money to Ruel and then he gave it to his wife.

Q: And after he gave the money to his wife, what happened next?
A: He gave us the item.

Q: Where did this item come from?
A: It came from the black bag, from the house of Totong Ibrahim.

Q: Why, where were you exactly talking with the two accused?
A: We were in front of the house of Totong Ibrahim.

x x x x x x x x x

Q: You mentioned that he got this bag of *marijuana*, what did the accused do with it? Where did he bring it?
A: He brought it outside.

Q: After bringing it outside, what did he do with it next?
A: He got some *marijuana* and gave it to us.

Q: After getting the *marijuana*, what did you do, if any?
A: We identified ourselves that we are police operatives conducting buy-bust operation.

Q: What happened next?
A: We apprehended the two (2) and then our back-up companions also identified themselves.

We find credit to the straight-forward testimony of PO2 Caslib. Absence of any ill-will on the part of the prosecution witnesses who were the best witnesses in prosecution for illegal sale of drugs, we sustain the findings of the lower courts.

Further, the accused-appellant challenges the regularity of the performance of duties of the police officers in the purported transaction of illegal sale of dangerous drugs. He argues that the police officers forced him to admit the ownership of the

marijuana samples due to their failure to apprehend their real target, Ibrahim.

A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan.[24] In this jurisdiction, the operation is legal and has been proved to be an effective method of apprehending drug peddlers, provided that due regard to constitutional and legal safeguards is undertaken.[25]

In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. Moreover, in the absence of proof of motive to falsely impute such a serious crime against the appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over appellant's self-serving and uncorroborated denial.[26]

Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation.[27] It is a fundamental rule that findings of the trial courts, which are factual in nature and which involve credibility, are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies

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[24] *People v. De Leon*, G.R. No. 186471, 25 January 2010, 611 SCRA 118, 135; *Cruz v. People*, G.R. No. 164580, 6 February 2009, 578 SCRA 147, 152.

[25] *People v. De Leon*, *id.*; *People v. Herrera*, G.R. No. 93728, 21 August 1995, 247 SCRA 433, 439.

[26] *People v. Llamado*, G.R. No. 185278, 13 March 2009, 581 SCRA 544, 552.

[27] *People v. Villamin*, G.R. No. 175590, 9 February 2010, 612 SCRA 91, 106; *People v. Macatingag*, G.R. No. 181037, 19 January 2009, 576 SCRA 354, 366 citing *People v. Hajili*, 447 Phil. 283, 295-296 (2003).

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.[28]

Further, the testimonies of the police officers who conducted the buy-bust are generally accorded full faith and credit, in view of the presumption of regularity in the performance of public duties. Hence, when lined against an unsubstantiated denial or claim of frame-up, the testimony of the officers who caught the accused red-handed is given more weight and usually prevails.[29] In order to overcome the presumption of regularity, jurisprudence teaches us that there must be clear and convincing evidence that the police officers did not properly perform their duties or that they were prompted with ill-motive.[30]

As to the *corpus delicti* of the case, Section 21, paragraph 1, Article II of Republic Act No. 9165 provides for the custody and disposition of the confiscated illegal drugs, to wit:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

This rule was elaborated in Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, *viz*:

a) 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

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[28] *People v. Villamin, id.* at 106-107 citing *People v. Macatingan, id.* at 366 citing further *People v. Bayani,* G.R. No. 179150, 17 June 2008, 554 SCRA 741, 752-753.

[29] *People v. Roa,* G.R. No. 186134, 6 May 2010, 620 SCRA 359, 367-368.

[30] *Id.* at 368 citing *People v. Bongalon,* 425 Phil. 96, 116 (2002).

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, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphasis ours)[31]

The following are the links that must be established in the chain of custody in a buy-bust situation: *first,* the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second,* the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third,* the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth,* the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[32]

As testified by PO2 Caslib, the *marijuana* came from the black bag and was handed by Mr. Ampatuan to them. The *marijuana* was eventually turned over to the police station. It was positively identified by PO2 Caslib in open court.

Q: After bringing it outside, what did he do with it next?
A: He got some marijuana and gave it to us.

Q: After getting the marijuana, what did you do, if any?
A: We identified ourselves that we are police operatives conducting buy- bust operation.[33]

x x x x x x x x x

Q: I am showing to you a bag here which was earlier marked as Exhibit "F", tell us what relation had this to the bag that you mentioned?

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[31] *People v. Presas,* G.R. No. 182525, 2 March 2011.

[32] *People v. Magpayo,* G.R. No. 187069, 20 October 2010, 634 SCRA 441, 451 citing *People v. Kamad,* G.R. No. 174198, 19 January 2010, 610 SCRA 295, 307-308.

[33] Testimony of PO2 Arnel Micabalo. TSN, 8 March 2000, p. 12.

A: That is the bag, sir.

Q: How do you know that this is the one?
A: Because it is somewhat an old bag.

Q: Were you able to look at the contents of this bag on that day?
A: Yes, during our arrival at the police station.

Q: Do you mean to say that that was your first time to look at the contents of this bag?
A: We saw the content of the bag at the house of Totong Ibrahim and we removed everything at the police station.

Q: Who opened the bag at the house of Totong Ibrahim?
A: It was Ruel Ampatuan.

Q: When Ruel opened this, what was the content?
A: Marijuana, sir.

Q: Can you tell us how they were arranged or how they were packed inside?
A: They were arranged by files, sir.

Q: How many files if you can remember?
A: it is wrapped with cellophane.

Q: I will open this bag and show its contents to you. Tell us what relation has this marijuana to the marijuana which you purchased from the accused?
Q: This is the one, sir.[34]

The *corpus delicti* of the crime which was the illicit drug was tested by Forensic Chemist Austero who later testified[35] and confirmed that the sales confiscated during the sale was *marijuana*.

Q: Now, you mentioned that you were the one who conducted the examination, tell us what kind of examination was this?
A: The examination was qualitative, Sir. That is to determine the presence of the sought for substance. So in this case,

[34] *Id.* at 13-14.

[35] Direct Testimony of Forensic Chemist Noemi Austero. TSN, 19 January 2000, pp. 8-9.

it is alleged to be *marijuana*. It is the determination of the presence of *marijuana* on these specimens submitted.

Q: Now, briefly, how is your examination done, can you describe it?

A: A sample is treated with a *duquenois-levine* reagent and if the purple color appears, it indicates the presence of *marijuana* plant.

Q: Now, by the way, how much was the quantity of the *marijuana* handed to the laboratory?

A: The first which I marked as "A", the weight is 774.5 grams and the one which I marked as "B", weighed 584.8 grams.

Q: Now, how much sample from "A" did you use for your examination?

A: Sir, I did not weigh the samples that were taken from the specimens.

Q: Now, by the way, what was the result of this examination that you conducted?

A: Both specimens gave positive result to the test for the presence of *marijuana*, Sir.

Q: Did you reduce your report into writing?

A: Yes, Sir.

Q: Do you have a copy with you?

A: Yes, Sir.

Q: Where in your report [indicates] that the result was positive?

A: Under findings, Sir.

Q: How much, by the way, was the total weight of the entire specimens that were handed to your office?

A: The total weight of the specimens Sir was 1, 359.3 grams.

Q: In terms of kilos, how will you convert that?

A: 1.3 kilos.

Q: Now, in this report of yours, there is a signature over the typewritten name on the right side, whose signature is that?

A: That is my signature, Sir.

Pros. dela Banda:

> At this point, Your Honor, may we request that this Chemistry Report No. D-200-97 be marked as Exhibit "J" in accordance with the pre-trial, Your Honor. This is the original also, Your Honor.

Indeed, in every prosecution for illegal sale of prohibited drugs, the presentation in evidence of the seized drug, as an integral part of the c*orpus delicti*, is most material. Thus, it is vital that the identity of the prohibited drug be proved with moral certainty. The fact that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit must also be established with the same degree of certitude. It is in this respect that the chain of custody requirement performs its function. It ensures that unnecessary doubts concerning the identity of the evidence are removed.[36]

Petitioner likewise asserts denial of any knowledge relating to the transaction and invoked that he and his companions were merely visitors of Ibrahim's wife.

Denial and *alibi* are defenses invariably viewed by the Court with disfavor, for they can easily be concocted but difficult to prove, and they are common and standard defense ploys in most prosecutions arising from violations of the Comprehensive Dangerous Drugs Act.[37]

Unfortunately, the accused-appellant failed to present any evidence to prove that there was indeed irregularity in the performance of duties or there was an improper motive on the part of the police officers. His mere testimony alone cannot be considered by this court as a clear and convincing evidence to rule otherwise for the same is self-serving on his part.

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[36] *People v. Quiamanlon*, G.R. No. 191198, 26 January 2011.

[37] *People v. De Leon, supra* note 21 at 136; *People v. Isnani*, G.R. No. 133006, 9 June 2004, 431 SCRA 439, 454 citing *People v. Ganenas*, 417 Phil. 53, 68 (2001) citing further *People v. Uy*, 392 Phil. 773, 788 (2000).

This Court finds the version of facts of the prosecution more credible to sustain than the version of facts of the accused-appellant denying any knowledge of the illegal sale.

WHEREFORE, the appeal is *DENIED*. The 25 June 2008 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00343, affirming the Decision of the Regional Trial Court of Panabo City, Branch 4, finding accused-appellant Ruel Ampatuan guilty of violation of Section 4 of Republic Act No. 6425,[38] as amended by Section 13, Republic Act No. 7659, as further amended by Section 5, Article II of Republic Act No. 9165, and sentencing him to suffer the penalty of *Reclusion Perpetua* and to pay a fine of ₱500,000.00 is hereby *AFFIRMED*. Costs against the appellant.

SO ORDERED.

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

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[38] Section 4, Article II of Republic Act No. 6425 or the "THE DANGEROUS DRUGS ACT OF 1972" provides in part:

The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, x x x, any prohibited drug, or shall act as a broker in any such transactions. x x x.

[*] Per Special Order No. 1022.

SECOND DIVISION

[G.R. No. 186523. June 22, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **URBAN SALCEDO, ABDURAHMAN ISMAEL DIOLAGRA, ABDULAJID NGAYA, HABER ASARI, ABSMAR ALUK, BASHIER ABDUL, TOTING HANO, JR., JAID AWALAL, ANNIK/RENE ABBAS, MUBIN IBBAH, MAGARNI HAPILON IBLONG, LIDJALON SAKANDAL, IMRAN HAKIMIN SULAIMAN, NADSMER ISNANI SULAIMAN, NADSMER ISNANI MANDANGAN, KAMAR JAAFAR, SONNY ASALI and BASHIER ORDOÑEZ,** *accused-appellants.*

KHADAFFY JANJALANI, ALDAM TILAO *alias* "ABU SABAYA," *ET AL.*, and MANY OTHER JOHN DOES, PETER DOES and RICHARD DOES, *accused.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DEFENSES OF ALIBI AND DENIAL; CANNOT PREVAIL OVER THE WITNESSES' POSITIVE IDENTIFICATION OF THE ACCUSED.— In the face of all that evidence, the only defense accused-appellants could muster are denial and alibi, and for accused-appellants Iblong, Mandangan, Salcedo and Jaafar, their alleged minority. Accused-appellants' proffered defense are sorely wanting when pitted against the prosecution's evidence. It is established jurisprudence that denial and alibi cannot prevail over the witnesses' positive identification of the accused-appellants. More so where, as in the present case, the accused-appellants failed to present convincing evidence that it was physically impossible for them to have been present at the crime scene at the time of the commission thereof. In *People v. Molina,* the Court expounded, thus: In light of the positive identification of appellant by the prosecution witnesses and since no ill motive on their part or on that of their families was shown that could have made either of them institute the case against the appellant

and falsely implicate him in a serious crime he did not commit, appellant's defense of alibi must necessarily fail. It is settled in this jurisdiction that the **defense of alibi**, being inherently weak, **cannot prevail over the clear and positive identification of the accused as the perpetrator of the crime**. x x x Furthermore, the detention of the hostages lasted for several months and they were transferred from one place to another, being always on the move for several days. Thus, in this case, for accused-appellants' alibi to prosper, they are required to prove their whereabouts for all those months. This they were not able to do, making the defense of alibi absolutely unavailing.

2. CRIMINAL LAW; MITIGATING CIRCUMSTANCES; MINORITY OF THE ACCUSED; THE TRIAL COURT'S AND THE APPELLATE COURT'S RULING REGARDING THE MINORITY OF THE ACCUSED, SUSTAINED.— The Court sustains the trial court's and the appellate court's ruling regarding the minority of accused-appellants Iblong, Mandangan, Salcedo and Jaafar. Iblong claimed he was born on August 5, 1987; Mandangan stated his birth date as July 6, 1987; Salcedo said he was born on January 10, 1985; and Jaafar claimed he was born on July 13, 1981. If Jaafar's birth date was indeed July 13, 1981, then he was over 18 years of age when the crime was committed in June of 2001 and, thus, he cannot claim minority. It should be noted that the defense absolutely failed to present any document showing accused-appellants' date of birth, neither did they present testimonies of other persons such as parents or teachers to corroborate their claim of minority. x x x It should be emphasized that at the time the trial court was hearing the case and even at the time it handed down the judgment of conviction against accused-appellants on August 13, 2004, R.A. No. 9344 had not yet been enacted into law. The procedures laid down by the law to prove the minority of accused-appellants were not yet in place. Hence, the rule was still that the burden of proving the minority of the accused rested solely on the defense. The trial court, in the absence of any document stating the age of the aforementioned four accused-appellants, or any corroborating testimony, had to rely on its own observation of the physical appearance of accused-appellants to estimate said accused-appellants' age. A reading of the afore-quoted Section 7 of R.A. No. 9344 shows that this manner of determining accused-appellants' age is also

sanctioned by the law. The accused-appellants appeared to the trial court as no younger than twenty-four years of age, or in their mid-twenties, meaning they could not have been under eighteen (18) years old when the crime was committed. As discussed above, such factual finding of the trial court on the age of the four accused-appellants, affirmed by the CA, must be accorded great respect, even finality by this Court.

3. ID.; ID.; ID.; JUVENILE JUSTICE WELFARE ACT OF 2006; APPLICATION THEREOF IS NOW MOOT AND ACADEMIC SINCE APPELLANTS HAVE ALREADY REACHED 21 YEARS OF AGE.— Even assuming *arguendo* that the four accused-appellants were indeed less than eighteen years old at the time the crime was committed, at this point in time, the applicability of R.A. No. 9344 is seriously in doubt. Pertinent provisions of R.A. No. 9344 are as follows: x x x Sec. 40. *Return of the Child in Conflict with the Law to Court.* x x x If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or **until the child reaches the maximum age of twenty-one (21) years**. If accused-appellants' claim are true, that they were born in 1985 and 1987, then they have already reached 21 years of age, or over by this time and thus, the application of Sections 38 and 40 of R.A. No. 9344 is now moot and academic.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an automatic review of the Decision[1] of the Court of Appeals (CA) promulgated on November 24, 2008, in accordance

[1] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Michael P. Elbinias and Ruben C. Ayson, concurring; *rollo*, pp. 6-24.

with Section 2 of Rule 125, in relation to Section 3 of Rule 56 of the Rules of Court. The CA found accused-appellants guilty beyond reasonable doubt of the crime of kidnapping in Criminal Case Nos. 3608-1164, 3611-1165, and 3674-1187 and sentenced them to *reclusion perpetua*.

A close examination of the records would reveal the CA's narration of the antecedent facts to be accurate, to wit:

> Accused-appellants interpose the present appeal to the Decision of branch 2 of the Regional Trial Court of Isabela City, Basilan, convicting them for the crime of Kidnapping and Serious Illegal Detention with Ransom, as defined and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659. After arraignment and due trial, accused-appellants were found guilty and, accordingly, sentenced in Criminal Case No. 3537-1129 to *Reclusion Perpetua*, and in Criminal Case Nos. 3608-1164, 3611-1165, and 3674-1187 to the Death Penalty.
>
> The Decision in Criminal Case No. 3537-1129 decreed as follows:
>
> > WHEREFORE, in Criminal Case No. 3537-1129, for the kidnapping of Joe Guillo, the Court finds the following accused guilty beyond reasonable doubt as principals:
> >
> > 1. Urban Salcedo, a.k.a. "Wahid Guillermo Salcedo"/"Abu Urban"
> > 2. Abdurahman Ismael Diolagla, a.k.a. "Abu Sahrin"
> > 3. Abdulajid Ngaya, a.k.a. "Abu Ajid"
> > 4. Haber Asari, a.k.a. "Abu Habs"
> > 5. Absmar Aluk, a.k.a. "Abu Adzmar/Abu Aluk"
> > 6. Bashier Abdul, a.k.a. "Abu Jar"
> > 7. Toting Hano, Jr., a.k.a. "Abu Jakaria" (in abstentia)
> > 8. Jaid Awalal, a.k.a. "Abu Jaid" (in abstencia)
> > 9. Mubin Ibbah, a.ka. "Abu Black" (in abstentia)
> > 10. Annik/Rene Abbas, a.k.a. "Abu Annik" (*in abstentia*)
> > 11. Margani Hapilon Iblong, a.k.a. "Abu Nadim"
> > 12. Lidjalong Sakandal/Sabandal
> > 13. Imran Hakimin *y* Sulaiman, a.k.a. "Abu Nadim"

14. Nadzmer Isnani Mangangan, a.k.a. "Abu Harun"
15. Kamar Jaagar, a.k.a. "Abu Jude"
16. Sonny Asali, a.k.a. "Abu Teng"/"Abu Umbra," and
17. Bashier Ordonez, a.k.a. "Abu Bashier"

as defined and penalized under Section 8 of Republic Act No. 7659, amending Article 267 of the Revised Penal Code, and applying Art. 63 of the Code, the lesser penalty of *RECLUSION PERPETUA* is hereby imposed on them.

The aforementioned accused shall jointly and severally pay Joel Guillo by way of moral damages the sum of ₱200,000.00, pursuant to paragraph 5, Article 2217 of the Civil Code, with proportionate costs against them.

