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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 167284. July 6, 2011]

THE ESTATE OF SOLEDAD MANINANG and THE LAW FIRM OF QUISUMBING TORRES, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, SPOUSES SALVACION SERRANO LADANGA[*] and AGUSTIN LADANGA,[**] and BERNARDO ASENETA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT DULY ESTABLISHED IN CASE AT BAR.— [T]he respondent court did not gravely abuse its discretion when it did not allow petitioners to join and participate in the appeal in the Reconveyance Case. Grave abuse of discretion "implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law." In the case at bar, while the

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[*] Died on August 2, 1996 (*rollo*, p. 55).

[**] Deceased per Manifestation of his counsel, Atty. Gregorio T. Fabros (*rollo* of G.R. No. 167284, p. 221).

CA's actions may not have been ideal (it should have simply denied petitioners' motions instead of refraining from acting on them), the same did not amount to a grave abuse of discretion considering that the issues raised by petitioners were not related to the subject matter before the CA. The petitioners' interest is in the Cubao property, while the subject of the appeal before the CA was the Diliman property.

2. ID.; CIVIL PROCEDURE; CAUSE OF ACTION; PETITIONER'S CAUSE OF ACTION IN CASE AT BAR IS INDEPENDENT OF THE CAUSE OF ACTION IN THE RECONVEYANCE CASE.— As to petitioners' ultimate objective of getting their alleged share in the Cubao property, this cannot be litigated in the appeal of the Reconveyance Case but must be the subject of a separate suit or proceeding. Petitioners' cause of action is independent of the cause of action in the Reconveyance Case and cannot possibly be litigated without causing undue delay and prejudice to the respondents, who have already endured more than two decades only to resolve the issues in the Reconveyance Case. Moreover, petitioners' cause of action presents contentious issues (*i.e.*, scope of the Compromise Agreement in the Probate Case, authority of Bernardo to compromise an estate property in the Reconveyance Case, defenses of other interested parties, *etc*.) which may still need to be threshed out in a proper trial and may require impleading other interested parties. To allow petitioners to litigate these matters for the first time in the appellate stage of the Reconveyance Case will not serve the ends of justice – not to respondents and not even to petitioners.

APPEARANCES OF COUNSEL

Quisumbing Torres on its own behalf and for petitioner.
Gregorio T. Fabros for Sps. Ladanga.

D E C I S I O N

DEL CASTILLO, *J.*:

An act will be struck down for having been done with grave abuse of discretion only when the abuse of discretion is patent and gross.[1]

Before the Court is a Petition for *Certiorari* and *Mandamus*[2] under Rule 65 of the Rules of Court assailing the June 1, 2004[3] and December 29, 2004[4] Resolutions of the Court of Appeals (CA) in CA-G.R. CV No. 51242, entitled *Bernardo Aseneta v. Spouses Salvacion Serrano Ladanga and Agustin Ladanga* where the CA refused to act on petitioners' Motion for Partial Reconsideration of the November 7, 2000 Decision[5] in the said case. The dispositive portion of the assailed June 1, 2004 Resolution reads:

> ACCORDINGLY, on account of the pendency before the Supreme Court of a petition for review filed by defendant-appellant Agustin Ladanga from the decision of the Court, the Court will again refrain from acting on the aforesaid Motion for Partial Reconsideration.
>
> SO ORDERED.[6]

The assailed December 29, 2004 Resolution,[7] on the other hand, denied the petitioners' motion for reconsideration of the June 1, 2004 Resolution.

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[1] *Fajardo v. Court of Appeals*, G.R. No. 157707, October 29, 2008, 570 SCRA 156, 163.

[2] *Rollo* of G.R. No. 167284, pp. 3-37.

[3] *Id.* at 50; penned by Associate Justice Godardo A. Jacinto and concurred in by Associate Justices Buenaventura J. Guerrero and Aurora S. Lagman.

[4] *Id.* at 51-52; penned by Associate Justice Godardo A. Jacinto and concurred in by Associate Justices Ruben T. Reyes and Aurora S. Lagman.

[5] *Id.* at 39-49; penned by Associate Justice Godardo A. Jacinto and concurred in by Associate Justices Bernardo P. Abesamis and Alicia L. Santos.

[6] *Id.* at 50.

[7] *Id.* at 52.

Petitioners seek (1) to annul and set aside the aforesaid Resolutions for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction; and (2) to require the CA to act on their earlier Motion for Joinder of Additional Parties, as well as their Motion for Partial Reconsideration.

Factual antecedents

In 1975, during her lifetime, Clemencia Aseneta (Clemencia), through her adopted son and judicially-appointed guardian,[8] respondent Bernardo Aseneta (Bernardo), filed a reconveyance case[9] (Reconveyance Case) against respondent-spouses Salvacion and Agustin Ladanga (spouses Ladanga) before Branch 93 of the Regional Trial Court of Quezon City. The complaint sought to annul the Deeds of Sale allegedly executed by Clemencia in favor of the spouses Ladanga over a Diliman property[10] and a Cubao property[11] on grounds of lack of intent to convey and lack of consideration. In 1977, Clemencia died during the pendency of the reconveyance case and was substituted as plaintiff by her known putative heir, Bernardo.[12]

Meanwhile, Clemencia's death also brought about estate settlement proceedings (Probate Case) between Soledad Maninang (Maninang), represented by petitioner Law Firm of Quisumbing Torres (QT), and Bernardo. Maninang claimed that Clemencia bequeathed to her the entire estate in her last will and testament. Bernardo countered that the will is void on the ground of preterition.

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[8] CA Decision, pp. 1, 3; *id.* at 39-41.

[9] Civil Case No. Q-20128 (*id.* at 56-62).