On the other hand, the court *a quo* in Criminal Case No. 3608-1164 decreed as follows:

In Criminal Case No. 3608-1164, for the kidnapping of Reina Malonzo, the court finds the following accused guilty beyond reasonable doubt as principals:

1. Urban Salcedo, a.k.a. "Wahid Guillermo Salcedo"/"Abu Urban"
2. Abdurahman Ismael Diolagla, a.k.a "Abu Sahrin"
3. Abdulajid Ngaya, a.k.a. "Abu Ajid"
4. Haber Asari, a.k.a. "Abu Habs"
5. Absmar Aluk, a.k.a. "Abu Adzmar/Abu Aluk"
6. Bashier Abdul, a.k.a. "Abu Jar"
7. Toting Hano, Jr., a.k.a. "Abu Jakaria" (in abstentia)
8. Jaid Awalal, a.k.a. "Abu Jaid" (in abstentia)
9. Mubin Ibbah, a.k.a. "Abu Black" (in abstentia)
10. Annik/Rene Abbas, a.k.a. "Abu Annik" (in abstentia)
11. Margani Hapilon Iblong, a.k.a. "Abu Nadim"
12. Lidjalong Sakandal/Sabandal
13. Imran Hakimin y Sulaiman, a.k.a. "Abu Nadim"
14. Nadzmer Isnani Mangangan, a.k.a. "Abu Harun"
15. Kamar Jaagar, a.k.a. "Abu" Jude"
16. Sonny Asali, a.k.a. "Abu Teng"/"Abu Umbra," and
17. Bashier Ordonez, a.k.a. "Abu Bashier"

as defined and penalized under Section 8 of Republic Act No. 7659, amending Article 267 of the Revised Penal Code, and applying Art. 63 of the Code, are hereby sentenced to the extreme penalty of DEATH.

The aforementioned accused shall jointly and severally pay Reina Malonzo by way of moral damages the sum of ₱200,000.00, pursuant to paragraph 5, Article 2217 of the Civil Code, with proportionate costs against them.

Likewise, the lower court, in Criminal Case No. 3611-1165 decreed as follows:

In Criminal Case No. 3611-1165, for the kidnapping of Shiela Tabuñag, the (court) finds the following accused guilty beyond reasonable doubt as principals:

1. Urban Salcedo, a.k.a. "Wahid Guillermo Salcedo"/"Abu Urban"
2. Abdurahman Ismael Diolagla, a.k.a. "Abu Sahrin"
3. Abdulajid Ngaya, a.k.a. "Abu Ajid"
4. Haber Asari, a.k.a. "Abu Habs"
5. Absmar Aluk, a.k.a. "Abu Adzmar/Abu Aluk"
6. Bashier Abdul, a.k.a. "Abu Jar"
7. Toting Hano, Jr., a.k.a. "Abu Jakaria" (in abstentia)
8. Jaid Awalal, a.k.a. "Abu Jaid" (in abstentia)
9. Mubin Ibbah, a.k.a. "Abu Black" (in abstentia)
10. Annik/Rene Abbas, a.k.a. "Abu Annik" (in abstentia)
11. Margani Hapilon Iblong, a.k.a. "Abu Nadim"
12. Lidjalong Sakandal/Sabandal
13. Imran Hakimin y Sulaiman, a.k.a. "Abu Nadim"
14. Nadzmer Isnani Mangangan, a.k.a. "Abu Harun"
15. Kamar Jaagar, a.k.a. "Abu" Jude"
16. Sonny Asali, a.k.a. "Abu Teng"/"Abu Umbra," and
17. Bashier Ordonez, a.k.a. "Abu Bashier"

as defined and penalized under Section 8 of Republic Act No. 7659, amending Article 267 of the Revised Penal Code, and applying Art. 63 of the Code, are hereby sentenced to the extreme penalty of DEATH.

The aforementioned accused shall jointly and severally pay Shiela Tabuñag by way of moral damages the sum of ₱200,000.00, pursuant to paragraph 5, Article 2217 of the Civil Code, with proportionate costs against them.

And in Criminal Case No. 3674-1187, it entered its judgment against the accused-appellants as follows:

In Criminal Case No. 3674-1187, for the kidnapping of Ediborah Yap, the court finds the following accused guilty beyond reasonable doubt as principals:

Urban Salcedo, a.k.a. "Wahid Guillermo Salcedo"/"Abu Urban"
Abdurahman Ismael Diolagla, a.k.a "Abu Sahrin"
Abdulajid Ngaya, a.k.a. "Abu Ajid"
Haber Asari, a.k.a. "Abu Habs"
Absmar Aluk, a.k.a. "Abu Adzmar/Abu Aluk"
Bashier Abdul, a.k.a. "Abu Jar"
Toting Hano, Jr., a.k.a. "Abu Jakaria" (in abstentia)
Jaid Awalal, a.k.a. "Abu Jaid" (in abstentia)
Mubin Ibbah, a.k.a. "Abu Black" (in abstentia)
Annik/Rene Abbas, a.k.a. "Abu Annik" (in abstentia)
Margani Hapilon Iblong, a.k.a. "Abu Nadim"
Lidjalong Sakandal/Sabandal
Imran Hakimin y Sulaiman, a.k.a. "Abu Nadim"
Nadzmer Isnani Mangangan, a.k.a. "Abu Harun"
Kamar Jaagar, a.k.a. "Abu" Jude"
Sonny Asali, a.k.a. "Abu Teng"/"Abu Umbra," and
Bashier Ordonez, a.k.a. "Abu Bashier"

as defined and penalized under Section 8 of Republic Act No. 7659, amending Article 267 of the Revised Penal Code, and applying Art. 63 of the Code, are hereby sentenced to the extreme penalty of DEATH.

The aforementioned accused shall jointly and severally pay to the heirs of Ediborah Yap by way of civil indemnity the sum of ₱50,000.00, moral damages in the sum of ₱200,000.00 and, considering the attendant aggravating circumstances, the sum of ₱100,000.00 by way of exemplary damages.

SO ORDERED.

The salient facts in this case are the following:

On June 1, 2001, Shiela Tabuñag, Reina Malonzo, and Ediborah Yap, were serving their duty shift as nurses at Jose Maria Torres Memorial Hospital in Lamitan, Basilan. Joel Guillo, the hospital accountant, on the other hand, had just finished his duty and decided to rest in the doctors' quarter.

At around 12:30 past midnight of June 2, 2001, the Abu Sayaff Group (ASG for brevity) led by Khadaffy Janjalani and Abu Sabaya, with 30 armed followers entered and took control over said hospital. Previously, however, another group of ASG with 60 followers led by Abu Umran hiked towards Lamitan for the sole purpose of reinforcing the group of Khadaffy Janjalani and Abu Sabaya. However, upon reaching the vicinity of the hospital, a firefight had already ensued between the military forces and the group of Janjalani and Sabaya. Simultaneously, the band also became entangled in a firefight with a civilian group led by one retired Col. Baet, who was killed during the encounter. Moments later, the band fled to different directions, with its members losing track of one another.

Pandemonium ensued in the hospital on that early morning, as the people were thrown into a frenzy by the shouting, window glass breaking, and herding of hostages from one room to another by the ASG. The group was also looking for medicine and syringes for their wounded comrades as well as food and clothing. The firefight lasted until the afternoon of June 2, 2001. Finally, at around 6:00 in the evening, the ASG and the hostages, including those from the Dos Palmas Resort, were able to slip out of the hospital through the backdoor, despite the intense gunfire that was ongoing. Hence, the long and arduous hiking towards the mountains began.

On June 3, 2001, at about noontime, the group of Janjalani and Sabaya met with the group of Abu Ben in Sinagkapan, Tuburan. The next day, Himsiraji Sali with approximately 60 followers also joined the group. It was only on the third week on July that year that the whole group of Abu Sayaff was completed, when it was joined by the group of Sattar Yacup, a.k.a. "Abu Umran."

Subsequently, new hostages from the Golden Harvest plantation in Tairan, Lantawan were abducted by the Hamsiraji Sali and Isnilun Hapilon.

On June 12, 2001, Abu Sabaya informed the hostages that Sobero had been beheaded and was warned of the consequences should said hostages fail to cooperate with the ASG. Hence, the ASG formed a "striking force" that then proceeded to behead 10 innocent civilians.

On October 1, 2001, Reina Malonzo was separated from the other hostages and taken to Zamboanga City by Abu Arabi with two other ASG members on board a passenger watercraft to stay at a house in Sta. Maria. Later on October 13, 2001, a firefight broke out between the ASG and the military, giving Joel Guillo and 3 other hostages the opportunity to escape from their captors. On even date, Sheila Tabuñag was released together with 2 other hostages from Dos Palmas, allegedly after paying ransom. Reina Malonzo was soon after also released by order of Khaddafy Janjalani on November 1, 2001.

Finally, after a shootout between the ASG and the military on June 7, 2002, at Siraway, Zamboanga del Norte, Ediborah Yap, died at the hands of her captors. Thereafter, a manhunt by the military was conducted, where the accused-appellants were subsequently captured and held for trial.

Hence, criminal informations for kidnapping and serious illegal detention under Art. 267 of the Revised Penal Code as amended by Sec. 8 of R.A. No. 7659 were filed against 17 ASG members on August 14, 2001, October 29, 2001, March 6, 2002, and March 12, 2002. As defense for the accused-appellants, 11 of the 17 of them raise the defense of alibi. Among them were Jaid Awalal, Imran Hakimin Sulaiman, Toting Hano, Jr., Abdurahman Ismael Diolagla, Mubin Ibbah, Absmar Aluk, Bashier Abdul, Annik/Rene Abbas, Haber Asari, Margani Hapilon Iblong, and Nadzmer Mandangan. On the other hand, Bashier Ordonez, Sonny Asali, Lidjalon Sakandal/Sabandal, and Abdulajid Ngaya claimed that they were merely forced by the Abu Sayyaf to join the group. The defense of being deep penetration agents of the military was conversely raised by 2 accused-appellants, Urban Salcedo and Kamar Jaafar.

After due trial, the court *a quo*, on August 13, 2004, rendered the appealed decisions which convicted all the accused-appellants of the crime of kidnapping with serious illegal detention.[2]

In Criminal Case No. 3537-1129, for the kidnapping of Joel Guillo, accused-appellants were sentenced to *reclusion perpetua*;

[2] *Id*. at 7-13.

in Criminal Case No. 3608-1164, for the kidnapping of Reina Malonzo, they were sentenced to Death; in Criminal Case No. 3611-1165, for the kidnapping of Sheila Tabuñag, they were sentenced to Death; and in Criminal Case No. 3674-1187, for the kidnapping of Ediborah Yap, they were also sentenced to Death.

The case was then brought to this Court for automatic review in view of the penalty of death imposed on accused-appellants. However, in accordance with the ruling in *People v. Mateo*,[3] and the amendments made to Sections 3 and 10 of Rule 122, Section 13 of Rule 124, and Section 3 of Rule 125 of the Revised Rules on Criminal Procedure, the Court transferred this case to the CA for intermediate review.

On November 24, 2008, the CA promulgated its Decision, the dispositive portion of which reads as follows:

> WHEREFORE, in view of the foregoing premises, We hold to AFFIRM the appealed judgments with the modification that the penalty of death be reduced to *Reclusion Perpetua* in Criminal Case Nos. 3608-1164, 3611-1165, and 3674-1187.
>
> SO ORDERED.[4]

Thus, the case is now before this Court on automatic review. Both the prosecution and the accused-appellants opted not to file their respective supplemental briefs with this Court.

In the Brief for Accused-Appellants filed with the CA, it was argued that the prosecution's evidence was insufficient to prove guilt beyond reasonable doubt. It was further averred that some of the accused-appellants were merely forced to join the Abu Sayyaf Group (ASG) for fear for their lives and those of their relatives, while four (4) of them, namely, Wahid Salcedo, Magarni Hapilon Iblong, Nadzmer Mandangan and Kamar Jaafar, were supposedly minors at the time the alleged kidnapping took place; hence, Republic Act (R.A.) No. 9344 (otherwise known as

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[3] G.R. No. 147678-87, July 7, 2004, 433 SCRA 640.

[4] *Rollo*, p. 23.

the *Juvenile Justice and Welfare Act of 2006*), should apply to said accused-appellants. It was then prayed that accused-appellants Nadzmer Isnani Madangan, Magarni Hapilon Iblong, Wahid Salcedo, Kamar Jaafar, Abdulajid Ngaya, Lidjalon Sakandal and Sonny Asali be acquitted, while the sentence for the rest of the accused-appellants be reduced to *reclusion perpetua.*

On the other hand, appellee maintained that the State had been able to prove accused-appellants' guilt beyond reasonable doubt and that the defense failed to adduce proof of minority of the four accused-appellants.

The Court finds no reason to reverse or modify the ruling and penalty imposed by the CA.

The defense itself admitted that the kidnapped victims who testified for the prosecution had been able to point out or positively identify in open court all the accused-appellants[5] as members of the ASG who held them in captivity. Records reveal that the prosecution witnesses were unwavering in their account of how accused-appellants worked together to abduct and guard their kidnapped victims, fight-off military forces who were searching and trying to rescue said victims, and how ransom was demanded and paid. The prosecution likewise presented two former members of the ASG who testified that they were part of the group that reinforced the kidnappers and helped guard the hostages. They both identified accused-appellants as their former comrades.

In the face of all that evidence, the only defense accused-appellants could muster are denial and alibi, and for accused-appellants Iblong, Mandangan, Salcedo and Jaafar, their alleged minority. Accused-appellants' proffered defense are sorely wanting when pitted against the prosecution's evidence. It is established jurisprudence that denial and alibi cannot prevail over the witnesses' positive identification of the accused-appellants. More so where, as in the present case, the accused-appellants failed to present convincing evidence that it was physically impossible for them to have been present at the crime

[5] Brief for the Accused-Appellants, CA *rollo*, p. 183.

scene at the time of the commission thereof.[6] In *People v. Molina*,[7] the Court expounded, thus:

> In light of the positive identification of appellant by the prosecution witnesses and since no ill motive on their part or on that of their families was shown that could have made either of them institute the case against the appellant and falsely implicate him in a serious crime he did not commit, appellant's defense of alibi must necessarily fail. It is settled in this jurisdiction that the **defense of alibi**, being inherently weak, **cannot prevail over the clear and positive identification of the accused as the perpetrator of the crime**. x x x[8]

Furthermore, the detention of the hostages lasted for several months and they were transferred from one place to another, being always on the move for several days. Thus, in this case, for accused-appellants' alibi to prosper, they are required to prove their whereabouts for all those months. This they were not able to do, making the defense of alibi absolutely unavailing.

Some of the accused-appellants maintained that they were merely forced to join the ASG. However, the trial court did not find their stories persuasive. The trial court's evaluation of the credibility of witnesses and their testimonies is conclusive on this Court as it is the trial court which had the opportunity to closely observe the demeanor of witnesses.[9] The Court again explained the rationale for this principle in *Molina*,[10] to wit:

> As oft repeated by this Court, the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment

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[6] *Lumanog v. People of the Philippines*, G.R. No. 182555, September 7, 2010, 630 SCRA 42, 130-131.

[7] G.R. No. 184173, March 13, 2009, 581 SCRA 519.

[8] *Id.* at 538. (Emphasis supplied.)

[9] *People v. Flores*, G.R. No. 188315, August 25, 2010, 629 SCRA 478, 488.

[10] *Supra* note 7.

on the stand, and the manner in which they gave their testimonies. The trial judge therefore can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirms the said findings, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case.[11]

The Court cannot find anything on record to justify deviation from said rule.

Lastly, the Court sustains the trial court's and the appellate court's ruling regarding the minority of accused-appellants Iblong, Mandangan, Salcedo and Jaafar. Iblong claimed he was born on August 5, 1987; Mandangan stated his birth date as July 6, 1987; Salcedo said he was born on January 10, 1985; and Jaafar claimed he was born on July 13, 1981. If Jaafar's birth date was indeed July 13, 1981, then he was over 18 years of age when the crime was committed in June of 2001 and, thus, he cannot claim minority. It should be noted that the defense absolutely failed to present any document showing accused-appellants' date of birth, neither did they present testimonies of other persons such as parents or teachers to corroborate their claim of minority.

Section 7 of R.A. No. 9344 provides that:

Sec. 7. *Determination of Age*. - The child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. **In the absence of these documents, age may be based on** information from the child himself/herself, testimonies of other persons, **the physical appearance of the child** and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

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[11] *Id*. at 535-536.

x x x x x x x x x

If a case has been filed against the child in conflict with the law and is pending in the appropriate court, the person shall file a motion to determine the age of the child in the same court where the case is pending. Pending hearing on the said motion, proceedings on the main case shall be suspended.

In all proceedings, law enforcement officers, prosecutors, judges and other government officials concerned shall exert all efforts at determining the age of the child in conflict with the law.[12]

It should be emphasized that at the time the trial court was hearing the case and even at the time it handed down the judgment of conviction against accused-appellants on August 13, 2004, R.A. No. 9344 had not yet been enacted into law. The procedures laid down by the law to prove the minority of accused-appellants were not yet in place. Hence, the rule was still that the burden of proving the minority of the accused rested solely on the defense. The trial court, in the absence of any document stating the age of the aforementioned four accused-appellants, or any corroborating testimony, had to rely on its own observation of the physical appearance of accused-appellants to estimate said accused-appellants' age. A reading of the afore-quoted Section 7 of R.A. No. 9344 shows that this manner of determining accused-appellants' age is also sanctioned by the law. The accused-appellants appeared to the trial court as no younger than twenty-four years of age, or in their mid-twenties, meaning they could not have been under eighteen (18) years old when the crime was committed.[13] As discussed above, such factual finding of the trial court on the age of the four accused-appellants, affirmed by the CA, must be accorded great respect, even finality by this Court.

Moreover, even assuming *arguendo* that the four accused-appellants were indeed less than eighteen years old at the time the crime was committed, at this point in time, the applicability

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[12] Emphasis supplied.