[10] The property in Diliman, Quezon City was registered in Clemencia Aseneta's name and covered by Transfer Certificate of Title (TCT) No. 5813. After the purported sale, title was transferred to Salvacion Ladanga, who obtained TCT No. 197624 in her name (CA Decision, p. 2; *id.* at 40).

[11] The property located in Cubao, Quezon City was registered in Clemencia Aseneta's name and covered by TCT No. 177619. Due to the purported sale, title was transferred to Salvacion Ladanga, who then obtained TCT No. 204090 in her name (*Id.*; *id.*).

[12] *Id.* at 1; *id.* at 39.

This Probate Case was eventually decided based on a compromise agreement executed by Bernardo, Maninang, and their respective counsels. The compromise agreement identified certain properties of the estate and provided for their distribution among the parties. It further provided that as to "*any other properties, known or unknown*," Maninang would get 35% interest while QT would get 15% interest. The following are the relevant excerpts from the November 5, 1992 Decision Based on Compromise Agreement in the Probate Case:

BERNARDO ASENETA and the ESTATE OF SOLEDAD L. MANINANG, assisted by their respective counsels, respectfully state:

1. On 6 October 1992, they have reached and concluded a mutually satisfactory settlement of their claims in the above-referenced cases. Consequently, they freely entered into and executed a Compromise Agreement to effect a prompt distribution of the Estate of Clemencia A. Aseneta, as follows:

> WHEREAS, the parties hereto are the sole claimants to the estate of Clemencia A. Aseneta x x x presently the subject of consolidated Special Proceeding Nos. Q-23304 and 8569 in the Regional Trial Court of Pasig, Branch 161, and Special Proceeding No. M-2176 in the Regional Trial Court of Makati, Branch 145;
>
> WHEREAS, the deceased Clemencia A. Aseneta left no other heirs;
>
> xxx xxx xxx
>
> WHEREAS, MANINANG is indebted to the law firms of N.J. Quisumbing & Associates and Quisumbing Torres & Evangelista (QTE) for professional services rendered in the aforesaid estate proceedings in an amount equivalent to thirty percent (30%) of MANINANG's recovery of inheritance, and therefore MANINANG has assigned directly to QTE, a thirty percent (30%) share of her distributions under this Compromise Agreement;
>
> xxx xxx xxx

NOW, THEREFORE, the parties hereto agree as follows:

1. The aforesaid real properties of the Estate shall belong and be distributed to the parties hereto and to ALGR [Bernardo's counsel] and QTE, as follows:

xxx xxx xxx

(h) **Any other real properties, known or unknown**, to ASENETA (37.5% undivided interest), to ALGR (12.5% undivided interest), **to MANINANG (35% undivided interest), and to QTE (15% undivided interest)**

xxx xxx xxx

6. The Estate shall be distributed, as soon as possible after approval of this Compromise Agreement, in accordance with the terms hereof, and the parties hereto shall voluntarily hand over whatever titles, cases, papers, documents, exhibits and personal properties appertaining to the other as per the distribution above.

xxx xxx xxx

8. x x x Any claims, causes of action or liabilities arising as a result of a breach of this Compromise Agreement are specifically reserved and excluded from this release and discharge.

xxx xxx xxx[13]

Back in 1987, while the Probate Case was still pending, a development allegedly took place in the Reconveyance Case. According to Bernardo,[14] the parties to the Reconveyance Case – Bernardo and respondent spouses Ladanga – allegedly entered into a Compromise Agreement with respect to the *Cubao* property. (The records of this case does not include a copy of such alleged Compromise Agreement.) This Compromise Agreement, which was allegedly approved by the trial court, stated that Bernardo and the spouses Ladanga have agreed to sell the Cubao property

[13] *Rollo* of G.R. No. 167284, pp. 67-72; penned by Judge Job B. Madayag. Emphasis supplied.

[14] CA *rollo*, pp. 91-92.

to an unmentioned third party.[15] The parties did not disclose to whom payment was made for such alleged sale.

The Reconveyance Case then proceeded and, after 20 years in the trial court, was finally decided in favor of Clemencia's estate. The trial court's February 24, 1995 Decision ordered the reconveyance of both the *Diliman* property (TCT No. 197624) and the *Cubao* property (TCT No. 204090) to "[Bernardo Aseneta] for and in behalf of Miss Clemencia Aseneta." The dispositive portion reads thus:

> WHEREFORE, premises considered, by preponderance of evidence, the Court finds in favor of [Bernardo Aseneta] and against the [Spouses Ladanga], and hereby orders as follows:
>
> A. For x x x spouses Ladanga to reconvey the titles and possession to the property now covered [by] TCT Nos. 197624 and 204090 to [Bernardo Aseneta] for and in behalf of Miss Clemencia Aseneta;
>
> B. For the Register of Deeds of Quezon City to cancel TCT Nos. 197624 and 204090 and to issue new transfer certificates of title in lieu of those cancelled, upon payment of the required fees by [Bernardo Aseneta], in the name of Miss Clemencia Aseneta;
>
> C. For the x x x spouses Ladanga to render within fifteen (15) days an accounting of rentals received from the properties covered by TCT No. 197624 from April, 1974 up to the present and so with the property under TCT No. 204090 from November 1974 up to the present and to remit said rentals to [Bernardo Aseneta] minus any amount paid by the x x x [spouses] Ladanga as realty taxes for the period mentioned;
>
> D. For x x x [spouses] Ladanga to pay [Bernardo Aseneta] ₱10,000.00 as reasonable attorney's fees; and
>
> E. Cost of suit.
>
> SO ORDERED.[16]

The spouses Ladanga appealed the adverse decision in the Reconveyance Case to the CA. The appeal was docketed as CA-G.R. CV No. 51242.