[13] RTC Decision, CA *rollo*, p. 140.

of R.A. No. 9344 is seriously in doubt. Pertinent provisions of R.A. No. 9344 are as follows:

> Sec. 38. *Automatic Suspension of Sentence*. - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That the suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.
>
> x x x x x x x x x
>
> Sec. 40. *Return of the Child in Conflict with the Law to Court*. -
>
> x x x x x x x x x
>
> If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or **until the child reaches the maximum age of twenty-one (21) years**.[14]

If accused-appellants' claim are true, that they were born in 1985 and 1987, then they have already reached 21 years of age, or over by this time and thus, the application of Sections 38 and 40 of R.A. No. 9344 is now moot and academic.[15]

However, just for the guidance of the bench and bar, it should be borne in mind that if indeed, an accused was under eighteen (18) years of age at the time of the commission of the crime, then as held in *People v. Sarcia*,[16] such offenders, even if already over twenty-one (21) years old at the time of conviction,

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[14] Emphasis supplied.

[15] See *Padua v. People*, G.R. No. 168546, July 23, 2008, 559 SCRA 519, 535.

[16] G.R. No. 169641, September 10, 2009, 599 SCRA 20, 51.

may still avail of the benefits accorded by Section 51 of R.A. No. 9344 which provides, thus:

> Sec. 51. *Confinement of Convicted Children in Agricultural Camps and Other Training Facilities*. - A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in cooperation with the DSWD.

Nevertheless, as discussed above, the evidence before the Court show that accused-appellants Iblong, Mandangan, Salcedo and Jaafar, were not minors at the time of the commission of the crime, hence, they cannot benefit from R.A. No. 9344.

WHEREFORE, the Decision of the Court of Appeals, dated November 24, 2008 in CA-G.R. CR.-H.C No. 00239, is hereby *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Abad,* and *Mendoza, JJ.,* concur.

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[*] Acting member per Special Order No. 1006.

SPECIAL FIRST DIVISION

[G.R. No. 192649. June 22, 2011]

HOME GUARANTY CORPORATION, *petitioner, vs.* **R-II BUILDERS, INC. and NATIONAL HOUSING AUTHORITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; MERCANTILE LAW; SECURITIES AND EXCHANGE COMMISSION REORGANIZATION ACT (P.D. 902-A); JURISDICTION OF REGIONAL TRIAL COURTS ACTING AS SPECIAL COMMERCIAL COURTS; A COMPLAINT THAT DOES NOT INVOLVE AN INTRA-CORPORATE DISPUTE SHOULD BE DISMISSED FOR LACK OF JURISDICTION INSTEAD OF SIMPLY DIRECTING THE RE-RAFFLE OF THE CASE TO ANOTHER BRANCH.— The record shows that, with the raffle of R-II Builders' complaint before Branch 24 of the Manila RTC and said court's grant of the application for temporary restraining order incorporated therein, HGC sought a preliminary hearing of its affirmative defenses which included, among other grounds, lack of jurisdiction and improper venue. It appears that, at said preliminary hearing, it was established that R-II Builders' complaint did not involve an intra-corporate dispute and that, even if it is, venue was improperly laid since none of the parties maintained its principal office in Manila. While it is true, therefore, that R-II Builders had no hand in the raffling of the case, it cannot be gainsaid that Branch 24 of the RTC Manila had no jurisdiction over the case. Rather than ordering the dismissal of the complaint, however, said court issued the 2 January 2008 order erroneously ordering the re-raffle of the case. In *Atwel v. Concepcion Progressive Association, Inc,* and *Reyes v. Hon. Regional Trial Court of Makati, Branch 142* which involved SCCs trying and/or deciding cases which were found to be civil in nature, this Court significantly ordered the dismissal of the complaint *for lack of jurisdiction* instead of simply directing the re-raffle of the case to another branch.

2. ID.; CIVIL PROCEDURE; ACTIONS; HAVING CONSISTENTLY SOUGHT THE TRANSFER OF POSSESSION AND CONTROL

OF THE PROPERTIES COMPRISING THE ASSET POOL OVER AND ABOVE THE NULLIFICATION OF THE DEED OF CONVEYANCE IN FAVOR OF PETITIONER, IT FOLLOWS THAT RESPONDENT SHOULD HAVE PAID THE CORRECT AND APPROPRIATE DOCKET FEES, COMPUTED ACCORDING TO THE ASSESSED VALUE THEREOF.— Having consistently sought the transfer of possession and control of the properties comprising the Asset Pool over and above the nullification of the Deed of Conveyance in favor of HGC, it follows R-II Builders should have paid the correct and appropriate docket fees, computed according to the assessed value thereof. This much was directed in the 19 May 2008 Order issued by Branch 22 of the Manila RTC which determined that the case is a real action *and* admitted the Amended and Supplemental Complaint R-II Builders subsequently filed in the case. In obvious evasion of said directive to pay the correct docket fees, however, R-II Builders withdrew its Amended and Supplemental Complaint and, in lieu thereof, filed its Second Amended Complaint which, while deleting its causes of action for accounting and conveyance of title to and/or possession of the entire Asset Pool, nevertheless prayed for its appointment as Receiver of the properties comprising the same. In the landmark case of *Manchester Development Corporation v. Court of Appeals*, this Court ruled that jurisdiction over any case is acquired only upon the payment of the prescribed docket fee which is both mandatory and jurisdictional. Although it is true that the *Manchester Rule* does not apply despite insufficient filing fees when there is no intent to defraud the government, R-II Builders' evident bad faith should clearly foreclose the relaxation of said rule. In addition to the jurisdictional and pragmatic aspects underlying the payment of the correct docket fees which have already been discussed in the decision sought to be reconsidered, it finally bears emphasizing that the Asset Pool is comprised of government properties utilized by HGC as part of its sinking fund, in pursuit of its mandate as statutory guarantor of government housing programs. With the adverse consequences that could result from the transfer of possession and control of the Asset Pool, it is imperative that R-II Builders should be made to pay the docket and filing fees corresponding to the assessed value of the properties comprising the same.

VELASCO, JR., *J., dissenting opinion:*

1. REMEDIAL LAW; JURISDICTION; CONFERRED BY LAW AND ONCE ACQUIRED, IT CONTINUES UNTIL THE CASE IS FINALLY TERMINATED; THE REGIONAL TRIAL COURT (RTC) OF MANILA STILL HAS JURISDICTION OVER THE CASE, THE RE-RAFFLING OF THE CASE ONLY EFFECTED THE TRANSFER OF THE CASE FROM ONE BRANCH TO ANOTHER BRANCH OF THE SAME COURT.— The judge presiding over Branch 24 of RTC Manila, a designated Special Commercial Court (SCC), however, determined that the case was not an intra-corporate dispute, and found it proper that the case be returned to the Executive Judge of RTC Manila for re-raffling. Thus, it was the Executive Judge of RTC Manila who conducted the re-raffling, and the case was then transferred to Branch 22 of RTC Manila. The subject matter jurisdiction over the case belonged and still remains with RTC Manila. The re-raffling only effected the transfer of the case from one branch to another branch of the same court, namely RTC Manila, by rightful action of the Executive Judge, not via order of Branch 24 of RTC Manila. The RTC of Manila still had jurisdiction over the case; it was not lost by the erroneous raffle. Jurisdiction is conferred by law. Once jurisdiction is acquired, it continues until the case is finally terminated. Thus, the complaint at bar should not be dismissed for lack of jurisdiction.

2. ID.; ID.; JURISDICTION WAS IN THE PROPER COURT, IF NOT IN THE PROPER BRANCH; CASE AT BAR.— In Our assailed March 9, 2011 Decision, We used *Calleja v. Panday* as precedent to the case at bar. A second look at *Calleja* shows that the facts and circumstances in said case are dissimilar to the instant case. In *Calleja*, a complaint which involves an intra-corporate dispute was directly filed with the RTC of San Jose, Camarines Sur, Branch 58 which is not an SCC. It appears that the case was referred to the Executive Judge of the RTC-Naga City which refused to receive the case folder, as it concluded that improper venue is not a ground for transferring said case to another jurisdiction. The RTC-Branch 58 of San Jose, Camarines Sur, as a result, issued an order transferring the case to RTC of Naga City, Branch 23 which is an SCC. The Court ruled that this procedure cannot be allowed, because a commercial case has to be filed directly with the Clerk of Court of the

designated commercial court since only these courts have jurisdiction over intra-corporate disputes pursuant to A.M. No. 03-03-03-SC effective July l, 2003. The instant case is NOT an intra-corporate dispute and, hence, is cognizable by a regular RTC. Said case was incorrectly raffled by the Executive Judge to an SCC but was subsequently raffled to a regular RTC upon discovery of the mistake. Moreover, the instant case was not filed directly with the clerk of court of the SCC as required by A.M. No. 03-03-03-SC but with the Clerk of Court of the RTC-Manila. Thus, there is nothing irregular with transfer of the case to a regular RTC via raffle by the Executive Judge. Clearly, the instant case cannot be dismissed on the alleged irregularity or want of jurisdiction of Branch 24, for jurisdiction is indisputably with the regular RTC-Manila and not the SCC. Here, jurisdiction was in the proper court, if not in the proper branch.

3. ID.; CIVIL PROCEDURE; ACTIONS; A COMPLAINT FOR "DECLARATION OF NULLITY OF SHARE ISSUE, RECEIVERSHIP, DISSOLUTION AND ASSET LIQUIDATION" OF A CORPORATION IS A CASE INCAPABLE OF PECUNIARY ESTIMATION SINCE THE RECOVERY OF THE REAL OR PERSONAL PROPERTY WAS MERELY A CONSEQUENCE OF THE PRINCIPAL ACTION AND THE COMPUTATION OF DOCKET FEES WAS NOT DEPENDENT ON THE VALUE OF THE PROPERTIES.— Whether or not the case is a real action, and whether or not the proper docket fees were paid, one must look to the main cause of action of the case. In all instances, in the original Complaint, the Amended and Supplemental Complaint and the Amended Complaint, it was all for the resolution or rescission of the DAC, with the prayer for the provisional remedy of injunction and the appointment of a trustee and subsequently a receiver. In the Second Amended Complaint, the return of the remaining assets of the asset pool, if any, to respondent R-II Builders would only be the result of the resolution or rescission of the DAC. Even if real property in the Asset Pool may change hands as a result of the case in the trial court, the fact alone that real property is involved does not make that property the basis of computing the docket fees. *De Leon v. Court of Appeals* has already settled the matter. That case, citing *Bautista v. Lim*, held that a case for rescission or annulment of contract is not susceptible of pecuniary estimation. On the other hand, in the

Decision We rendered on July 25, 2005 in *Serrano v. Delica*, We ruled that the action for cancellation of contracts of sale and the titles is a real action. Similarly, on February 10, 2009, We ruled in *Ruby Shelter Builders and Realty Development Corporation v. Formaran III* (*Ruby Shelter*) that an action for nullification of a Memorandum of Agreement which required the lot owner to issue deeds of sale and cancellation of the Deeds of Sale is a real action. Quite recently, however, in one case—*Lu v. Lu Ym, Sr.*—similar to the facts of the instant case, the Court on February 15, 2011 held that a complaint for "declaration of nullity of share issue, receivership and dissolution and asset liquidation" of the Ludo and Luym Development Corporation is a **case incapable of pecuniary estimation** since the recovery of the real or personal property was merely a consequence of the principal action and the computation of docket fees was not dependent on the value of the properties. This latest ruling in *Lu* is a precedent to the case at bar and is the latest case law on the matter. It prevails over our rulings in *Serrano* and *Ruby Shelter*. In both *Lu* and the case at bar, the main causes of action are similar—the nullification of the share issue in *Lu* and the Deed of Assignment and Conveyance in the instant case; both prayed for receivers and both asked for dissolution of a company in *Lu* and the asset pool in the instant case. R-II Builders asked for the residual value of the assets after liquidation, while David Lu would get his share after dissolution and liquidation. Ergo, the instant case is incapable of pecuniary estimation.

4. ID.; ID.; ID.; NO BASIS FOR PAYMENT OF ADDITIONAL DOCKET FEES IN CASE AT BAR; THE TRANSFER OF OWNERSHIP DOES NOT RESULT IN A BENEFIT OR GAIN ON THE PART OF RESPONDENT.— Moreover, it is clear as day that the prayer in the original complaint was for the conveyance of the properties of the Asset Pool to R-II Builders as trustee but NOT as owner. A trustee does not acquire ownership of the assets entrusted to him but merely manages it for the benefit of the beneficiary pursuant to Rule 98 of the Rules of Court. x x x Since the conveyance of the Asset Pool to R-II Builders was not a transfer of ownership to said company, but instead the Asset Pool was held only by R-II Builders as trustee in favor of the rightful owners, then there is NO benefit or gain to R-II Builders and the instant case cannot be classified

as a real action. The present complaint of respondent R-II Builders still remains one that involves an action incapable of pecuniary estimation, a subject matter which is within the exclusive original jurisdiction of the RTC Manila, and the corresponding docket fees prescribed by RTC Manila were already paid at the time of the filing of the original Complaint. Hence, there is no basis for the payment of additional fees.

5. ID.; ID.; ID.; DISMISSAL OF THE CASE IS NOT IN KEEPING WITH THE LIBERAL APPLICATION OF THE RULES OF COURT; ASSUMING THAT THE CASE IS A REAL ACTION AND NOT ONE INCAPABLE OF PECUNIARY ESTIMATION, THE CASE SHOULD NOT BE DISMISSED BUT THE PAYMENT OF ADDITIONAL FEES SHALL BE MADE A LIEN ON THE JUDGMENT.— Even granting *arguendo* that the instant case is a real action and not one incapable of pecuniary estimation, the case should not be dismissed but the payment of the additional fees shall be made a lien on the judgment. It would not be in keeping with the liberal application of the rules for the Court to order the dismissal of the complaint when the RTC Manila itself committed the error of assigning the case to an SCC, when the subject matter did not involve an intra-corporate dispute. The Court will deviate from the policy of securing a just, speedy and inexpensive resolution of the case at bar if respondent R-II Builders paid the prescribed docket fees, which We would later deem erroneous, and for which its complaint would be dismissed. If We maintain that there was a mistake in the imposition of the docket fees assessed by the Court itself through the error of a trial court, then the better procedure is to consider the additional docket fees that may be due and owing from respondent R-II Builders as a lien on the judgment award, instead of dismissing the complaint.

6. ID.; ID.; ID.; TO REQUIRE RESPONDENT TO PAY THE DOCKET FEE OF PHP 118,390,832.37 ON THE VALUE OF THE ASSET POOL WHEN IT IS ONLY ASKING FOR THE RESIDUAL PROPERTIES WOULD BE CONFISCATORY AND A DENIAL OF ACCESS TO THE JUSTICE SYSTEM.— On another point, respondent R-II Builders likewise challenged Our ruling in the assailed March 9, 2011 Decision that "the conveyance and /or transfer of possession of the same properties (in the Asset Pool) in the original complaint and Amended and Supplemental

Complaint both presuppose a real action for which appropriate docket fees computed on the basis of the assessed or estimated values of said properties should have been assessed and paid." (Decision dated March 9, 2011, p. 20) Clearly, we want respondent R-II Builders to pay docket fees on the entire value of the properties in the asset Pool estimated at PhP 5,919,716,618.62. This has no basis considering that R-II Builders is only asking the remaining assets of the Asset Pool after inventory and accounting. To require said respondent docket fees of PhP 118,390,832.37 on said value of the Asset Pool when it is only asking for the residual properties would be confiscatory and a denial of access to the justice system. Thus, even assuming that the R-II Builders' complaint is a real action and additional fees should be paid on the properties sought to be recovered, in this case, the remaining properties of the ASSET Pool, the alternative is to require R-II Builders to pay additional fees based on the estimated residual value of its rights in the Asset Pool to be determined by the trial court in a hearing where the parties will be required to adduce evidence on the possible residual value that will result from the resolution or rescission of the DAC. R-II Builders cannot be required to pay docket fees based on the value of the entire Asset Pool of PhP 5,919,716,618.62, it having only an interest in the residual value of the asset pool, which is what would remain after liquidation and payment of the creditors. Even Our ruling in *Ruby Shelter* did not order the dismissal of the case but simply directed the payment of additional fees to be charged on a real action. This course of action would be most fair to all parties. The *fallo* of *Ruby Shelter* reads: WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED. The Decision, dated 22 November 2006, of the Court of Appeals in CA-G.R. SP No. 94800, which affirmed the Orders dated 24 March 2006 and 29 March 2006 of the RTC, Branch 22, of Naga City, in Civil Case No. RTC-2006-0030, ordering petitioner Ruby Shelter Builders and Realty Development Corporation **to pay additional docket/ filing fees, computed based on Section 7(a), Rule 141 of the Rules of Court**, as amended, is hereby AFFIRMED. Costs against the petitioner.

APPEARANCES OF COUNSEL

HGC Legal Group for petitioner.
Ponce Enrile Reyes & Manalastas Law Firm for R-II Builders, Inc.
NHA Legal Department for NHA.

R E S O L U T I O N

PEREZ, *J.*:

Before the Court are: (a) the Entry of Appearance filed by Atty. Lope E. Feble of the Toquero Exconde Manalang Feble Law Offices as collaborating counsel for respondent R-II Builders, Inc. (R-II Builders), with prayer to be furnished all pleadings, notices and other court processes at its given address; and (b) the motion filed by R-II Builders, seeking the reconsideration of Court's decision dated 9 March 2011 on the following grounds:[1]

I

THE HONORABLE COURT ERRED IN RULING THAT RTC MANILA, BRANCH 22, HAD NO JURISDICTION OVER THE PRESENT CASE SINCE RTC-MANILA, BRANCH 24, TO WHICH THE INSTANT CASE WAS INITIALLY RAFFLED HAD NO AUTHORITY TO HEAR THE CASE BEING A SPECIAL COMMERCIAL COURT.

II.

THE HONORABLE COURT ERRED IN RULING THAT THE CORRECT DOCKET FEES WERE NOT PAID.

In urging the reversal of the Court's decision, R-II Builders argues that it filed its complaint with the Manila RTC which is undoubtedly vested with jurisdiction over actions where the subject matter is incapable of pecuniary estimation; that through no fault of its own, said complaint was raffled to Branch 24, the designated Special Commercial Court (SCC) tasked to hear

[1] *Rollo*, Vol. II, p. 1819.

intra-corporate controversies; that despite the determination subsequently made by Branch 24 of the Manila RTC that the case did not involve an intra-corporate dispute, the Manila RTC did not lose jurisdiction over the same and its Executive Judge correctly directed its re-raffling to Branch 22 of the same Court; that the re-raffle and/or amendment of pleadings do not affect a court's jurisdiction which, once acquired, continues until the case is finally terminated; that since its original Complaint, Amended and Supplemental Complaint and Second Amended Complaint all primarily sought the nullification of the Deed of Assignment and Conveyance (DAC) transferring the Asset Pool in favor of petitioner Home Guaranty Corporation (HGC), the subject matter of the case is clearly one which is incapable of pecuniary estimation; and, that the court erred in holding that the case was a real action and that it evaded the payment of the correct docket fees computed on the basis of the assessed value of the realties in the Asset Pool.

R-II Builders' motion is bereft of merit.

The record shows that, with the raffle of R-II Builders' complaint before Branch 24 of the Manila RTC and said court's grant of the application for temporary restraining order incorporated therein, HGC sought a preliminary hearing of its affirmative defenses which included, among other grounds, lack of jurisdiction and improper venue. It appears that, at said preliminary hearing, it was established that R-II Builders' complaint did not involve an intra-corporate dispute and that, even if it is, venue was improperly laid since none of the parties maintained its principal office in Manila. While it is true, therefore, that R-II Builders had no hand in the raffling of the case, it cannot be gainsaid that Branch 24 of the RTC Manila had no jurisdiction over the case. Rather than ordering the dismissal of the complaint, however, said court issued the 2 January 2008 order erroneously ordering the re-raffle of the case. In *Atwel v. Concepcion Progressive Association, Inc.*[2] and *Reyes v. Hon. Regional Trial Court of Makati, Branch 142*[3] which

[2] G.R. No. 169370, 14 April 2008, 551 SCRA 272.

[3] G.R. No. 165744, 11 August 2008, 561 SCRA 593.

involved SCCs trying and/or deciding cases which were found to be civil in nature, this Court significantly ordered the dismissal of the complaint *for lack of jurisdiction* instead of simply directing the re-raffle of the case to another branch.

Even then, the question of the Manila RTC's jurisdiction over the case is tied up with R-II Builder's payment of the correct docket fees which should be paid in full upon the filing of the pleading or other application which initiates an action or proceeding.[4] While it is, consequently, true that jurisdiction, once acquired, cannot be easily ousted,[5] it is equally settled that a court acquires jurisdiction over a case only upon the payment of the prescribed filing and docket fees.[6] Already implicit from the filing of the complaint in the City of Manila where the realties comprising the Asset Pool are located, the fact that the case is a real action is evident from the allegations of R-II Builders' original Complaint, Amended and Supplemental Complaint and Second Amended Complaint which not only sought the nullification of the DAC in favor of HGC but, more importantly, prayed for the transfer of possession of and/or control of the properties in the Asset Pool. Its current protestations to the contrary notwithstanding, no less than R-II Builders – in its opposition to HGC's motion to dismiss – admitted that the case is a real action as it affects title to or possession of real property or an interest therein.[7] Having only paid docket fees corresponding to an action where the subject matter is incapable of pecuniary estimation, R-II Builders cannot expediently claim that jurisdiction over the case had already attached.

In *De Leon v. Court of Appeals*,[8] this Court had, of course, ruled that a case for rescission or annulment of contract is not susceptible of pecuniary estimation although it may eventually

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[4] Section 1, Rule 141 of the *Revised Rules of Court*.

[5] *PNB v. Tejano, Jr.*, G.R. No. 173615, 16 October 2009, 604 SCRA 147.

[6] *Lacson v. Reyes*, G.R. No. 86250, 26 February 1990, 182 SCRA 729, 733.

[7] *Rollo*, p. 436.

[8] G.R. No. 104796, 6 March 1998, 287 SCRA 94.

result in the recovery of real property. Taking into consideration the allegations and the nature of the relief sought in the complaint in the subsequent case of *Serrano v. Delica*,[9] however, this Court determined the existence of a real action and ordered the payment of the appropriate docket fees for a complaint for cancellation of sale which prayed for both permanent and preliminary injunction aimed at the restoration of possession of the land in litigation is a real action. In discounting the apparent conflict in said rulings, the Court went on to rule as follows in *Ruby Shelter Builders and Realty Development Corporation v. Hon. Pablo C, Formaran*,[10] to wit:

> The Court x x x does not perceive a contradiction between *Serrano* and the *Spouses De Leon*. The Court calls attention to the following statement in *Spouses De Leon*: "A review of the jurisprudence of this Court indicates that in determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought." Necessarily, the determination must be done on a case-to-case basis, depending on the facts and circumstances of each. What petitioner conveniently ignores is that in *Spouses De Leon*, the action therein that private respondents instituted before the RTC was "solely for annulment or rescission" of the contract of sale over a real property. There appeared to be no transfer of title or possession to the adverse party x x x. (Underscoring Supplied)

Having consistently sought the transfer of possession and control of the properties comprising the Asset Pool over and above the nullification of the Deed of Conveyance in favor of HGC, it follows R-II Builders should have paid the correct and appropriate docket fees, computed according to the assessed value thereof. This much was directed in the 19 May 2008 Order issued by Branch 22 of the Manila RTC which determined that the case is a real action *and* admitted the Amended and Supplemental Complaint R-II Builders subsequently filed in the case.[11] In obvious evasion of said directive to pay the correct

[9] G.R. No. 136325, 29 July 2005, 465 SCRA 82.

[10] G.R. No. 175914, 10 February 2009, 578 SCRA 283.

[11] *Rollo*, pp. 490-495.

docket fees, however, R-II Builders withdrew its Amended and Supplemental Complaint and, in lieu thereof, filed its Second Amended Complaint which, while deleting its causes of action for accounting and conveyance of title to and/or possession of the entire Asset Pool, nevertheless prayed for its appointment as Receiver of the properties comprising the same. In the landmark case of *Manchester Development Corporation v. Court of Appeals*,[12] this Court ruled that jurisdiction over any case is acquired only upon the payment of the prescribed docket fee which is both mandatory and jurisdictional. Although it is true that the *Manchester Rule* does not apply despite insufficient filing fees when there is no intent to defraud the government,[13] R-II Builders' evident bad faith should clearly foreclose the relaxation of said rule.

In addition to the jurisdictional and pragmatic aspects underlying the payment of the correct docket fees which have already been discussed in the decision sought to be reconsidered, it finally bears emphasizing that the Asset Pool is comprised of government properties utilized by HGC as part of its sinking fund, in pursuit of its mandate as statutory guarantor of government housing programs. With the adverse consequences that could result from the transfer of possession and control of the Asset Pool, it is imperative that R-II Builders should be made to pay the docket and filing fees corresponding to the assessed value of the properties comprising the same.

WHEREFORE, the Court resolves to:

(a) *NOTE* the Entry of Appearance of Atty. Lope E. Feble of Tuquero Exconde Manalang Feble Law Offices as collaborating counsel for respondent R-II Builders, Inc.; and *DENY* counsel's prayer to be furnished with all pleadings notices and other court processes at Unit 2704-A, West Tower, Philippine Stock Exchange Centre, Exchange Road, Ortigas Center Pasig, since only the lead counsel is entitled to service of court processes;

[12] 233 Phil. 579, 584 (1987).

[13] *Intercontinental Broadcasting Corporation (IBC-13) v. Hon. Rose Marie Alonzo Legasto,* G.R. No. 169108, 18 April 2006, 487 SCRA 339.

(b) *DENY* with *FINALITY* R-II Builders, Inc.'s Motion for Reconsideration of the Decision dated 9 March 2011 for lack of merit, the basic issues having been already passed upon and there being no substantial argument to warrant a modification of the same. No further pleadings or motions shall be entertained herein.

Let an Entry of Judgment in this case be made in due course.

SO ORDERED.

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

Velasco, Jr., J., see dissenting opinion.

DISSENTING OPINION

VELASCO, JR., *J.*:

The Motion for Reconsideration of respondent R-II Builders, Inc. (R-II Builders) is impressed with merit. Consequently, the Decision dated March 9, 2011 has to be abandoned and set aside.

In Our March 9, 2011 Decision, We ruled as follows:

x x x **With its acknowledged lack of jurisdiction over the case, Branch 24 of the Manila RTC should have ordered the dismissal of the complaint, since a court without subject matter jurisdiction cannot transfer the case to another court**. Instead, it should have simply ordered the dismissal of the complaint, considering that the affirmative defenses for which HGC sought hearing included its lack of jurisdiction over the case.[1] (Emphasis supplied.)

Upon a revisit of the above ruling, it is my opinion that the Manila Regional Trial Court (RTC) has jurisdiction and continues to exercise jurisdiction over the Second Amended Complaint of respondent.

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[*] Per Raffle dated 22 June 2011.

[1] *Home Guaranty Corporation v. R-II Builders, Inc.*, G.R. No. 192649, March 9, 2011.

Batas Pambansa Blg. (BP) 129, or the Judiciary Reorganization Act of 1980, as amended by Republic Act No. (RA) 7691, is clear when it laid down the jurisdiction of RTCs and provided that they shall exercise exclusive original jurisdiction in "all civil actions in which the subject of litigation is incapable of pecuniary estimation"[2] or 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) x x x."[3]

Moreover, under RA 8799 or the Securities Regulation Code, jurisdiction over intra-corporate disputes was transferred from the Securities and Exchange Commission "to the Courts of general jurisdiction or the appropriate Regional Trial Court." This Court was given the power or authority to designate the RTC branches that shall exercise jurisdiction over said cases.[4]

Section 13 of BP 129 created 13 RTCs, one RTC for each of the 13 judicial regions. The National Capital Judicial Region (NCJR), consisting of Manila, Quezon, Pasay, Caloocan, Navotas, Malabon, San Juan, Mandaluyong, Makati, Pasig, Pateros, Taguig, Marikina, Parañaque, Las Piñas, Muntinlupa and Valenzuela, has only one (1) RTC. The RTC-NCJR is the only court which exercises judicial powers and functions through its various branches. Sec. 14 of BP 129, as amended, provides for 276 Branches of the RTC-NCJR, among which are 97 organized Branches for the City of Manila (RTC Manila). Sec. 18 of BP 129 grants these 97 branches of the RTC in Manila of the RTC-NCJR authority over cases in the territorial area of the City of Manila. Moreover, these branches of RTC in Manila are authorized by law to determine "the venue of all suits, proceedings or actions whether civil or criminal."

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[2] BP 129, Sec. 19(1).

[3] *Id.*, Sec. 19(2).

[4] RA 8799, Sec. 5(2).

All cases of the 97 branches of RTC in Manila of the RTC-NCJR are distributed or assigned among said branches through the raffle of cases, presided over by the Executive Judge pursuant to existing Supreme Court circulars and resolutions. Undeniably, the case at bar was not filed by respondent R-II Builders directly with Branch 24 of RTC Manila, but directly with the Clerk of Court of the RTC-NCJR in Manila. The Clerk of Court computed the docket fees and respondent R-II Builders paid the fees based on said assessment. It was the Executive Judge of the RTC in Manila who, after having initially determined that the case involved an intra-corporate dispute, raffled the case to Branch 24, a regular RTC designated by this Court as a commercial court.

The judge presiding over Branch 24 of RTC Manila, a designated Special Commercial Court (SCC), however, determined that the case was not an intra-corporate dispute, and found it proper that the case be returned to the Executive Judge of RTC Manila for re-raffling. Thus, it was the Executive Judge of RTC Manila who conducted the re-raffling, and the case was then transferred to Branch 22 of RTC Manila. The subject matter jurisdiction over the case belonged and still remains with RTC Manila. The re-raffling only effected the transfer of the case from one branch to another branch of the same court, namely RTC Manila, by rightful action of the Executive Judge, not via order of Branch 24 of RTC Manila. The RTC of Manila still had jurisdiction over the case; it was not lost by the erroneous raffle. Jurisdiction is conferred by law.[5] Once jurisdiction is acquired, it continues until the case is finally terminated.[6] Thus, the complaint at bar should not be dismissed for lack of jurisdiction.

In Our assailed March 9, 2011 Decision, We used *Calleja v. Panday*[7] as precedent to the case at bar. A second look at

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[5] *Southeast Asian Fisheries Development Center-Aquaculture Department v. National Labor Relations Commission*, G.R. No. 86773, February 14, 1992, 206 SCRA 283, 288.

[6] *Philippine National Bank v. Tejano, Jr.*, G.R. No. 173615, October 16, 2009, 604 SCRA 147, 159.

[7] G.R. No. 168696, February 28, 2006, 483 SCRA 680.

Calleja shows that the facts and circumstances in said case are dissimilar to the instant case. In *Calleja*, a complaint which involves an intra-corporate dispute was directly filed with the RTC of San Jose, Camarines, Sur, Branch 58 which is not an SCC. It appears that the case was referred to the Executive Judge of the RTC-Naga City which refused to receive the case folder, as it concluded that improper venue is not a ground for transferring said case to another jurisdiction. The RTC-Branch 58 of San Jose, Camarines Sur, as a result, issued an order transferring the case to RTC of Naga City, Branch 23 which is an SCC. The Court ruled that this procedure cannot be allowed, because a commercial case has to be filed directly with the Clerk of Court of the designated commercial court since only these courts have jurisdiction over intra-corporate disputes pursuant to A.M. No. 03-03-03-SC effective July l, 2003. The instant case is NOT an intra-corporate dispute and, hence, is cognizable by a regular RTC. Said case was incorrectly raffled by the Executive Judge to an SCC but was subsequently raffled to a regular RTC upon discovery of the mistake. Moreover, the instant case was not filed directly with the clerk of court of the SCC as required by A.M. No. 03-03-03-SC but with the Clerk of Court of the RTC-Manila. Thus, there is nothing irregular with transfer of the case to a regular RTC via raffle by the Executive Judge. Clearly, the instant case cannot be dismissed on the alleged irregularity or want of jurisdiction of Branch 24, for jurisdiction is indisputably with the regular RTC-Manila and not the SCC. Here, jurisdiction was in the proper court, if not in the proper branch.

Reliance on *Igot v. Court of Appeals*[8] is also misplaced, as that case recognized that only the court that issued an injunction can impose sanctions for contempt of that injunction. While referral was made due to lack of subject matter jurisdiction in that particular case, in the present case, it was the court with proper jurisdiction over the subject matter that took action. Branch 24 of RTC Manila recognized that it did not have the authority to hear the case, and properly stood back and let the

[8] G.R. No. 150794, August 17, 2004, 436 SCRA 668.

Executive Judge of RTC Manila handle the re-raffle. Branch 24 of RTC Manila took no direct action to transfer the case to another branch.

Regarding the matter of the payment of docket fees, in the Decision dated March 9, 2011, We further stated:

> x x x (T)he CA also gravely erred in not ruling that respondent RTC's (Branch 22, the regular court) jurisdiction over the case was curtailed by R-II Builder's failure to pay the correct docket fees. In other words, the jurisdictionally flawed transfer of the case from Branch 24, the SCC to Branch 22, the regular court, is topped by another jurisdictional defect which is the non-payment of the correct docket fees.[9]
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> x x x (T)he CA failed to take into account the fact that R-II Builders' original complaint and *Amended and Supplemental Complaint* both interposed causes of action for conveyance and/or recovery of possession of the entire *Asset Pool*. Indeed, in connection with its second cause of action for appointment as trustee in its original complaint, R-II Builders distinctly sought the conveyance of the entire *Asset Pool*, which it consistently estimated to be valued at ₱5,919,716,618.62 as of 30 June 2005. In its opposition to HGC's motion to dismiss, R-II Builders even admitted that the case is a real action as it affects title to or possession of real property or an interest therein.[10] x x x
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> x x x For non-payment of the correct docket fee which, for real actions, should be computed on the basis of the assessed value of the property, or if there is none, the estimated value thereof as alleged by the claimant, respondent RTC should have denied admission of R-II Builders' *Second Amended Complaint* and ordered the dismissal of the case.[11]

I recommend the recall of Our previous rulings.

On September 1, 2005, the complaint subject of this instant petition was filed with the RTC Manila, and the reliefs prayed for were as follows:

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[9] *Home Guaranty Corporation v. R-II Builders, Inc., supra* note 1.

[10] *Id.*

[11] *Id.*

x x x [P]laintiff R-II Builders, Inc. respectfully prays, that this Honorable Court:

1. Upon the filing of the Complaint, issue *ex parte* a temporary restraining order enjoining the following: (i) the HGC and the NHA [National Housing Authority], and all persons acting under them, from disposing of or conveying to the Social Security System, or to any other entity, any portion of the properties conveyed to the HGC by the PDB [Planters Development Bank] under the Deed of Assignment and Conveyance; (ii) the NHA from executing a Special Power of Attorney in favor of HGC, or any other entity, that will serve as authority to accomplish the conveyance of the Asset Pool properties or any portion thereof.

2. After due notice and hearing, issue a writ of preliminary injunction enjoining: (i) the HGC and the NHA, and all persons acting under them, from disposing of or conveying to the Social Security System, or to any other entity, any portion of the properties conveyed to the HGC by the PDB under the Deed of Assignment and Conveyance during the pendency of the proceedings in this case; (ii) the NHA from executing a Special Power of Attorney in favor of HGC, or any other entity, that will serve as authority to accomplish the conveyance of the Asset Pool properties or any portion thereof, likewise during the pendency of the proceedings in this case; and

3. After trial on the merits, render judgment:

(i) Resolving and/or rescinding the Deed of Assignment and Conveyance executed by PDB in favor of HGC; or in the alternative, declaring the nullity of the said instrument;

(ii) Appointing R-II Builders, Inc. as the Trustee of the Asset Pool properties, with powers and responsibilities including but not limiting to those stated x x x herein and those spelled out in the Re-Stated Smokey Mountain Asset Pool Formation Trust Agreement x x x;

(iii) Ordering HGC to render an accounting of all properties of the Asset Pool transferred thereto under the Deed of Assignment and Conveyance, and **thereafter convey the entire Asset Pool to R-II Builders, Inc. as the Trustee thereof**;

(iv) Making the injunction permanent.