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[15] Bernardo's Clarification and Opposition, pp. 1-2 (*rollo* of G.R. No. 167284, pp. 76-77) and Spouses Ladanga's Petition in G.R. No. 145874, p. 5 (*id.* at 108).

[16] RTC Decision, p. 7; *id.* at 62; decided by Judge Elpidio M. Catungal, Sr.

It was at this stage that petitioners Estate of Soledad Maninang (Estate of Maninang) and QT attempted to join Bernardo as appellees in the Reconveyance Case by filing a Motion for Joinder of Additional Parties on September 2, 1996.[17] Petitioners claimed that under the Decision in the Probate Case, they had a 50% undivided interest in the Cubao property, which the trial court in the Reconveyance Case adjudicated in favor of the estate of Clemencia. They posited that while the Cubao property was not specifically identified in the compromise agreement in the Probate Case, it falls under the clause "any other property, known or unknown."

Bernardo opposed petitioners' motion on the ground that the spouses Ladanga's appeal in the Reconveyance Case does not involve the Cubao property, but only the Diliman property.[18] The spouses Ladanga did not controvert Bernardo's contention that the appeal only involves the Diliman property. Instead they opposed petitioners' motion on the ground that petitioners' right to a share in Clemencia's estate is dubitable and should be threshed out in the appropriate proceedings.[19]

Without acting on petitioners' Motion for Joinder of Additional Parties, the CA affirmed *in toto* in its November 7, 2000 Decision the trial court's decision with respect to the Diliman property. The dispositive portion of the CA's Decision reads as follows:

> IN VIEW OF THE FOREGOING, the appealed decision, insofar as it relates to the property presently covered by TCT No. 197624, is hereby *AFFIRMED*.
>
> SO ORDERED.[20]

On November 24, 2000, respondent spouses Ladanga appealed[21] the CA Decision to the Supreme Court (G.R. No. 145874). This Court affirmed the CA Decision over the

[17] *Id.* at 63-66.

[18] *Id.* at 76-78.

[19] *Id.* at 74-75.

[20] CA Decision, p. 11; *id.* at 49.

[21] *Id.* at 104-117.

Diliman property in its September 30, 2005 Decision,[22] which attained finality on November 11, 2005.[23]

Meanwhile, the petitioners learned in 2001 of the CA Decision in CA-G.R. CV No. 51242, which affirmed the trial court's Decision with respect to the Diliman property. Petitioners filed before the CA a Motion for Partial Reconsideration[24] of the CA Decision. They prayed for the nullification of the compromise agreement executed by Bernardo and spouses Ladanga over the Cubao property on the basis that Bernardo had no authority from the probate court to enter into such agreement;[25] or, in the alternative, petitioners sought a declaration that no such compromise agreement actually existed between Bernardo and spouses Ladanga.[26]

The appellate court, in its assailed June 1, 2004 Resolution,[27] refused to act on petitioners' Motion for Partial Reconsideration because of the then pending appeal of CA-G.R. CV No. 51242 in the Supreme Court. To recall, the Resolution disposes as follows:

> ACCORDINGLY, on account of the pendency before the Supreme Court of a petition for review filed by defendant-appellant Agustin Ladanga from the decision of the Court, the Court will again refrain from acting on the aforesaid Motion for Partial Reconsideration.
>
> SO ORDERED.

Petitioners filed before the CA a Motion for Reconsideration,[28] which was denied by the CA in its assailed December 29, 2004 Resolution.[29] This assailed Resolution pertinently reads:

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[22] *Spouses Ladanga v. Aseneta*, 508 Phil. 376 (2005).

[23] *Rollo* of G.R. No. 145874, (unpaged).

[24] *Rollo* of G.R. No. 167284, pp. 88-101.

[25] *Id.* at 92-93.

[26] *Id.* at 90-92.

[27] *Id.* at 50.

[28] *Id.* at 118-130.

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

The Estate of Soledad Maninang and the Quisumbing Torres Law Firm (movants for partial reconsideration) are back with a Motion for Reconsideration of the June 1, 2004 Resolution, contending that their Motion for Partial Reconsideration of the November 7, 2000 Decision may yet be resolved notwithstanding the pendency of the Petition for Review in the Supreme Court. Herein movants submit that 'considering that the subject matter of movants' Motion for Partial Reconsideration is not the same as the subject matter of defendant-appellants' Supreme Court petition, there is absolutely no risk that the Honorable Court's Resolution of the Motion for Partial Reconsideration may conflict with the Supreme Court's future decision in G.R. No. 145[8]74. The Court is not persuaded. Prudence, let alone proper judicial decorum, commends that action on the aforesaid incident by the Court should be deferred until such time that the High Court will have finally resolved G.R. No. 145[8]74.

WHEREFORE, the Motion for Reconsideration is DENIED.[30]

Petitioners come to this Court seeking the annulment of the assailed Resolutions and a writ of *mandamus* to compel the CA to act on their various motions.

Petitioners' Arguments

Petitioners contest the ground which the CA relied upon in refraining from acting on their motions. They argue that the pending appeal of CA-G.R. CV No. 51242 in the Supreme Court has nothing to do with their pending motions. They point out that the spouses Ladanga's appeal to the Supreme Court only involved the *Diliman* property, while petitioners' Motion for Partial Reconsideration before the CA sought a ruling on the compromise agreement over the *Cubao* property. The difference in the subject matter of the two appeals prevents the possibility of issuing conflicting rulings on the case. [31]

As authority for their theory that the CA can still rule on their motions, petitioners cite Section 8 of Rule 42 of the Rules of Court which states that the lower court "loses jurisdiction over the case upon the perfection of the appeals filed in due

[30] *Id.* at 52.

[31] Petitioners' Memorandum, pp. 17-19; *id.* at 204-206.

time and the expiration of the time to appeal ***of the other parties***." Basing their theory on the said provision, petitioners maintain that the CA still has jurisdiction to act on their motions because petitioners were still well within their period to appeal when they filed their Motion for Partial Reconsideration.[32]

As regards their Motion for Joinder of Additional Parties,which was not acted upon by the CA, petitioners are adamant that the CA had the ministerial duty to act on their motions, as allegedly enshrined in no less than the Constitution.[33] Petitioners insist that, as *pro indiviso* co-owners of the Cubao property, they have a right to join Bernardo as party-plaintiff in the reconveyance case.[34]

Respondents' Arguments

Respondent Bernardo waived his right to file a comment and submitted the petition for resolution;[35] hence, the Court resolved in its Resolution dated December 12, 2007 to dispense with the filing of Bernardo's memorandum.

On the other hand, respondent spouses Ladanga filed their Comment dated June 28, 2005.[36] They assert that the CA was correct in declining to act on petitioners' motions because the CA already lost jurisdiction over CA-G.R. CV No. 51242 after the spouses Ladangas' appeal to this Court was given due course. As to the filing of a Memorandum, the same was waived[37] by the respondent spouses' lawyer, Atty. Gregorio T. Fabros, who manifested that the respondent spouses had already died.

Issue

Whether petitioners have a right to adjudicate their claims to the Cubao property in the appeal in the Reconveyance Case,

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[32] *Id.* at 13-16; *id.* at 200-203.

[33] *Id.* at 25-27; *id.* at 212-214.

[34] *Id.* at 19-25; *id.* at 206-212.

[35] *Rollo* of G.R. No. 167284, p. 156.

[36] *Id.* at 154-155.

[37] *Id.* at 221.

such that the respondent court gravely abused its discretion in denying them the opportunity to participate therein.

Our Ruling

The petition lacks merit.

Petitioners claim that they have an interest in the properties of Clemencia's estate by virtue of the decision in the Probate Case which gave them a certain share in those properties. They thus seek to join the appeal in the Reconveyance Case so that the *Cubao* property would be adjudicated to Clemencia's estate. But the said motion is moot because the Cubao property had already been adjudicated in favor of Clemencia's estate with finality by the trial court in the Reconveyance Case. The trial court's February 24, 1995 Decision ordered the spouses Ladanga to reconvey the Cubao property to Clemencia's estate, and this was not appealed. What was appealed to the CA (in CA-G.R. CV No. 51242) was the order to reconvey the *Diliman* property. That the appeal in the Reconveyance Case (CA-G.R. CV No. 51242) only involved the Diliman property was finally determined by this Court in G.R. No. 145874.

In short, there is no need for petitioners to join the appeal in the Reconveyance Case because: first, such appeal covered the Diliman property and not the Cubao property; and second, as to the Cubao property, it has already been settled with finality that such property must be reconveyed by the spouses Ladanga to Clemencia's estate.

Based on the foregoing, the respondent court did not gravely abuse its discretion when it did not allow petitioners to join and participate in the appeal in the Reconveyance Case. Grave abuse of discretion "implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law."[38]

[38] *Cortez-Estrada v. Heirs of Samut,* 491 Phil. 458, 474 (2005).

In the case at bar, while the CA's actions may not have been ideal (it should have simply denied petitioners' motions instead of refraining from acting on them), the same did not amount to a grave abuse of discretion considering that the issues raised by petitioners were not related to the subject matter before the CA. The petitioners' interest is in the Cubao property, while the subject of the appeal before the CA was the Diliman property.

As to petitioners' ultimate objective of getting their alleged share in the Cubao property, this cannot be litigated in the appeal of the Reconveyance Case but must be the subject of a separate suit or proceeding. Petitioners' cause of action is independent of the cause of action in the Reconveyance Case and cannot possibly be litigated without causing undue delay and prejudice to the respondents, who have already endured more than two decades only to resolve the issues in the Reconveyance Case. Moreover, petitioners' cause of action presents contentious issues (*i.e.*, scope of the Compromise Agreement in the Probate Case, authority of Bernardo to compromise an estate property in the Reconveyance Case, defenses of other interested parties, *etc.*) which may still need to be threshed out in a proper trial and may require impleading other interested parties. To allow petitioners to litigate these matters for the first time in the appellate stage of the Reconveyance Case will not serve the ends of justice – not to respondents and not even to petitioners.

WHEREFORE, premises considered, the Petition for *Certiorari* and *Mandamus* is *DISMISSED.*

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169196. July 6, 2011]

PETRA C. MARTINEZ, in her capacity as General Manager, Claveria Agri-Based Multi-Purpose Cooperative, Inc., *petitioner, vs.* **FILOMENA L. VILLANUEVA,** *respondent.*

[G.R. No. 169198. July 6, 2011]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **FILOMENA L. VILLANUEVA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; STATUTES; REPEALS; A LAW CANNOT BE DEEMED REPEALED UNLESS IT IS CLEARLY MANIFEST THAT THE LEGISLATURE INTENDED IT.— [T]he Court notes that nothing in R.A. No. 6938 shows that it repealed the provisions of R.A. No. 6713 as regards the prohibitions on CDA officials and employees. R.A. No. 6938 does not contain any provision categorically and expressly repealing the provisions of R.A. No. 6713 pertaining to prohibitions on government officials and employees, even at least for those belonging to the CDA. Laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. Hence, a law cannot be deemed repealed unless it is clearly manifest that the legislature intended it. The failure to add a specific repealing clause indicates that the intent was not to repeal any existing law, unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and old laws.