(v) Ordering HGC to pay Attorney's Fees in the amount of Five Hundred Thousand Pesos (PhP 500,000.00) and the costs of suit.

Plaintiff prays for such further or other relief that this Honorable Court may deem just or equitable under the premises.[12] (Emphasis supplied.)

On August 2, 2007, respondent R-II Builders filed its Amended and Supplemental Complaint, which prayed for the following reliefs:

5. After trial on the merits, render judgment:

(i) Declaring the annulment of the Deed of Assignment and Conveyance executed by PDB in favor of HGC; or in the alternative, declaring the nullity of the said instrument;

(ii) Appointing R-II Builders as the Trustee of the Asset Pool properties, with powers and responsibilities including but not limiting to those stated x x x herein and those spelled out in the Re-Stated Smokey Mountain Asset Pool Formation Trust Agreement;

(iii) Ordering HGC to render an accounting of all properties of the Asset Pool transferred thereto under the Deed of Assignment and Conveyance, and thereafter convey title to and/or possession of **the entire Asset Pool to R-II Builders as the Trustee thereof** which assets consist of, but is not limited to, the following:

(a) 105 parcels of land comprising the Smokey Mountain Site, and, the Reclamation Area, consisting of 539,471.47 square meters, and all the buildings and improvements thereon, with their corresponding certificates of title;

(b) shares of stock of Harbour Centre Port Terminal, Inc. which are presently registered in the books of said company in the name of PDB for the account of the Smokey Mountain Asset Pool; and

(c) other documents as listed in Annex E of the Contract of Guaranty.

(iv) Ordering NHA to pay the Asset Pool the amount of Php1,803,729,757.88 including the direct and indirect cost thereon as may be found by this Honorable Court to be due thereon;

(v) Making the injunction permanent;

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[12] *Rollo,* pp. 375-376.

(vi) Ordering HGC and the NHA to pay Attorney's Fees in the amount of ₱2,000,000 and the costs of suit.[13] (Emphasis in boldface supplied; underscoring in the original.)

Home Guaranty Corporation (HGC) filed its answer to the said complaint. On September 2, 2007, respondent R-II Builders filed its Amended and Supplemental Complaint. This complaint was admitted in the May 19, 2008 Order. On August 15, 2008, respondent R-II Builders filed its Second Amended Complaint, which prayed for the following:

x x x [P]laintiff R-II Builders, Inc. respectfully prays that this Honorable Court:

1. Upon the filing of the Complaint, issue *ex parte* a temporary restraining order enjoining the following: (i) the HGC and the NHA, and all persons acting under them, from disposing of or conveying to the Social Security System, or to any other entity, any portion of the properties conveyed to the HGC by the PDB under the Deed of Assignment and Conveyance; (ii) the NHA from executing a Special Power of Attorney in favor of HGC, or any other entity, that will serve as authority to accomplish the conveyance of the Asset Pool properties or any portion thereof.

2. After due notice and hearing, issue a writ of preliminary injunction enjoining: (i) the HGC and the NHA, and all persons acting under them, from disposing of or conveying to the Social Security System, or to any other entity, any portion of the properties conveyed to the HGC by the PDB under the Deed of Assignment and Conveyance during the pendency of the proceedings in this case: (ii) the NHA from executing a Special Power of Attorney in favor of HGC, or any other entity, that will serve as authority to accomplish the conveyance of the Asset Pool properties or any portion thereof, likewise during the pendency of the proceedings in this case; and

3. After due proceedings, appoint a receiver under Rule 59 of the Rules of Court who will have the power to preserve, administer, liquidate and distribute the Asset Pool and perform the powers and functions of a receiver provided by law.

4. After trial on the merits, rendered judgment:

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[13] *Id.* at 485-486.

(i) Resolving and/or rescinding the Deed of Assignment and Conveyance executed by PDB in favor of HGC, or in the alternative, declaring the nullity of the said instrument;

(ii) Approving the liquidation and distribution of the Asset Pool in accordance with the beneficial rights and interests that had vested under the Joint Venture Agreement and Pool Formation Agreement, as duly inventoried and accounted for by the appointed Receiver, and thereafter particularly the transfer or conveyance of all remaining assets and values of the Asset Pool to plaintiff R-II Builders;

(iii) Making the injunction permanent.

(iv) Ordering HGC to pay Attorney's Fees in the amount of Five Hundred Thousand Pesos (PhP500,000.00) and the costs of suit.

Plaintiff prays for such further or other relief that this Honorable Court may deem just or equitable.[14] (Emphasis in the original.)

In its Order dated March 3, 2009, the RTC Manila granted the Motion to Admit the Second Amended Complaint. The Answer to the Second Amended Complaint was filed by HGC in October 2009. Thus, the Second Amended Complaint was validly admitted by leave of court pursuant to Sec. 3, Rule 10 of the Rules of Court, and HGC responded to said amended complaint and there was already a JOINDER OF ISSUES on the Second Amended Complaint. The effect of the amendment is that the amended pleading **supersedes** the pleadings that it amends, pursuant to Sec. 8, Rule 10 of the Rules of Court. Thus, the Second Amended Complaint **superseded** both the original complaint and the Amended and Supplemental Complaint. The Second Amended Complaint asked for the resolution or rescission of the Deed of Assignment and Conveyance (DAC); sought the appointment of a receiver; after the inventory is completed, that the liquidation and distribution of the Asset Pool in accordance with the parties' agreements be approved and **the remaining assets and values of the Asset Pool be**

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[14] *Id.* at 535-537.

transferred and conveyed to respondent R-II Builders; and the payment of attorney's fees of PhP 500,000.

Whether or not the case is a real action, and whether or not the proper docket fees were paid, one must look to the main cause of action of the case. In all instances, in the original Complaint, the Amended and Supplemental Complaint and the Amended Complaint, it was all for the resolution or rescission of the DAC, with the prayer for the provisional remedy of injunction and the appointment of a trustee and subsequently a receiver. In the Second Amended Complaint, the return of the remaining assets of the asset pool, if any, to respondent R-II Builders would only be the result of the resolution or rescission of the DAC.

Even if real property in the Asset Pool may change hands as a result of the case in the trial court, the fact alone that real property is involved does not make that property the basis of computing the docket fees. *De Leon v. Court of Appeals*[15] has already settled the matter. That case, citing *Bautista v. Lim*,[16] held that a case for rescission or annulment of contract is not susceptible of pecuniary estimation. On the other hand, in the Decision We rendered on July 25, 2005 in *Serrano v. Delica*,[17] We ruled that the action for cancellation of contracts of sale and the titles is a real action. Similarly, on February 10, 2009, We ruled in *Ruby Shelter Builders and Realty Development Corporation v. Formaran III*[18] (*Ruby Shelter*) that an action for nullification of a Memorandum of Agreement which required the lot owner to issue deeds of sale and cancellation of the Deeds of Sale is a real action.

Quite recently, however, in one case—*Lu v. Lu Ym, Sr.*[19]—similar to the facts of the instant case, the Court on February

[15] G.R. No. 104796, March 6, 1998, 287 SCRA 94.

[16] G.R. No. L-41430, February 19, 1979, 88 SCRA 479.

[17] G.R. No. 136325, July 29, 2005, 465 SCRA 82.

[18] G.R. No. 175914, February 10, 2009, 578 SCRA 283.

[19] G.R. Nos. 153690 & 170889.

15, 2011 held that a complaint for "declaration of nullity of share issue, receivership and dissolution and asset liquidation" of the Ludo and Luym Development Corporation is a **case incapable of pecuniary estimation** since the recovery of the real or personal property was merely a consequence of the principal action and the computation of docket fees was not dependent on the value of the properties.

This latest ruling in *Lu* is a precedent to the case at bar and is the latest case law on the matter. It prevails over our rulings in *Serrano* and *Ruby Shelter*. In both *Lu* and the case at bar, the main causes of action are similar—the nullification of the share issue in *Lu* and the Deed of Assignment and Conveyance in the instant case; both prayed for receivers and both asked for dissolution of a company in *Lu* and the asset pool in the instant case. R-II Builders asked for the residual value of the assets after liquidation, while David Lu would get his share after dissolution and liquidation. Ergo, the instant case is incapable of pecuniary estimation.

Moreover, it is clear as day that the prayer in the original complaint was for the conveyance of the properties of the Asset Pool to R-II Builders as trustee but NOT as owner. A trustee does not acquire ownership of the assets entrusted to him but merely manages it for the benefit of the beneficiary pursuant to Rule 98 of the Rules of Court. The duties of the trustee are:

> Sec. 6. Conditions included in bond.—
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> x x x x x x x x x
>
> b. That **he will manage and dispose of all such estate**, and faithfully discharge his trust in relation thereto, according to law and the will of the testator or the provisions of the instrument or order under which he is appointed;
>
> x x x x x x x x x
>
> d. **That at the expiration of his trust he will settle his accounts in court and pay over and deliver all the estate remaining in his hands, or due from him on such settlement, to the person or persons entitled thereto.** (Emphasis supplied.)

Since the conveyance of the Asset Pool to R-II Builders was not a transfer of ownership to said company, but instead the Asset Pool was held only by R-II Builders as trustee in favor of the rightful owners, then there is NO benefit or gain to R-II Builders and the instant case cannot be classified as a real action. The present complaint of respondent R-II Builders still remains one that involves an action incapable of pecuniary estimation, a subject matter which is within the exclusive original jurisdiction of the RTC Manila, and the corresponding docket fees prescribed by RTC Manila were already paid at the time of the filing of the original Complaint. Hence, there is no basis for the payment of additional fees.

Even granting *arguendo* that the instant case is a real action and not one incapable of pecuniary estimation, the case should not be dismissed but the payment of the additional fees shall be made a lien on the judgment. It would not be in keeping with the liberal application of the rules for the Court to order the dismissal of the complaint when the RTC Manila itself committed the error of assigning the case to an SCC, when the subject matter did not involve an intra-corporate dispute. The Court will deviate from the policy of securing a just, speedy and inexpensive resolution of the case at bar if respondent R-II Builders paid the prescribed docket fees, which We would later deem erroneous, and for which its complaint would be dismissed. If We maintain that there was a mistake in the imposition of the docket fees assessed by the Court itself through the error of a trial court, then the better procedure is to consider the additional docket fees that may be due and owing from respondent R-II Builders as a lien on the judgment award, instead of dismissing the complaint.

Our Decision dated March 9, 2011[20] explicitly acknowledged that the complaint should NOT be dismissed outright when the trial court finds that there is a need to pay additional fees during the course of the proceedings. We explained:

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[20] *Home Guaranty Corporation v. R-II Builders, Inc., supra* note 1.

Applying the rule that "a case is deemed filed only upon payment of the docket fee regardless of the actual date of filing in court" in the landmark case of *Manchester Development Corporation v. Court of Appeals*, this Court ruled that jurisdiction over any case is acquired only upon the payment of the prescribed docket fee which is both mandatory and jurisdictional. **To temper said ruling**, the Court subsequently issued the following guidelines in *Sun Insurance Office, Ltd. v. Hon. Maximiano Asuncion*,[21] *viz*:

> 1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.
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> 2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefore is paid. The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.
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> **3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefore shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee. [Decision dated March 9, 2011, pp. 22-23]**

Applying the third guideline in the above-cited *Sun Insurance Office, Ltd.* to the complaint at bar, even if it is conceded that the case is a real action, then the additional fee if any shall constitute a lien on the judgment but the complaint shall not be dismissed for lack of jurisdiction.

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[21] G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274, 285.

We cite again Our more recent ruling in *Lu*,[22] where We adopted the three-tiered approach explained in Our previous August 26, 2008 Decision in *Lu*, thus:

> In the instant case, however, we cannot grant the dismissal prayed for because of the following reasons: *First*, the case instituted before the RTC is one incapable of pecuniary estimation. Hence, **the correct docket fees were paid**. *Second*, John and LLDC are **estopped from questioning the jurisdiction** of the trial court because of their active participation in the proceedings below, and because the issue of payment of insufficient docket fees had been belatedly raised before the Court of Appeals, *i.e.*, only in their motion for reconsideration. *Lastly*, assuming that the docket fees paid were truly inadequate, **the mistake was committed by the Clerk of Court who assessed the same and not imputable to David**; and **as to the deficiency, if any, the same may instead be considered a lien on the judgment** that may thereafter be rendered. (Emphases in the original.)

On another point, respondent R-II Builders likewise challenged Our ruling in the assailed March 9, 2011 Decision that "the conveyance and /or transfer of possession of the same properties (in the Asset Pool) in the original complaint and Amended and Supplemental Complaint both presuppose a real action for which appropriate docket fees computed on the basis of the assessed or estimated values of said properties should have been assessed and paid." (Decision dated March 9, 2011, p. 20) Clearly, we want respondent R-II Builders to pay docket fees on the entire value of the properties in the asset Pool estimated at PhP 5,919,716,618.62. This has no basis considering that R-II Builders is only asking the remaining assets of the Asset Pool after inventory and accounting. To require said respondent docket fees of PhP 118,390,832.37 on said value of the Asset Pool when it is only asking for the residual properties would be confiscatory and a denial of access to the justice system.

Thus, even assuming that the R-II Builders' complaint is a real action and additional fees should be paid on the properties sought to be recovered, in this case, the remaining properties

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[22] *Supra* note 19; citing *Lu v. Lu Ym, Sr.*, G.R. No. 153690, August 26, 2008, 563 SCRA 254, 274.

of the ASSET Pool, the alternative is to require R-II Builders to pay additional fees based on the estimated residual value of its rights in the Asset Pool to be determined by the trial court in a hearing where the parties will be required to adduce evidence on the possible residual value that will result from the resolution or rescission of the DAC. R-II Builders cannot be required to pay docket fees based on the value of the entire Asset Pool of PhP 5,919,716,618.62, it having only an interest in the residual value of the asset pool, which is what would remain after liquidation and payment of the creditors. Even Our ruling in *Ruby Shelter*[23] did not order the dismissal of the case but simply directed the payment of additional fees to be charged on a real action. This course of action would be most fair to all parties. The *fallo* of *Ruby Shelter* reads:

> WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED. The Decision, dated 22 November 2006, of the Court of Appeals in CA-G.R. SP No. 94800, which affirmed the Orders dated 24 March 2006 and 29 March 2006 of the RTC, Branch 22, of Naga City, in Civil Case No. RTC-2006-0030, ordering petitioner Ruby Shelter Builders and Realty Development Corporation **to pay additional docket/filing fees, computed based on Section 7(a), Rule 141 of the Rules of Court**, as amended, is hereby AFFIRMED. Costs against the petitioner. (Emphasis supplied.)

Therefore, Our March 9, 2011 Decision has to be recalled and set aside and the petition of HGC denied. The RTC should be ordered to conduct a hearing to determine the estimated residual value of the Asset Pool where the parties can present evidence thereon. After determination of the estimate of the remaining assets and values that may possibly accrue to respondent R-II Builders, then said respondent should be ordered to pay additional docket fees based thereon within a reasonable time frame. Otherwise, the complaint will be dismissed for nonpayment of docket fees.

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[23] *Supra* note 18, at 307.

FIRST DIVISION

[G.R. No. 174158. June 27, 2011]

WILLIAM ENDELISEO BARROGA, *petitioner, vs.* **DATA CENTER COLLEGE OF THE PHILIPPINES and WILFRED BACTAD,**[1] *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; PETITIONER'S SUBSTANTIAL COMPLIANCE CALLS FOR THE RELAXATION OF THE RULES.— The Court has time and again upheld the theory that the rules of procedure are designed to secure and not to override substantial justice. These are mere tools to expedite the decision or resolution of cases, hence, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided. The CA thus should not have outrightly dismissed petitioner's petition based on these procedural lapses.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; PETITIONER'S TRANSFER IS NOT TANTAMOUNT TO CONSTRUCTIVE DISMISSAL.— The instant petition merits dismissal on substantial grounds. After a careful review of the records and the arguments of the parties, we do not find any sufficient basis to conclude that petitioner's re-assignment amounted to constructive dismissal. Constructive dismissal is quitting because continued employment is rendered impossible, unreasonable or unlikely, or because of a demotion in rank or a diminution of pay. It exists when there is a clear act of discrimination, insensibility or disdain by an employer which becomes unbearable for the employee to continue his employment. x x x Petitioner was originally appointed as instructor in 1991 and was given additional administrative functions as Head for Education during his stint in Laoag branch. He did not deny having been designated as Head for Education in a temporary capacity for which he cannot invoke any tenurial security. Hence, being temporary in character, such

[1] Also appears as Wilfredo Bactad in some parts of the records.

designation is terminable at the pleasure of respondents who made such appointment. Moreover, respondents' right to transfer petitioner rests not only on contractual stipulation but also on jurisprudential authorities. The Labor Arbiter and the NLRC both relied on the condition laid down in petitioner's employment contract that respondents have the prerogative to assign petitioner in any of its branches or tie-up schools as the necessity demands. In any event, it is management prerogative for employers to transfer employees on just and valid grounds such as genuine business necessity. It is also important to stress at this point that respondents have shown that it was experiencing some financial constraints. Because of this, respondents opted to temporarily suspend the post-graduate studies of petitioner and some other employees who were given scholarship grants in order to prioritize more important expenditures.