2. ID.; ID.; REPUBLIC ACT NO. 6938 (THE COOPERATIVE CODE OF THE PHILIPPINES); THE BAN ON COOPERATIVE DEVELOPMENT AUTHORITY OFFICIALS HOLDING A POSITION IN A COOPERATIVE PROVIDED IN THE LAW SHOULD BE TAKEN AS A PROHIBITION IN ADDITION TO THOSE PROVIDED IN REPUBLIC ACT NO. 6713.— [O]ur reading of the provisions of R.A. No. 6938

fails to reveal to us any inconsistency or repugnancy between the pertinent provisions of R.A. No. 6938 and R.A. No. 6713. Thus, neither can there be any implied repeal. The ban on CDA officials holding a position in a cooperative provided in R.A. No. 6938 should therefore be taken for what it is, that is, it is a prohibition in addition to those provided in R.A. No. 6713 and specifically applicable to CDA officials and employees. True, R.A. No. 6938 allows CDA officials and employees to become members of cooperatives and enjoy the privileges and benefits attendant to membership. However, R.A. No. 6938 should not be taken as creating in favor of CDA officials and employees an exemption from the coverage of Section 7(d), R.A. No. 6713 considering that the benefits and privileges attendant to membership in a cooperative are not confined solely to availing of loans and not all cooperatives are established for the sole purpose of providing credit facilities to their members. Thus, the limitation on the benefits which respondent may enjoy in connection with her alleged membership in CABMPCI does not lead to absurd results and does not render naught membership in the cooperative or render R.A. No. 6938 ineffectual, contrary to respondent's assertions. We find that such limitation is but a necessary consequence of the privilege of holding a public office and is akin to the other limitations that, although interfering with a public servant's private rights, are nonetheless deemed valid in light of the public trust nature of public employment.

3. ID.; ID.; REPUBLIC ACT NO. 6713 (THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES); THE PROHIBITION IN SECTION 7(d) THEREOF IS *MALUM PROHIBITUM*.— [T]he ratiocination of the CA that respondent should not have been held liable for grave misconduct because of the supposed failure of Martinez to show undue influence is mistaken. The relevant provision under which respondent was charged is Section 7(d) of R.A. No. 6713 x x x. Said prohibition is Section 7(d) is *malum prohibitum.* It is the commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated. Therefore, it is immaterial whether respondent has fully paid her loans since the law prohibits the mere act of soliciting a loan under the circumstances provided in Section 7(d) of R.A.

No. 6713. Neither is undue influence on respondent's part required to be proven as held by the CA. Whether respondent used her position or authority as a CDA official is of no consequence in the determination of her administrative liability. And considering that respondent admitted having taken two loans from CABMPCI, which is a cooperative whose operations are directly regulated by respondent's office, respondent was correctly meted the penalty of suspension by the Deputy Ombudsman for Luzon for violation of Section 7(d).

4. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; RULE ON IMMUTABILITY OF JUDGMENTS; APPLIED IN CASE AT BAR.— Aside from the reversal of the appellate court's decision which exonerated respondent from administrative liability, Martinez also prays, in the interest of justice, that the October 30, 2002 CA decision nullifying the October 16, 2001 RTC decision and the corresponding writ of execution issued against respondent's husband, be reversed and set aside. x x x The CA decision has already attained finality on November 13, 2003 after this Court denied the petition for review on *certiorari* assailing such decision. As held in the case of *Mocorro, Jr. v. Ramirez*: "x x x A definitive final judgment, however erroneous, is no longer subject to change or revision. A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/ resolutions of a court must reach a point of finality set by the law."

APPEARANCES OF COUNSEL

Danilo C. Cunanan for Petra Martinez.

Office of the Legal Affairs (Ombudsman) for Ombudsman.

Carlos P. Rivera for Filomena L. Villanueva.

D E C I S I O N

VILLARAMA, JR., *J.*:

The above-titled consolidated petitions[1] filed under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assail the May 6, 2005 Decision[2] and August 8, 2005 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 86896. The CA had reversed the September 15, 2004 Order[4] of the Deputy Ombudsman for Luzon finding respondent Filomena L. Villanueva liable for grave misconduct for violating Republic Act (R.A.) No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees.

The undisputed facts of the case are as follows:

Petitioner Petra C. Martinez (Martinez) is the General Manager of Claveria Agri-Based Multi-Purpose Cooperative, Inc. (CABMPCI) while respondent is the Assistant Regional Director of the Cooperative Development Authority (CDA), Regional Office No. 02, Tuguegarao City, Cagayan.

On May 19, 1998, respondent obtained a loan of ₱50,000 from CABMPCI as evidenced by a loan note[5] and a cash disbursement voucher[6] both signed by respondent and approved by Martinez in the latter's capacity as General Manager.

On June 13, 1998, respondent again obtained a loan from CABMPCI, with the corresponding loan note[7] and cash

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[1] *Rollo* (G.R. No. 169196), pp. 7-36; *rollo* (G.R. No. 169198), pp. 11-38.

[2] *Id.* at 38-46. Penned by Associate Justice Eliezer R. de los Santos with Associate Justices Eugenio S. Labitoria and Arturo D. Brion (now a member of this Court) concurring.

[3] *Id.* at 47-48.

[4] *Id.* at 72-74.

[5] Ombudsman records, p. 5.

[6] *Id.* at 6.

[7] *Id.* at 9.

disbursement voucher[8] also signed by respondent and approved by Martinez. The loan was for ₱1,000,000, but respondent returned ₱500,000 five days later.