3. ID.; ID.; ID.; ASSERTION OF BAD FAITH ON THE PART OF THE EMPLOYER ARE PURELY UNSUBSTANTIATED CONJECTURES; FACT THAT PETITIONER'S LETTER OF COURTESY RESIGNATION WAS NOT ACCEPTED BOLSTERS THE FACT THAT RESPONDENTS NEVER INTENDED TO GET RID OF PETITIONER.— We cannot fully subscribe to petitioner's contention that his re-assignment was tainted with bad faith. As a matter of fact, respondents displayed commiseration over the health condition of petitioner's father when they suggested that he take an indefinite leave of absence to attend to this personal difficulty. Also, during the time when respondents directed all its administrative officers to submit courtesy resignations, petitioner's letter of resignation was not accepted. This bolsters the fact that respondents never intended to get rid of petitioner. In fine, petitioner's assertions of bad faith on the part of respondents are purely unsubstantiated conjectures.

4. ID.; LABOR STANDARDS; WAGES; PROHIBITION AGAINST DIMINUTION OF BENEFITS; NOT VIOLATED IN CASE AT BAR.— The Court agrees with the Labor Arbiter that there was no violation of the prohibition on diminution of benefits. Indeed, any benefit and perks being enjoyed by employees cannot be reduced and discontinued, otherwise, the constitutional mandate to afford full protection to labor shall be offended. But the rule against diminution of benefits is applicable only if the grant

or benefit is founded on an express policy or has ripened into a practice over a long period which is consistent and deliberate. Petitioner was granted a monthly allowance for board and lodging during his stint as instructor in UNP-Vigan, Ilocos Sur as evinced in a letter dated June 6, 1992 with the condition stated in the following tenor: Please be informed that during your assignment at our tie-up at UNP-VIGAN, ILOCOS SUR , you will be receiving a monthly Board and Lodging of Pesos: One Thousand Two Hundred x x x (₱1,200.00). *However, you are only entitled to such allowance, if you are assigned to the said tie-up and the same will be changed or forfeited depending upon the place of your next reassignment*. Petitioner failed to present any other evidence that respondents committed to provide the additional allowance or that they were consistently granting such benefit as to have ripened into a practice which cannot be peremptorily withdrawn. Moreover, there is no conclusive proof that petitioner's basic salary will be reduced as it was not shown that such allowance is part of petitioner's basic salary. Hence, there will be no violation of the rule against diminution of pay enunciated under Article 100 of the Labor Code.

APPEARANCES OF COUNSEL

Sandro Marie N. Obra for petitioner.
Alvin Manuel for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Our labor laws are enacted not solely for the purpose of protecting the working class but also the management by equally recognizing its right to conduct its own legitimate business affairs.

This Petition for Review on *Certiorari*[2] seeks the reversal of the Resolutions dated May 15, 2006[3] and August 4, 2006[4]

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[2] *Rollo*, pp. 3-30.

[3] Annex "A" of the Petition, *id.* at 31-32; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr.

[4] Annex "B" of the Petition, *id.* at 33.

of the Court of Appeals (CA) in CA-G.R. SP No. 93991, which dismissed petitioner William Endeliseo Barroga's Petition for *Certiorari* for procedural infirmities, as well as the Decision[5] dated August 25, 2005 and Resolution[6] dated January 31, 2006 of the National Labor Relations Commission (NLRC), with respect to the dismissal of petitioner's claim of constructive dismissal against respondents Data Center College of the Philippines and its President and General Manager, Wilfred Bactad.

Factual Antecedents

On November 11, 1991, petitioner was employed as an Instructor in Data Center College Laoag City branch in Ilocos Norte. In a Memorandum[7] dated June 6, 1992, respondents transferred him to University of Northern Philippines (UNP) in Vigan, Ilocos Sur where the school had a tie-up program. Petitioner was informed through a letter[8] dated June 6, 1992 that he would be receiving, in addition to his monthly salary, a ₱1,200.00 allowance for board and lodging during his stint as instructor in UNP-Vigan. In 1994, he was recalled to Laoag campus. On October 3, 2003, petitioner received a Memorandum[9] transferring him to Data Center College Bangued, Abra branch as Head for Education/Instructor due to an urgent need for an experienced officer and computer instructor thereat.

However, petitioner declined to accept his transfer to Abra citing the deteriorating health condition of his father and the absence of additional remuneration to defray expenses for board and lodging which constitutes implicit diminution of his salary.[10]

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[5] Annex "D" of the Petition, *id.* at 37-50; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[6] Annex "C" of the Petition, *id.* at 34-36.

[7] Annex "W" of the Petition, *id.* at 165.

[8] Annex "V" of the Petition, *id.* at 164.

[9] Dated October 3, 2003, Annex "U" of the Petition, *id.* at 163.

[10] See petitioner's letter to respondent Bactad dated October 13, 2003, Annex "X" of the Petition, *id.* at 166.

On November 10, 2003, petitioner filed a Complaint[11] for constructive dismissal against respondents. Petitioner alleged that his proposed transfer to Abra constitutes a demotion in rank and diminution in pay and would cause personal inconvenience and hardship. He argued that although he was being transferred to Abra branch supposedly with the same position he was then holding in Laoag branch as Head for Education, he later learned through a Memorandum[12] from the administrator of Abra branch that he will be re-assigned merely as an instructor, thereby relegating him from an administrative officer to a rank-and-file employee. Moreover, the elimination of his allowance for board and lodging will result to an indirect reduction of his salary which is prohibited by labor laws. Petitioner also claimed that when he questioned the indefinite suspension of the scholarship for post-graduate studies extended to him by respondents,[13] the latter became indifferent to his legitimate grievances which eventually led to his prejudicial re-assignment. He averred that his transfer is not indispensable to the school's operation considering that respondents even suggested that he take an indefinite leave of absence in the meantime if only to address his personal difficulties.[14] Petitioner thus prayed for his reinstatement and backwages. Further, as Head for Education at Data Center College Laoag branch, petitioner asked for the payment of an overload honorarium as compensation for the additional teaching load in excess of what should have been prescribed to him. Exemplary damages and attorney's fees were likewise prayed for.

For their part, respondents claimed that they were merely exercising their management prerogative to transfer employees for the purpose of advancing the school's interests. They argued that petitioner's refusal to be transferred to Abra constitutes

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[11] Annex "F" of the Petition, *id.* at 56.

[12] Dated November 4, 2003, Annex "Z" of the Petition, *id.* at 168.

[13] See petitioner's letter to respondent Bactad dated October 27, 2003, Annex "AA" of the Petition, *id.* at 170.

[14] See respondent Bactad's letter to petitioner dated October 29, 2003, Annex "Y" of the Petition, *id.* at 167.

insubordination. They claimed that petitioner's appointment as instructor carries a proviso of possible re-assignments to any branch or tie-up schools as the school's necessity demands. Respondents argued that petitioner's designation as Head for Education in Laoag branch was merely temporary and that he would still occupy his original plantilla item as instructor at his proposed assignment in Abra branch. Respondents denied liability to petitioner's monetary claims.

Ruling of the Labor Arbiter

On September 24, 2004, the Labor Arbiter rendered a Decision[15] dismissing the Complaint for lack of merit. The Labor Arbiter ruled that there was no demotion in rank as petitioner's original appointment as instructor on November 11, 1991 conferred upon respondents the right to transfer him to any of the school's branches and that petitioner's designation as Head for Education can be withdrawn anytime since he held such administrative position in a non-permanent capacity. The Labor Arbiter held that the exclusion of his allowance for board, lodging and transportation was not constructive dismissal, enunciating that the concept of non-diminution of benefits under Article 100 of the Labor Code prohibits the elimination of benefits that are presently paid to workers to satisfy the requirements of prevailing minimum wage rates. Since the benefit claimed by petitioner is beyond the coverage of the minimum wage law, its non-inclusion in his re-assignment is not considered a violation. The Labor Arbiter also denied petitioner's claim for overload honorarium for failure to present sufficient evidence to warrant entitlement to the same. The claim for damages was likewise denied.

Ruling of the National Labor Relations Commission

In a Decision[16] dated August 25, 2005, the NLRC affirmed the findings of the Labor Arbiter that there was no constructive dismissal. It ruled that the management decision to transfer

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[15] Annex "M" of the Petition, *id.* at 92-108; penned by NLRC, Regional Arbitration Branch No. 1 Officer-in-Charge Irenarco R. Rimando.

[16] *Supra* note 5.

petitioner was well within the rights of respondents in consonance with petitioner's contract of employment and which was not sufficiently shown to have been exercised arbitrarily by respondents. It agreed with the Labor Arbiter that petitioner's designation as Head for Education was temporary for which he could not invoke any tenurial security. Further, the NLRC held that it was not proven with certainty that the transfer would unduly prejudice petitioner's financial situation. The NLRC, however, found petitioner to be entitled to overload honorarium pursuant to CHED Memorandum Order No. 25 for having assumed the position of Head for Education, albeit on a temporary basis. The NLRC disposed of the case as follows:

> WHEREFORE, premises considered, the decision under review is hereby MODIFIED by ordering the respondent Data Center College of the Philippines, to pay the complainant the sum of SEVENTY THREE THOUSAND SEVEN THUNDRED [sic] THIRTY and 39/100 Pesos (₱73,730.39), representing overload honorarium.
>
> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[17]

From this Decision, both parties filed their respective motion for partial reconsideration. Petitioner assailed the NLRC Decision insofar as it dismissed his claims for reinstatement, backwages, damages and attorney's fees.[18] Respondents, for their part, questioned the NLRC's award of overload honorarium in favor of petitioner. These motions were denied by the NLRC in a Resolution dated January 31, 2006.[19]

Ruling of the Court of Appeals

Both parties filed petitions for *certiorari* before the CA. Respondents' petition for *certiorari* was docketed as CA-G.R. SP No. 94205, which is not subject of the instant review. On

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[17] *Rollo*, p. 49.

[18] See petitioner's Partial Motion for Reconsideration with Motion to Admit Additional Documentary Evidence, Annex "O" of the Petition, *id.* at 124-135.

[19] *Supra* note 6.

the other hand, petitioner filed on April 7, 2006, a Petition for *Certiorari*[20] with the CA docketed as CA-G.R. SP No. 93991 assailing the NLRC's finding that no constructive dismissal existed. Realizing his failure to attach the requisite affidavit of service of the petition upon respondents, petitioner filed on April 27, 2006, an *Ex-Parte* Manifestation and Motion[21] to admit the attached affidavit of service and registry receipt in compliance with the rules.

On May 15, 2006, the CA dismissed the petition in CA-G.R. SP No. 93991 in a Resolution which reads:

> Petition is **DISMISSED** outright due to the following infirmities:
>
> 1. there is no statement of material dates as to when the petitioner received the assailed decision dated August 25, 2005 and when he filed a Motion for Reconsideration thereof;
>
> 2. there is no affidavit of service attached to the petition;
>
> 3. these initiatory pleadings and the respondents' Motion for Reconsideration of the Decision dated August 25, 2005 are not attached to the petition.
>
> SO ORDERED.[22]

Petitioner filed a Motion for Reconsideration[23] alleging that the material dates of receipt of the NLRC Decision and the filing of his motion for reconsideration are explicitly stated in his Partial Motion for Reconsideration which was attached as an annex to the petition and was made an integral part thereof. As to the absence of the affidavit of service, petitioner argued that there is no legal impediment for the belated admission of the affidavit of service as it was duly filed before the dismissal of the petition. As for his failure to attach respondents' motion for reconsideration, petitioner manifested that a separate petition for *certiorari* has been filed by respondents and is pending

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[20] CA *rollo*, pp. 2-16.

[21] *Id.* at 93-95.

[22] *Supra* note 3.

[23] CA *rollo*, pp. 99-104.

with the CA, docketed as CA-G.R. SP No. 94205, where the denial of said motion is at issue.

On August 4, 2006, the CA issued the following Resolution:

> Due to non-compliance despite opportunity afforded to comply, petitioner's June 9, 2006 Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> SO ORDERED.[24]

Issues

Hence, this petition assigning the following errors:

> THE HONORABLE COURT OF APPEALS PATENTLY COMMITTED REVERSIBLE ERROR IN DISMISSING THE PETITION FOR *CERTIORARI* [UNDER RULE 65] OF THE PETITIONER BY GIVING PRECEDENT TO TECHNICALITIES RATHER THAN THE MERITORIOUS GROUNDS ASSERTED THEREIN.
>
> THE PUBLIC RESPONDENT, NATIONAL LABOR RELATIONS COMMISSION, SERIOUSLY ERRED IN ITS CONCLUSIONS OF LAW IN RENDERING IT[S] ASSAILED DECISION AND RESOLUTION STATING THAT THE PETITIONER WAS NOT CONSTRUCTIVELY DISMISSED, THUS, NOT ENTITLED TO REINSTATEMENT, BACKWAGES, AND ATTORNEY'S FEES.[25]

Petitioner imputes grave abuse of discretion on the CA in not giving due course to his petition despite substantial compliance with the requisite formalities as well as on the NLRC in not ruling that he was constructively dismissed by respondents.

Our Ruling

Petitioner's substantial compliance calls for the relaxation of the rules. Therefore, the CA should have given due course to the petition.

The three material dates which should be stated in the petition for *certiorari* under Rule 65 are the dates when the notice of

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[24] *Supra* note 4.

[25] *Rollo*, p. 12.

the judgment was received, when a motion for reconsideration was filed and when the notice of the denial of the motion for reconsideration was received.[26] These dates should be reflected in the petition to enable the reviewing court to determine if the petition was filed on time.[27] Indeed, petitioner's petition before the CA stated only the date of his receipt of the NLRC's Resolution denying his motion for partial reconsideration. It failed to state when petitioner received the assailed NLRC Decision and when he filed his partial motion for reconsideration. However, this omission is not at all fatal because these material dates are reflected in petitioner's Partial Motion for Reconsideration attached as Annex "N" of the petition. In *Acaylar, Jr. v. Harayo*,[28] we held that failure to state these two dates in the petition may be excused if the same are evident from the records of the case. It was further ruled by this Court that the more important material date which must be duly alleged in the petition is the date of receipt of the resolution of denial of the motion for reconsideration. In the case at bar, petitioner has duly complied with this rule.

Next, the CA dismissed the petition for failure to attach an affidavit of service. However, records show that petitioner timely rectified this omission by submitting the required affidavit of service even before the CA dismissed his petition.

Thirdly, petitioner's failure to attach respondent's motion for reconsideration to the assailed NLRC decision is not sufficient ground for the CA to outrightly dismiss his petition. The issue that was raised in respondents' motion for reconsideration is the propriety of the NLRC's grant of overload honorarium in favor of petitioner. This particular issue was not at all raised in petitioner's petition for *certiorari* with the CA, therefore, there is no need for petitioner to append a copy of this motion

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[26] *Batugan v. Balindong*, G.R. No. 181384, March 13, 2009, 581 SCRA 473, 482.

[27] *Technological Institute of the Philippines Teachers and Employees Organization (TIPTEO) v. Court of Appeals*, G.R. No. 158703, June 26, 2009, 591 SCRA 112, 127.

[28] G.R. No. 176995, July 30, 2008, 560 SCRA 624, 636.

to his petition. Besides, as already mentioned, the denial of respondents' motion for reconsideration has been assailed by respondents before the CA docketed as CA-G.R. SP No. 94205. At any rate, the Rules do not specify the documents which should be appended to the petition except that they should be relevant to the judgment, final order or resolution being assailed. Petitioner is thus justified in attaching the documents which he believed are sufficient to make out a *prima facie* case.[29]

The Court has time and again upheld the theory that the rules of procedure are designed to secure and not to override substantial justice.[30] These are mere tools to expedite the decision or resolution of cases, hence, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided.[31] The CA thus should not have outrightly dismissed petitioner's petition based on these procedural lapses.

Petitioner's transfer is not tantamount to constructive dismissal.

Nevertheless, the instant petition merits dismissal on substantial grounds. After a careful review of the records and the arguments of the parties, we do not find any sufficient basis to conclude that petitioner's re-assignment amounted to constructive dismissal.

Constructive dismissal is quitting because continued employment is rendered impossible, unreasonable or unlikely, or because of a demotion in rank or a diminution of pay. It exists when there is a clear act of discrimination, insensibility or disdain by an employer which becomes unbearable for the employee to continue his employment.[32] Petitioner alleges that the real purpose of

[29] *Quintano v. National Labor Relations Commission*, 487 Phil. 412, 424-425 (2004).

[30] *Reyes, Jr. v. Court of Appeals*, 385 Phil. 623, 629 (2000).

[31] *Van Melle Phils., Inc. v. Endaya*, 458 Phil. 420, 430 (2003).

[32] *Montederamos v. Tri-Union International Corporation*, G.R. No. 176700, September 4, 2009, 598 SCRA 370, 376.

his transfer is to demote him to the rank of an instructor from being the Head for Education performing administrative functions. Petitioner further argues that his re-assignment will entail an indirect reduction of his salary or diminution of pay considering that no additional allowance will be given to cover for board and lodging expenses. He claims that such additional allowance was given in the past and therefore cannot be discontinued and withdrawn without violating the prohibition against non-diminution of benefits.

These allegations are bereft of merit.

Petitioner was originally appointed as instructor in 1991 and was given additional administrative functions as Head for Education during his stint in Laoag branch. He did not deny having been designated as Head for Education in a temporary capacity for which he cannot invoke any tenurial security. Hence, being temporary in character, such designation is terminable at the pleasure of respondents who made such appointment.[33] Moreover, respondents' right to transfer petitioner rests not only on contractual stipulation but also on jurisprudential authorities. The Labor Arbiter and the NLRC both relied on the condition laid down in petitioner's employment contract that respondents have the prerogative to assign petitioner in any of its branches or tie-up schools as the necessity demands. In any event, it is management prerogative for employers to transfer employees on just and valid grounds such as genuine business necessity.[34] It is also important to stress at this point that respondents have shown that it was experiencing some financial constraints. Because of this, respondents opted to temporarily suspend the post-graduate studies of petitioner and some other employees who were given scholarship grants in order to prioritize more important expenditures.[35]

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[33] *Pabu-aya v. Court of Appeals*, 408 Phil. 782, 790 (2001).