On July 19, 1999, CABMPCI issued Official Receipt (O.R.) No. 141084[9] to respondent stating that it received from the latter the sum of ₱764,865.25 in payment of the following sums:

Loans	: 589730.15
Interest on Loans	: 87567.55
Fines	: 87567.55

On the same day, Martinez issued the following certification to respondent:

> This is to certify that Mrs. Filomena Villanueva has fully paid her loan in the amount of Five Hundred eighty nine thousand seven hundred thirty and fifteen centavos (₱589,730.15) at the Claveria Agri-based Mul[ti-] purpose Cooperative Incorporated.
>
> This certification is issued upon the request of Mrs. Villanueva for general purposes.
>
> Issued this 19th day of July 1999.
>
> (Sgd.)
> MRS. PETRA C. MARTINEZ
> General Manager[10]

Also on July 19, 1999, respondent's husband, Armando Villanueva (Armando), obtained a loan from CABMPCI in the amount of ₱780,000 as evidenced by a loan note[11] and cash disbursement voucher[12] signed by Armando and approved by Martinez. The parties, however, have different versions as to

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[8] *Id.* at 10.

[9] Annex "2" of Respondent's Counter-Affidavit filed before the Office of the Ombudsman.

[10] Annex "3" of Respondent's Counter-Affidavit filed before the Office of the Ombudsman.

[11] Ombudsman records, p. 11.

[12] *Id.* at 12; RTC records, p. 4.

the circumstances surrounding the transactions that occurred on July 19, 1999.

Martinez claims that the Villanueva spouses came to her that day and requested her to transfer respondent's two loans (₱15,134.75 and ₱764,865.25, inclusive of interests and charges) to Armando's name so that respondent's name will not be among the list of borrowers, she being an official of the CDA. Due to respondent's moral ascendancy, Martinez claims that she acceded to the request. Accordingly, Armando assumed the outstanding loan of his wife. As respondent's loan had been transferred to her husband, Martinez issued O.R. No. 141084 and a certification to the effect that respondent has already paid her loan although no money was actually received. Respondent, on the other hand, contends that her husband obtained the ₱780,000 loan in his personal capacity as member of CABMPCI.

Subsequently, following Armando's failure to pay his loan, CABMPCI, represented by Martinez, filed an action for collection of sum of money against Armando before the Regional Trial Court (RTC) of Sanchez Mira, Cagayan. Martinez likewise filed with the CDA an administrative complaint against respondent for Willful Failure to Pay Just Debt.

On October 16, 2001, the RTC declared Armando in default and rendered a decision[13] ordering him to pay ₱1,107,210.90 plus the stipulated rate of 3% per month as combined fine and interest, and to pay the costs of collection. A writ of execution[14] to this effect was issued.

Armando thereafter filed a petition for prohibition,[15] docketed as CA-G.R. SP No. 71002 before the CA, seeking the nullification of the October 16, 2001 decision and writ of execution issued against him, claiming that said loan has already been paid as shown by O.R. No. 141084 issued by CABMPCI to respondent. CABMPCI was required to file a comment, but it failed to comply.

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[13] *Id.* at 13-14.

[14] *Id.* at 15.

[15] CA *rollo* (CA-G.R. SP No. 71002), pp. 2-5.

Thus, the CA deemed such noncompliance as a waiver of its right to refute the allegations in Armando's petition. On October 30, 2002, the CA rendered a decision[16] nullifying the RTC decision and writ of execution on the ground that the obligation has already been settled.

On December 9, 2002, petitioner filed an affidavit/complaint[17] before the Office of the Deputy Ombudsman for Luzon charging respondent with violation of Article 215[18] of the Revised Penal Code and Section 7(d)[19] in relation to Section 11[20] of R.A. No. 6713.

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[16] *Id.* at 20-24.

[17] Ombudsman records, pp. 2-4.

[18] ART. 215. *Prohibited Transactions.*—The penalty of *prision correccional* in its minimum period or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon any appointive public officer who, during his incumbency, shall directly or indirectly become interested in any transaction of exchange or speculation within the territory subject to his jurisdiction.

[19] SEC. 7. *Prohibited Acts and Transactions.* - In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

xxx xxx xxx

(d) *Solicitation or acceptance of gifts.* - Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

xxx xxx xxx

[20] SEC. 11. *Penalties.* - (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8, or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding Five Thousand Pesos (₱5,000.00), or both, and in the discretion of the court of competent jurisdiction, disqualification to hold public office.

On July 22, 2003, Graft Investigation Officer II Ismael B. Boco rendered a Decision on the administrative aspect of petitioner's complaint finding respondent liable for grave misconduct and recommending the penalty of dismissal. Said decision was duly approved by Victor C. Fernandez, Deputy Ombudsman for Luzon, on August 18, 2003.

Deputy Ombudsman Fernandez found that respondent abused her position when she solicited a loan from CABMPCI despite the fact that she is disqualified by its by-laws and when she used her influence to transfer her loan obligation to her husband with no money being actually paid. The Deputy Ombudsman for Luzon noted that while an individual may incur an indebtedness unrestricted by the fact that she is a public officer or employee, caution should be taken to prevent the development of suspicious circumstances that might inevitably impair the image of the public office.

On September 9, 2003, respondent sought reconsideration of the decision. The Deputy Ombudsman for Luzon, in an Order[21] dated September 15, 2004, denied the motion for reconsideration but reduced the penalty from dismissal to six months suspension without pay. Respondent's suspension from office was thereafter implemented effective at the close of office hours of October 8, 2004.

(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.

(c) Private individuals who participate in conspiracy as co-principals, accomplices or accessories, with public officials or employees, in violation of this Act, shall be subject to the same penal liabilities as the public officials or employees and shall be tried jointly with them.

(d) The official or employee concerned may bring an action against any person who obtains or uses a report for any purpose prohibited by Section 8 (D) of this Act. The court in which such action is brought may assess against such person a penalty in any amount not to exceed [T]wenty-[F]ive [T]housand [P]esos (₱25,000.00). If another sanction hereunder or under any other law is heavier, the latter shall apply.

[21] *Supra* note 4.

Aggrieved, respondent filed a petition for review before the CA assailing the September 15, 2004 Order of the Office of the Deputy Ombudsman for Luzon.