[34] *Merck Sharp and Dohme (Philippines) v. Robles*, G.R. No. 176506, November 25, 2009, 605 SCRA 488, 497.

[35] See respondents' letter to the Commission on Higher Education dated December 11, 2003 in relation to petitioner's letter seeking clarification of the temporary suspension of the employees' masteral studies, *rollo*, pp. 172-173.

Indeed, we cannot fully subscribe to petitioner's contention that his re-assignment was tainted with bad faith. As a matter of fact, respondents displayed commiseration over the health condition of petitioner's father when they suggested that he take an indefinite leave of absence to attend to this personal difficulty. Also, during the time when respondents directed all its administrative officers to submit courtesy resignations, petitioner's letter of resignation was not accepted.[36] This bolsters the fact that respondents never intended to get rid of petitioner. In fine, petitioner's assertions of bad faith on the part of respondents are purely unsubstantiated conjectures.

The Court agrees with the Labor Arbiter that there was no violation of the prohibition on diminution of benefits. Indeed, any benefit and perks being enjoyed by employees cannot be reduced and discontinued, otherwise, the constitutional mandate to afford full protection to labor shall be offended.[37] But the rule against diminution of benefits is applicable only if the grant or benefit is founded on an express policy or has ripened into a practice over a long period which is consistent and deliberate.[38]

Petitioner was granted a monthly allowance for board and lodging during his stint as instructor in UNP-Vigan, Ilocos Sur as evinced in a letter dated June 6, 1992 with the condition stated in the following tenor:

> Please be informed that during your assignment at our tie-up at UNP-VIGAN, ILOCOS SUR , you will be receiving a monthly Board and Lodging of Pesos: One Thousand Two Hundred x x x (₱1,200.00).
>
> *However, you are only entitled to such allowance, if you are assigned to the said tie-up and the same will be changed or forfeited*

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[36] See respondents' letter to petitioner dated September 26, 2003, Annex "Z-1" of the Petition, *id.* at 169.

[37] *Arco Metal Products Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU (SAMARM-NAFLU)*, G.R. No. 170734, May 14, 2008, 554 SCRA 110, 118.

[38] *TSPIC Corporation v. TSPIC Employees Union (FFW)*, G.R. No. 163419, February 13, 2008, 545 SCRA 215, 232.

depending upon the place of your next reassignment.[39] (Italics supplied.)

Petitioner failed to present any other evidence that respondents committed to provide the additional allowance or that they were consistently granting such benefit as to have ripened into a practice which cannot be peremptorily withdrawn. Moreover, there is no conclusive proof that petitioner's basic salary will be reduced as it was not shown that such allowance is part of petitioner's basic salary. Hence, there will be no violation of the rule against diminution of pay enunciated under Article 100 of the Labor Code.[40]

WHEREFORE, the Resolutions dated May 15, 2006 and August 4, 2006 of the Court of Appeals in CA-G.R. SP No. 93991 are *SET ASIDE*. The Decision dated August 25, 2005 and Resolution dated January 31, 2006 of the National Labor Relations Commission in NLRC Case No. RAB I-12-1242-03 (LC) insofar as it found respondents Data Center College of the Philippines and Wilfred Bactad not liable for constructive dismissal, are *AFFIRMED*.

SO ORDERED.

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

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[39] *Supra* note 8.

[40] *Aguanza v. Asian Terminal, Inc.*, G.R. No. 163505, August 14, 2009, 596 SCRA 104, 113.

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Buy-bust operation — A form of entrapment, in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime. (Ampatuan *vs*. People, G.R. No. 183676, June 22, 2011) p. 747

— Failure to record in the police blotter the marked money used is not fatal to the prosecution's case. (People *vs*. Cruz, G.R. No. 187047, June 15, 2011) p. 420

Chain of custody rule/custody and disposition of confiscated drugs — Defined as the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. (People *vs*. Marcelino, Jr., G.R. No. 189325, June 15, 2011) p. 495

— Integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. (People *vs*. Castro, G.R. No. 194836, June 15, 2011) p. 526

— Its purpose is to establish the identity of the substance exhibited in court as the same substance seized during the buy-bust operation. (Ampatuan *vs*. People, G.R. No. 183676, June 22, 2011) p. 747

(People *vs*. Castro, G.R. No. 194836, June 15, 2011) p. 526

— Prosecution must prove that the seized drugs are the same ones presented in court by: (a) testimony about every link in the chain from the moment the item was picked up to the time it is offered into evidence; and (b) witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the item. (Ampatuan *vs*. People, G.R. No. 183676, June 22, 2011) p. 747

— The non-compliance with the requirement under par. 1, Sec. 21, Article II of the Act under justifiable ground, 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*. Gratil, G.R. No. 182236, June 22, 2011) p. 681

Illegal possession of dangerous drugs — 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*. Castro, G.R. No. 194836, June 15, 2011) p. 526

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. (Ampatuan *vs*. People, G.R. No. 183676, June 22, 2011) p. 747

(People *vs*. Gratil, G.R. No. 182236, June 22, 2011) p. 681

(People *vs*. Castro, G.R. No. 194836, June 15, 2011) p. 526

(People *vs*. Marcelino, Jr., G.R. No. 189325, June 15, 2011) p. 495

(People *vs*. Cruz, G.R. No. 187047, June 15, 2011) p. 420

— Punishable by life imprisonment and fine ranging from ₱500,000.00 to ₱10,000,000.00 without eligibility for parole. (People *vs*. Marcelino, Jr., G.R. No. 189325, June 15, 2011) p. 495

(People *vs*. Cruz, G.R. No. 187047, June 15, 2011) p. 420

Prosecution of drug cases — Credence is given to prosecution witnesses who are police officers. (Ampatuan *vs*. People, G.R. No. 183676, June 22, 2011) p. 747

(People *vs*. Marcelino, Jr., G.R. No. 189325, June 15, 2011) p. 495

COMPROMISES AND SETTLEMENT

Concept — A compromise is a contract whereby the parties by making reciprocal concessions, avoid litigation, or put an end to one already commenced. (Gaisano *vs*. Akol, G.R. No. 193840, June 15, 2011) p. 512

CO-OWNERSHIP

Rights of co-owner — A co-owner can alienate only his pro indiviso share in the co-owned property, and not the share of the co-owners. (Alano *vs*. Planter's Dev't. Bank, G.R. No. 171628, June 13, 2011) p. 81

CORPORATIONS

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. (Umale *vs*. ASB Realty Corp., G.R. No. 181126, June 15, 2011) p. 351

Doctrine of apparent authority — Its existence may be ascertained through (a) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (b) the acquiescence in his acts of a particular nature., with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers. (Phil. Realty and Holdings Corp. *vs*. Ley Construction and Dev't. Corp., G.R. No. 165548, June 13, 2011) p. 32

— The rule is settled that 'although an officer or agent acts without, or in excess of, his actual authority if he acts within the scope of an apparent authority with which the corporation has clothed him by holding him out or permitting him to appear as having such authority, the corporation is bound thereby in favor of a person who deals with him in good faith in reliance on such apparent authority, as where an officer is allowed to exercise a particular authority with respect to the business, or a particular branch of it, continuously and publicly, for a considerable time." *(Id.)*

Nature — Corporations are juridical entities that exist by operation of law; as creatures of law, the powers and attributes of corporations are those set out, expressly or impliedly, in the law. (Umale *vs*. ASB Realty Corp., G.R. No. 181126, June 15, 2011) p. 351

COURT PERSONNEL

Court Stenographers — Failure to submit transcript of stenographic notes within the period prescribed under Administrative Circular No. 24-90 constitutes gross neglect of duty and is punishable by dismissal even if for the first offense. (Judge Absin *vs*. Montalla, A.M. No. P-10-2829, June 21, 2011) p. 560

— It is the duty of the court stenographer who has attended a session of a court to immediately deliver to the clerk of court all the notes he has taken, the same to be attached to the record of the case. *(Id.)*

Gross misconduct — A 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. (OCA *vs*. Tolosa, A.M. No. P-09-2715, June 13, 2011) p. 9

Misconduct — Defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. (OCA *vs*. Tolosa, A.M. No. P-09-2715, June 13, 2011) p. 9

COURTS

Disposition of cases — Courts may rule or decide on matters that were not submitted as issues but were proven during trial. (Phil. Realty and Holdings Corp. *vs*. Ley Construction and Dev't. Corp., G.R. No. 165548, June 13, 2011) p. 32

Inherent powers — Trial courts have plenary control of the proceedings including the judgment, and in the exercise of a sound judicial discretion, may take such proper action in this regard as truth and justice may require. (Sta. Lucia Realty & Dev't., Inc. *vs*. City of Pasig, G.R. No. 166838, June 15, 2011) p. 171

Land registration court — Has no jurisdiction to order the registration of land already decreed in the name of another in an earlier land registration case. (Top Management Programs Corp. *vs*. Fajardo, G.R. No. 150462, June 15, 2011) p. 144

DAMAGES

Attorney's fees — Awarded when a party is compelled to litigate or incur expenses to protect its interest, or when the court deems it just and equitable. (Phil. Realty and Holdings Corp. *vs*. Ley Construction and Dev't. Corp., G.R. No. 165548, June 13, 2011) p. 32

— May be reduced by the court when found to be excessive. *(Id.)*

Damages for the payment of a sum of money — In case of delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum. (Rep. of the Phils. *vs*. De Guzman, G.R. No. 175021, June 15, 2011) p. 229

DENIAL OF THE ACCUSED

Defense of — Cannot prevail over positive identification of the accused. (People *vs*. Diolagra, G.R. No. 186523, June 22, 2010) p. 765

— Inherently a weak defense. (People *vs*. Castro, G.R. No. 194836, June 15, 2011) p. 526

— Viewed with disfavor for it can be easily concocted. (Ampatuan *vs.* People, G.R. No. 183676, June 22, 2011) p. 747

(People *vs*. Cruz, G.R. No. 187047, June 15, 2011) p. 420

DEPARTMENT OF AGRARIAN REFORM

Conversion order — D.A.R. Adm. Order 12-94 is only a guiding principle and not an absolute proscription on the conversion of land use. (Ayala Land, Inc. *vs*. Castillo, G.R. No. 178110, June 15, 2011) p. 274

— Revocation of the conversion order is proper as the lands were already placed under the Comprehensive Agrarian Reform Program. (Ayala Land, Inc. *vs*. Castillo, G.R. No. 178110, June 15, 2011; *Villarama, Jr., J., dissenting opinion*) p. 274

— Section 34 of A.O. No. 1 provides a one-year period from the issuance of the order within which to file a petition for cancellation or withdrawal thereof; exception. *(Id.)*

— The rule applicable in determining the timeliness of a petition for cancellation or withdrawal of a conversion order is the rule prevailing at the time of filing. (Ayala Land, Inc. *vs*. Castillo, G.R. No. 178110, June 15, 2011) p. 274

DOCKET FEES

Payment of — A complaint for "Declaration of Nullity of Share Issue, Receivership, Dissolution, and Asset Liquidation" of a corporation is a case incapable of pecuniary estimation since the recovery of the real or personal property was merely a consequence of the principal action and the computation of docket fees was not dependent on the value of the properties. (Home Guaranty Corp. *vs*. R-II Builders Inc., G.R. No. 192649, June 22, 2011; *Velasco, Jr., J., dissenting opinion*) p. 781

— Jurisdiction over any case is acquired only upon the payment of the prescribed docket fee which is both mandatory and jurisdictional. (Home Guaranty Corp. *vs*. R-II Builders Inc., G.R. No. 192649, June 22, 2011) p. 781

EJECTMENT

Action for — The only issue up for adjudication is material possession over the real property; the court may pass on the issue of ownership provisionally. (Heirs of Agapito T. Olarte and Angela A. Olarte *vs*. Office of the President of the Phils., G.R. No. 177995, June 15, 2011) p. 253

EMPLOYMENT, TERMINATION OF

Constructive dismissal — Occurs when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit. (Barroga *vs*. Data Center College of the Phils., G.R. No. 174158, June 27, 2011) p. 808

Loss of trust and confidence — Burden of proof to prove allegations of breach of trust and confidence rests with the employer but proof beyond reasonable doubt is not required. (Coca-Cola Export Corp. *vs*. Gacayan, G.R. No. 149433, June 22, 2011) p. 594

— The requisites to be a valid ground for dismissal are: (a) the employee concerned must be holding a position of trust and confidence and (b) there must be an act that would justify the loss of trust and confidence. *(Id.)*

ESTOPPEL

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. (Phil. Realty and Holdings Corp. *vs.* Ley Construction and Dev't. Corp., G.R. No. 165548, June 13, 2011) p. 32

— Elements of estoppel are: (a) the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; (b) the other in fact

relies, and relies reasonably or justifiably, upon that communication; (c) the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and (d) the actor knew, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action. *(Id.)*

EVIDENCE

Preponderance of evidence — Defined as the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." (Rep. of the Phils. *vs.* De Guzman, G.R. No. 175021, June 15, 2011) p. 229

— In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbility of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. *(Id.)*

FORUM SHOPPING

Certificate of non-forum shopping — Before a complaint can be dismissed for lack of a proper Certificate of Non-Forum Shopping, notice and hearing are required. (Atty. Bautista *vs.* Judge Causapin, Jr., A.M. No.RTJ-07-2044, June 22, 2011) p. 574

— Must be signed by all the petitioners or plaintiffs in a case and the signing by only one of them is insufficient. *(Id.)*

— Subsequent and substantial compliance may call for the relaxation of the rules of procedure. (Santos *vs.* Litton Mills Inc. and/or Atty. Rodolfo Mariño, G.R. No. 170646, June 22, 2011) p. 640

Existence of — Present where a party's petition for certiorari and subsequent appeal seek to achieve one and the same purpose. (Espiritu *vs*. Tankiansee, G.R. No. 164153, June 13, 2011) p. 19

FRAME-UP

Defense of — Must be corroborated by credible and convincing evidence to gain merit in court. (People *vs*. Gratil, G.R. No. 182236, June 22, 2011) p. 681

— Viewed with disfavor for it can be easily concocted. (People *vs*. Cruz, G.R. No. 187047, June 15, 2011) p. 420

FRAUD

Extrinsic fraud — Fraud is extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured. (Bulawan *vs*. Aquende, G.R. No. 182819, June 22, 2011) p. 714

ILLEGAL POSSESSION AND USE OF FALSE TREASURY OR BANK NOTES AND OTHER INSTRUMENTS OF CREDIT

Commission of — The elements of the crime are: (a) That any treasury or bank note or certificate or other obligation and security payable to bearer, or any instrument payable to order or other document of credit not payable to bearer is forged or falsified by another person; (b) that the offender knows that any of the said instrument is forged or falsified; and (c) that he either used or possessed with intent to use any of such forged or falsified instruments. (Clemente *vs*. People, G.R. No. 194367, June 15, 2011) p. 515

INCOME TAX

Corporate income tax — Once the corporation exercises the option to carry-over and apply the excess quarterly income tax against the tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for

that taxable period. (Commissioner of Internal Revenue *vs*. Migrant [Phils.] Operations, Corp., G.R. No. 171742, June 15, 2011) p. 208

Creditable withholding tax — The requisites for claiming a tax credit or a refund of creditable withholding tax: (a) the claim must be filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax; (b) it must be shown on the return that the income received was declared as part of the gross income; and (c) the fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld. (Commissioner of Internal Revenue *vs*. Migrant [Phils.] Operations, Corp., G.R. No. 171742, June 15, 2011) p. 208

INTERVENTION

Motion for — May be filed at any time before rendition of judgment by the trial court. (In the Matter of the Heirship [Intestate Estates] of the Late Hermogenes Rodriguez, Pascual *vs*. Robles, G.R. No. 182645, June 22, 2011) p. 702

JUDGES

Gross ignorance of the law — When the law is so elementary, not to know it or to act as if one does not know it, constitutes gross ignorance of the law. (Atty. Bautista *vs*. Judge Causapin, Jr., A.M. No.RTJ-07-2044, June 22, 2011) p. 574

(Diaz *vs*. Judge Gestopa, Jr., A.M. No.MTJ-11-1786, June 22, 2011) p. 566

Gross misconduct — Committed in case a judge had a drinking spree with the defendants and requested the plaintiff's counsel to withdraw its motion to declare the defendant in default. (Atty. Bautista *vs*. Judge Causapin, Jr., A.M. No.RTJ-07-2044, June 22, 2011) p. 574

JUDGMENTS

Annulment of — Judgment may be annulled on the grounds of extrinsic fraud and lack of jurisdiction. (Bulawan *vs*. Aquende, G.R. No. 182819, June 22, 2011) p. 714

— May be availed of even if the judgment to be annulled had been fully executed or implemented. *(Id.)*

Execution pending appeal — Not applicable in land registration cases. (Top Management Programs Corp. *vs*. Fajardo, G.R. No. 150462, June 15, 2011) p. 144

Finality or immutability of judgment — Final and executory judgments are immutable and unalterable except: (a) clericalerrors; (b) *nunc pro tunc* which cause no prejudice to any party; and (c) void judgments. (In the Matter of the Heirship [Intestate Estates] of the Late Hermogenes Rodriguez, Pascual *vs*. Robles, G.R. No. 182645, June 22, 2011) p. 702

Validity of — A judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties is not only irregular but also extrajudicial and invalid. (General Milling Corporation-Independent Labor Union *vs*. General Milling Corp., G.R. No. 183122, June 15, 2011) p. 371

— All acts performed pursuant to a void judgment and all claims emanating from it have no legal effect. (PNB *vs*. Sps. Perez, G.R. No. 187640, June 15, 2011) p. 440

— Order of execution which varies the tenor of judgment or exceeds the terms thereof is a nullity. (General Milling Corporation-Independent Labor Union *vs*. General Milling Corp., G.R. No. 183122, June 15, 2011) p. 371

JURISDICTION

Concept — Once acquired, it continues until the case is finally terminated. (Home Guaranty Corp. *vs*. R-II Builders Inc., G.R. No. 192649, June 22, 2011; *Velasco, Jr., J., dissenting opinion*) p. 781