Respondent argued that the Office of the Deputy Ombudsman for Luzon erred in treating the loan she obtained from CABMPCI as a prohibited loan under Section 7(d) of R.A. No. 6713 because she was an official of the CDA. Respondent argued that although Section 7(d) of R.A. No. 6713 prohibits all public officials and employees from soliciting or accepting loans in connection with any operation being regulated by her office, the subsequent enactment of R.A. No. 6938 or the Cooperative Code of the Philippines[22] allows qualified officials and employees to become members of cooperatives and naturally, to avail of the attendant privileges and benefits of membership. She contended that it would be absurd if CDA officials and employees who are eligible to apply for membership in a cooperative would be prohibited from availing loans. She respectfully submitted that the only limitation applicable to any CDA officer or employee is Article 28[23] of R.A. No. 6938 which disqualifies them from being elected or appointed to any position in a cooperative.

She likewise argued that the Office of the Deputy Ombudsman for Luzon has no jurisdiction to suspend her, much less decree immediate implementation of the suspension order, as the authority to impose sanctions properly belongs to the CDA.[24]

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[22] Now amended by R.A. No. 9520 or the Philippine Cooperative Code of 2008.

[23] ART. 28. *Government Officers and Employees.* - (1) Any officer or employee of the Cooperative Development Authority shall be disqualified to be elected or appointed to any position in a cooperative;

(2) Elective officials of the Government, except *barangay* officials, shall be ineligible to become officers and directors of cooperatives; and

(3) Any government employee may, in the discharge of his duties as member in the cooperative, be allowed by the head of office concerned to use official time for attendance at the general assembly, board and committee meetings of cooperatives as well as cooperative seminars, conferences, workshops, technical meetings, and training courses locally or abroad: *Provided*, That the operations of the office concerned are not adversely affected.

[24] CA *rollo* (CA-G.R. SP No. 86896), pp. 5-8.

In the assailed decision, the CA granted respondent's petition for review and set aside the September 15, 2004 Order of the Deputy Ombudsman for Luzon.

The CA held that the only limitation for CDA officers or employees in R.A. No. 6938 is Article 28 which disqualifies them from being elected or appointed to any position in a cooperative. The CA further pointed out that under Article 29[25] of said law, an applicant for membership shall be deemed a member after approval of her membership by the board of directors and shall exercise the rights of a member after having made such payments to the cooperative in respect to membership or after acquiring interest in the cooperative as may be prescribed by the by-laws. The CA found questionable Martinez's claim that respondent is disqualified from being a member considering that Martinez approved respondent's loan. The CA added that it also would be unjust and inequitable for respondent to receive an official receipt signed by the general manager, indicating full payment of the loan if such receipt could not be taken as reliable evidence of actual payment. It held that where the debtor introduces some evidence of payment, the burden shifts to the creditor to show nonpayment. The CA likewise ruled that Martinez failed to prove that respondent had used undue influence in soliciting the loan and held that the Ombudsman erred in applying R.A. No. 6713 without recognizing the fact of membership and its privileges.

Hence the instant petitions.

The Office of the Ombudsman proffers the following arguments for this Court's consideration:

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[25] ART. 29. *Application.* - An applicant for membership shall be deemed a member after approval of his membership by the board of directors and shall exercise the rights of [a] member after having made such payments to the cooperative in respect to membership or acquired interest in the cooperative as may be prescribed in the by-laws. In case membership is refused or denied by the board of directors, an appeal may be made to the general assembly and the latter's decision shall be final.

I.

THE HONORABLE COURT OF APPEALS ERRED IN THE APPLICATION OF RA 6938, BY ONLY APPLYING AND LIMITING ITSELF TO ARTICLES 28 AND 29 THEREOF AND DISREGARDING ARTICLE 26[26] OF THE SAME [LAW]. ARTICLE 26 CLEARLY DISQUALIFIES PRIVATE RESPONDENT FROM BECOMING A MEMBER OF A COOPERATIVE ON WHICH SHE EXERCISED REGULATORY AUTHORITY AS THE ASSISTANT DIRECTOR OF THE COOPERATIVE DEVELOPMENT AUTHORITY (CDA).

II.

THERE IS MORE THAN ENOUGH SUBSTANTIAL EVIDENCE TO PROVE THE ADMINISTRATIVE GUILT OF RESPONDENT FOR MISCONDUCT WHEN SHE, AS A RANKING OFFICIAL OF THE CDA AND TASKED TO APPLY AND IMPLEMENT THE COOPERATIVE CODE OF THE PHILIPPINES AND ITS RULES, REGULATIONS AND ISSUANCES RELATIVE THERETO AND REGULATE THE AFFAIRS OF COOPERATIVES, SOLICITED AND OBTAINED A ONE (1) MILLION LOAN FROM CAGAYAN AGRI-BASED MULTI-PURPOSE COOPERATIVE, INCORPORATED (CABMPCI), NOTWITHSTANDING HER DISQUALIFICATION AS MEMBER OF SAID COOPERATIVE[.][27]

The Office of the Ombudsman argues that it is not enough that the membership of the respondent be approved by the board of directors as required by Article 29 of R.A. No. 6938, or that she was not elected to any position in a cooperative as provided in Article 28. Article 26 of said law, which requires that a member of the cooperative "resides or farms in the area of operation," should have been applied as well, according to the Ombudsman. And since respondent conceded that she is not a resident of Claveria, nor did she operate any farm in said place, respondent was disqualified from membership in CABMPCI.

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[26] ART. 26. *Who May Be Members of Cooperatives.* - Any natural person, who is a citizen of the Philippines, a cooperative, or nonprofit organization with juridical personality shall be eligible for membership in a cooperative if the applicant meets the qualifications prescribed in the by-laws: *Provided*, That only natural persons may be admitted as members of a primary cooperative.