KIDNAPPING AND SERIOUS ILLEGAL DETENTION

Commission of — Elements of the crime are: (a) the offender is a private individual; (b) he kidnaps or detains another or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping is illegal; and (d) in the commission of the offense, any of the following circumstances are present: (1) the kidnapping or detention lasts for more than 3 days; or (2) it is committed by simulating public authority; or (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer. (People *vs*. Mostrales, G.R. No. 184925, June 15, 2011) p. 395

LAND REGISTRATION

Torrens Certificate of Title — While the Certificate of title is conclusive as to its ownership and location, this does not preclude the filing of an action for the purpose of attacking the statements therein. (Sta. Lucia Realty &Dev't., Inc. *vs*. City of Pasig, G.R. No. 166838, June 15, 2011) p. 171

LEASE

Period of lease — In case of extension of lease, Article 1675 of the Civil Code states that a lessee that commits any of the grounds for ejectment cited in Article 1673 of the same Code, including non-payment of lease rentals and devoting the leased premises to uses other than those stipulated cannot avail of the periods established in Article 1687. (Umale *vs*. ASB Realty Corp., G.R. No. 181126, June 15, 2011) p. 351

LIS PENDENS

Concept — Literally means pending suit, refers to the jurisdiction, power or control which a court acquires over property involved in a suit, pending the continuance of the action, and until final judgment. (Top Management Programs Corp. *vs*. Fajardo, G.R. No. 150462, June 15, 2011) p. 144

Notice of — A warning to the whole world that anyone who buys the property *in litis* does so at his own risk and subject to the outcome of the litigation. (Top Management Programs Corp. *vs.* Fajardo, G.R. No. 150462, June 15, 2011) p. 144

— One who buys land where there is a pending notice of *lis pendens* cannot invoke the right of a purchaser in good faith; neither can he have acquired better rights than those of his predecessor in interest. *(Id.)*

— The filing of a notice of *lis pendens* has a two-fold effect: (a) to keep the subject matter of the litigation within the power of the court until the entry of the final judgment to prevent the defeat of the final judgment by successive alienation; and (b) to bind a purchaser, bona fide or not, of the land subject of the litigation to the judgment or decree that the court will promulgate subsequently. *(Id.)*

LOANS

Contract of loan — Ownership is transferred from the lender to the borrower. (Phil. Realty and Holdings Corp. *vs.* Ley Construction and Dev't. Corp., G.R. No. 165548, June 13, 2011) p. 32

LOCAL GOVERNMENT CODE (R.A. NO. 7160)

Appraisal of Real Property — All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality where the property is situated. (Sta. Lucia Realty &Dev't., Inc. *vs*. City of Pasig, G.R. No. 166838, June 15, 2011) p. 171

Power to reclassify agricultural land — Subject to the requirements of the land use conversion procedure. (Ayala Land, Inc. *vs*. Castillo, G.R. No. 178110, June 15, 2011; *Villarama, Jr., J., dissenting opinion*) p. 274

Territorial boundaries — Must be clear for they define the limits of the territorial jurisdiction of a local government unit. (Sta. Lucia Realty &Dev't., Inc. *vs*. City of Pasig, G.R. No. 166838, June 15, 2011) p. 171

MITIGATING CIRCUMSTANCES

Minority — Burden of proof rested solely on the defense. (People *vs.* Diolagra, G.R. No. 186523, June 22, 2011) p. 765

MORTGAGES

Rights of mortgagee-creditor — Rule that a mortgagee need not look beyond the title does not apply to banks and other financial institutions as greater care and due diligence is required of them. (Alano *vs*. Planter's Dev't. Bank, G.R. No. 171628, June 13, 2011) p. 81

MOTION TO DISMISS

Lack of cause of action as a ground — Hypothetically admits the truth of the allegation in the complaint; exception. (Phil. Army, 5th Infantry Division, through Gen. Yapsing *vs.* Sps. Pamittan [Ret.], G.R. No. 187326, June 15, 2011) p. 440

MOTIONS

Motion for extension of time to plead — Need not contain a notice of hearing. (Atty. Bautista *vs*. Judge Causapin, Jr., A.M. No. RTJ-07-2044, June 22, 2011) p. 574

Notice of hearing — A movant shall set his motion for hearing, unless it is one of those which a court can act upon without prejudicing the rights of the other party. (Atty. Bautista *vs*. Judge Causapin, Jr., A.M. No.RTJ-07-2044, June 22, 2011) p. 574

Omnibus motion rule — All available objections that are not included in a party's motion shall be deemed waived. (Home Dev't.Mutual Fund *vs*. Sps. See, G.R. No. 170292, June 22, 2011) p. 609

NATIONAL HOUSING AUTHORITY

Zonal Improvement Project (ZIP) — Adopted to strengthen further the efforts of the government to uplift the living conditions in the slums and blighted areas in line with the spirit of the constitutional provision guaranteeing housing

and a decent quality of life for every Filipino. (Heirs of Agapito T. Olarte and Angela A. Olarte *vs*. Office of the President of the Phils., G.R. No. 177995, June 15, 2011) p. 253

— The primordial requisite is that the intended beneficiary must be the occupant of the tagged structure at the time of the official ZIP Census or at the closure thereof. *(Id.)*

NATIONAL LABOR RELATIONS COMMISSION (NLRC)

Appeal — Posting of bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the Labor Arbiter; (University Plans Inc. *vs*. Solano, G.R. No. 170416, June 22, 2011) p. 623

Appeal bond — May be reduced on the following instances: (a) there was substantial compliance with the Rules, (b) surrounding facts and circumstances constitute meritorious ground to reduce the bond, (c) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (d) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period. (University Plans Inc. *vs*. Solano, G.R. No. 170416, June 22, 2011) p. 623

OBLIGATIONS

Nature and effect of obligations — Generally, no person shall be responsible for those events which could not be foreseen, or though foreseen, were inevitable. (Phil. Realty and Holdings Corp. *vs*. Ley Construction and Dev't. Corp., G.R. No. 165548, June 13, 2011) p. 32

OBLIGATIONS, EXTINGUISHMENT OF

Novation — In order for novation to take place, the concurrence of the following requisites is indispensable: (a) there must be a previous valid obligation; (b) the parties concerned must agree to a new contract; (c) the old contract must be extinguished; and (d) there must be a valid new contract. (Phil. Realty and Holdings Corp. *vs*. Ley Construction and Dev't. Corp., G.R. No. 165548, June 13, 2011) p. 32

Payment — To be effective in extinguishing an obligation, it must be made to the proper party. (Rep. of the Phils. *vs*. De Guzman, G.R. No. 175021, June 15, 2011) p. 229

PAROL EVIDENCE RULE

Application — To avoid the operation of the rule, the Rules of Court allows a party to present evidence modifying, explaining or adding to the terms of the written agreement if he puts in issue in his pleading, as in this case, the failure of the written agreement to express the true intent and agreement of the parties. (Leoveras *vs*. Valdez, G.R. No. 169985, June 15, 2011) p. 190

Concept — When the terms of an agreement is deemed to contain all the terms agreed upon and no evidence of these terms can be admitted other than what is contained in the written agreement. (Leoveras *vs*. Valdez, G.R. No. 169985, June 15, 2011) p. 190

PARTIES TO CIVIL ACTIONS

Compulsory joinder of indispensable parties — A person who was not impleaded in the complaint cannot be bound by the decision rendered therein, for no man shall be affected by a proceeding in which he is a stranger. (Bulawan *vs*. Aquende, G.R. No. 182819, June 22, 2011) p. 714

— The burden to implead or order the impleading of indispensable parties is placed on the plaintiff and on the trial court, respectively. *(Id.)*

Real parties-in-interest — Defined as one who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. (Umale *vs*. ASB Realty Corp., G.R. No. 181126, June 15, 2011) p. 351

PARTITION

Concept — The division between two or more persons of real or personal property, owned in common, by setting apart their respective interests so that they may enjoy and

possess these in severalty, resulting in the partial or total extinguishment of the co-ownership. (Leoveras *vs*. Valdez, G.R. No. 169985, June 15, 2011) p. 190

— The separation, division, and assignment of a thing held in common among those to whom it may belong. *(Id.)*

PRESUMPTIONS

Regular performance of official duty — Applies in cases involving violations of the Comprehensive Dangerous Drugs Act (R.A. No. 9165). (People *vs*. Castro, G.R. No. 194836, June 15, 2011) p. 526

PRE-TRIAL

Notice of pre-trial — Failure to send notice of pre-trial to the parties shall render the pre-trial and all subsequent proceedings null and void. (PNB *vs*. Sps. Perez, G.R. No. 187640, June 15, 2011) p. 440

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Registration — Does not vest title but merely confirms or records title already existing and vested. (Leoveras *vs*. Valdez, G.R. No. 169985, June 15, 2011) p. 190

PUBLIC OFFICERS AND EMPLOYEES

Misconduct — Defined as a transgression of an established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. (OCA *vs*. Tolosa, A.M. No. P-09-2715, June 13, 2011) p. 9

QUIETING OF TITLE

Action for — A remedy for the removal of any cloud, doubt, or uncertainty affecting title to real property. (Top Management Programs Corp. *vs*. Fajardo, G.R. No. 150462, June 15, 2011) p. 144

— If two Certificates of Title purport to include the same land whether, wholly or partly, the better approach is to trace the original Certificate from which the Certificates of Titles were derived. *(Id.)*

— Two requisites must concur: (a) the plaintiff or complainant has a legal or equitable title or interest in the real property subject of the action; and (b) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its prima facie appearance of validity or legal efficacy. *(Id.)*

RAPE

Commission of — Civil liabilities of accused, cited. (People *vs*. Dumadag, G.R. No. 176740, June 22, 2011) p. 664

— Gravamen of the offense is sexual intercourse with a woman against her will or without her consent. *(Id.)*

— Lust is no respecter of time and place. *(Id.)*

— Not negated by the absence of laceration in the hymen. (People *vs*. Dominguez, G.R. No. 191065, June 13, 2011) p. 105

Intimidation as an element — When a victim is threatened with bodily injury, such constitutes intimidation sufficient to bring the victim to submission to the lustful desires of the rapist. (People *vs*. Dumadag, G.R. No. 176740, June 22, 2011) p. 664

Prosecution of — When rape under the Penal Code or Child Abuse Law (R.A. No. 7610) were both applicable for a single criminal act, accused may be charged with either crime but not both. (People *vs*. Dahilig, G.R. No. 187083, June 13, 2011) p. 92

— When the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge. (People *vs*. Espina, G.R. No. 183564, June 29, 2011)

— Youth and immaturity are generally badges of truth and sincerity. (People *vs*. Dumadag, G.R. No. 176740, June 22, 2011) p. 664

(People *vs.* Dominguez, G.R. No. 191065, June 13, 2011) p. 105

Qualifying circumstances of minority and relationship — Relative within the fourth civil degree will not qualify the crime. (People *vs*. Dominguez, G.R. No. 191065, June 13, 2011) p. 105

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*. Dumadag, G.R. No. 176740, June 22, 2011) p. 664

Statutory rape — Elements of the crime are: (a) that the offender had carnal knowledge of a woman; and (b) that such a woman is under twelve (12) years of age or is demented. (People *vs.* Dominguez, G.R. No. 191065, June 13, 2011) p. 105

Sweetheart theory — Must be sufficiently established by compelling evidence. (People *vs.* Dumadag, G.R. No. 176740, June 22, 2011) p. 664

(People *vs*. Dahilig, G.R. No. 187083, June 13, 2011) p. 92

REAL PROPERTY TAX CODE (P.D. NO. 464)

Appraisal of real property — All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality where the property is situated. (Sta. Lucia Realty & Dev't., Inc. *vs*. City of Pasig, G.R. No. 166838, June 15, 2011) p. 171

Collection of tax to be the responsibility of treasurers — The collection of the real property tax and all penalties accruing thereto, and the enforcement of the remedies provided for in the Code or any applicable laws, shall be the responsibility of the treasurer of the province, city or municipality where the property is situated. (Sta. Lucia Realty &Dev't., Inc. *vs*. City of Pasig, G.R. No. 166838, June 15, 2011) p. 171

RECONSTITUTION OF TORRENS CERTIFICATE OF TITLE LOST OR DESTROYED (R.A. NO. 26)

Petition for — The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's mortgagee's, or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location and boundaries of the property; (d) the nature and description of the building or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owner of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have any interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or if there be any, the registration thereof has not been accomplished, as yet. (Castillo *vs.* Rep. of the Phils., G.R. No. 182980, June 22, 2011) p. 729

Sources from which the Transfer Certificate of Title shall be constituted — May be available, in the following order: (a) the owner's duplicate of certificate of title; (b) the co-owner's mortgagee's or lessee's duplicate of the certificate of title; (c) a certified copy of the certificate of title, previously issued by the Register of Deeds or by a legal custodian thereof; (d) the deed of transfer or other document, on file in the Register of Deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued; (e) a document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased, or encumbered, or an authenticated copy of said document showing that its original had been registered; and (f) any

other document which, in the judgment of the court, is sufficient and a proper basis for reconstituting the lost or destroyed certificate of title. (Castillo *vs*. Rep. of the Phils., G.R. No. 182980, June 22, 2011) p. 729

RECONVEYANCE

Action for reconveyance — A legal and equitable remedy granted to the rightful landowner, whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer or reconvey the land to him. (Leoveras*vs*. Valdez, G.R. No. 169985, June 15, 2011) p. 190

REGIONAL TRIAL COURT

Jurisdiction as a special commercial court — A complaint that does not involve an intra-corporate dispute should be dismissed for lack of jurisdiction instead of simply directing the re-raffle of the case to another branch. (Home Guaranty Corp. *vs*. R-II Builders Inc., G.R. No. 192649, June 22, 2011) p. 781

RULES OF PROCEDURE

Application — Liberal construction of the Rules of Court does not apply to land registration cases. (Castillo *vs*. Rep. of the Phils., G.R. No. 182980, June 22, 2011) p. 729

— Strict and rigid application of technicalities must be avoided if it tends to frustrate rather than promote substantial justice. (Barroga *vs*. Data Center College of the Phils., G.R. No. 174158, June 27, 2011) p. 808

SECURITIES AND EXCHANGE COMMISSION

Jurisdiction — The Commission has the discretion to authorize the rehabilitation receiver, as the case may warrant, to exercise the powers in Rule 59 of the Rules of Court. (Umale *vs*. ASB Realty Corp., G.R. No. 181126, June 15, 2011) p. 351

SHERIFFS

Dishonesty — Committed by disregarding the highest bid in an auction sale which prejudiced the right of the judgment creditor to recover a bigger amount. (Flores *vs*. Pascasio, A.M. No. P-06-2130, June 13, 2011) p. 1

— Fine is imposed as an alternative penalty in view of respondent's dismissal from service. *(Id.)*

Duties of — A sheriff has no discretion whatsoever with respect to the disposition of the amounts he receives. (OCA *vs*. Tolosa, A.M. No. P-09-2715, June 13, 2011) p. 9

— It is mandatory for a sheriff to make a return of the writ of execution immediately upon satisfaction, in part or in full, of the judgment, to update the court on the status of the execution and to take the necessary steps to ensure the speedy execution of the decision. *(Id.)*

— Sheriffs should know the rules of procedure relative to the implementation of writs of execution and should show a high degree of professionalism in the performance of duties. *(Id.)*

SUMMARY JUDGMENT

Application — Filing of a motion and the conduct of a hearing on the motion are necessary for the rendition of a summary judgment; non-observance thereof is a violation of petitioner's due process and right to a trial where they can present their evidence and prove their defense. (Calubaquib *vs*. Rep. of the Phils., G.R. No. 170658, June 22, 2011) p. 653

When rendered — A summary judgment is proper when there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law. (Calubaquib *vs*. Rep. of the Phils., G.R. No. 170658, June 22, 2011) p. 653

(Diaz *vs*. Judge Gestopa, Jr., A.M. No.MTJ-11-1786, June 22, 2011) p. 566

TRIAL

Broadcasting of trial of the Maguindanao massacre cases — Court partially grants *pro hac vice* the live broadcast of the trial court proceedings subject to certain limitations. (*Re*: Petition for Radio and Television Coverage of the Multiple Murder Cases Against Maguindanao Governor ZaldyAmpatuan, et al., A.M. No. 10-11-5-SC, June 14, 2011) p. 128

— Impossibility of accommodating the parties and witnesses inside the courtroom is considered. *(Id.)*

UNJUST ENRICHMENT

Application — There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. (Phil. Realty and Holdings Corp. *vs*. Ley Construction and Dev't. Corp., G.R. No. 165548, June 13, 2011) p. 32

VOID MARRIAGES

Declaration of nullity of a void marriage — Deferment of the reception of evidence on custody, support, and property relations is allowed. (Yu *vs*. Judge Reyes-Carpio, G.R. No. 189207, June 15, 2011) p. 474

WAGES

Rule against diminution of benefits — Applicable only if the grant or benefit is founded on an express policy or has ripened into a practice over a long period which is consistent and deliberate. (Barroga *vs*. Data Center College of the Phils., G.R. No. 174158, June 27, 2011) p. 808

WITNESSES

Credibility of — Findings of trial court are entitled to great respect and accorded the highest consideration by the appellate court; exceptions. (People *vs*. Dumadag, G.R. No. 176740, June 22, 2011) p. 664

(People *vs*. Marcelino, Jr., G.R. No. 189325, June 15, 2011) p. 495

(People *vs*. Cruz, G.R. No. 187047, June 15, 2011) p. 420

— Not affected by inconsistencies and discrepancies in the testimony referring to minor details and not upon the basic aspect of the crime. (People *vs*. Marcelino, Jr., G.R. No. 189325, June 15, 2011) p. 495

— Testimonial evidence should not only be given by a credible witness but it should also be credible, reasonable, and in accord with human experience. (People *vs*. Mostrales, G.R. No. 184925, June 15, 2011) p. 395

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