[27] *Rollo* (G.R. No. 169198), pp. 21-22.

The Ombudsman adds that it is incumbent upon respondent, as CDA Assistant Director, to be knowledgeable of the by-laws and articles of incorporation of CABMPCI, particularly regarding the qualifications of the members, since the affairs of CABMPCI are within the area of jurisdiction of respondent's office. Despite this, however, respondent still applied for membership, enabling her to obtain a loan, by clearly using her influence as an officer of the CDA in violation of R.A. No. 6938, the very law she is supposed to implement. The Ombudsman argues that respondent put herself in a conflict-of-interest situation proscribed by Section 7(d) of R.A. No. 6713 and clearly violated said law when she took the prohibited loans.

Petitioner Martinez, on the other hand, submits that the CA erred in:

I.

…APPRECIATING THE EVIDENCE ON RECORD; COROLLARILY, IT GRAVELY ERRED IN GIVING FULL CREDENCE TO A MERE PHOTOCOPY OF A CERTAIN UNVERIFIED AND UNIDENTIFIED PIECE OF DOCUMENT[;]

II.

…HOLDING THAT SUBSTANTIAL EVIDENCE DOES NOT EXIST TO SUPPORT [THE] OMB-LUZON'S CONCLUSION THAT RESPONDENT IS GUILTY OF GRAVE MISCONDUCT[; AND]

III.

. . . . NOT FINDING THAT MERE SOLICITATION OF A LOAN IS PROHIBITED UNDER SECTION 7(D) OF R.A. 6713.[28]

Martinez argues that other than respondent's bare allegations, respondent failed to prove that she actually applied, and was duly admitted, for membership at CABMPCI. Martinez claims that the CA erred in giving probative value to a mere photocopy of the cover page of Passbook No. 7716 allegedly issued to respondent as evidence of her membership. Martinez argues that respondent should have submitted a copy of her application

[28] *Rollo* (G.R. No. 169196), p. 14.

form duly accepted by the Board of Directors, together with the official receipt evidencing the payment of membership fee and paid-up share capital. Martinez adds that pursuant to CABMPCI's by-laws, respondent is not at all qualified to become a member.

As respondent never became a member, Martinez insists that it was only because of respondent's position and authority as Assistant Regional Director of the CDA that she went out of the cooperative's policies in order to accommodate respondent's loan applications. Specifically, she allowed respondent to obtain a loan despite the fact that the latter was not eligible for membership. Indeed, Martinez points out that even if respondent was eligible for membership, the cooperative's policy is to allow new members to avail of a loan only after two months of membership and to a maximum loanable amount of only twice the membership capital/deposit.[29]

Martinez also disagrees with the CA's observation which seems to imply that respondent's full payment of the loan exonerates her from administrative liability. Martinez contends that the issue of whether the loans were paid is immaterial to the charge of violation of Section 7(d) of R.A. No. 6713 since said law prohibits the mere solicitation of a loan. Martinez points out that from the very start, respondent never denied obtaining a loan from CABMPCI.

Lastly, Martinez also urges the Court to set aside the October 30, 2002 CA decision in CA-G.R. SP No. 71002 nullifying the October 16, 2001 RTC decision and the corresponding writ of execution issued against respondent's husband.

Respondent, for her part, manifests in her one-page comment that she is of the considered view that the assailed CA decision and resolution are supported by law and jurisprudence. She submits that the petitions present no cogent reasons to warrant reversal of assailed decision and resolution.

The petitions are partly meritorious.

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[29] CA *rollo* (CA-G.R. SP No. 86896), p. 81.

It is worthy to note at the outset that the reasoning of the CA suffers from inconsistency. On the one hand, the CA ruled that the only prohibition applicable to CDA officials and employees is the prohibition stated in Article 28 of R.A. No. 6938, and that the Deputy Ombudsman for Luzon "erred in applying R.A. 6713 without recognizing the fact of membership and its privileges." Implicit in the CA's statements is a finding that the prohibition in Section 7(d) of R.A. No. 6713, which applies to all public officials and employees, has been repealed by R.A. No. 6938. Yet, in the same breath, the CA also ruled that there exists no substantial evidence to warrant a finding that respondent violated Section 7(d) of R.A. No. 6713, thereby implying that the prohibition still stands. Whichever way the CA decision is read, however, the error on the part of the CA is clear.

First, the Court notes that nothing in R.A. No. 6938 shows that it repealed the provisions of R.A. No. 6713 as regards the prohibitions on CDA officials and employees. R.A. No. 6938 does not contain any provision categorically and expressly repealing the provisions of R.A. No. 6713 pertaining to prohibitions on government officials and employees, even at least for those belonging to the CDA. Laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. Hence, a law cannot be deemed repealed unless it is clearly manifest that the legislature intended it. The failure to add a specific repealing clause indicates that the intent was not to repeal any existing law, unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and old laws.[30] Here, Article 127 of R.A. No. 6938 simply reads:

ART. 127. *Repeals*. – Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof inconsistent with any provision of this Code shall be deemed repealed: *Provided, however*, That nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of Presidential Decree No. 269: *Provided further*, That the electric cooperatives

[30] *Secretary of Finance v. Ilarde*, G.R. No. 121782, May 9, 2005, 458 SCRA 218, 233, citing *Recaña, Jr. v. Court of Appeals*, G.R. No. 123850, January 5, 2001, 349 SCRA 24, 33.

which qualify as such under this Code shall fall under the coverage thereof.

Also, our reading of the provisions of R.A. No. 6938 fails to reveal to us any inconsistency or repugnancy between the pertinent provisions of R.A. No. 6938 and R.A. No. 6713. Thus, neither can there be any implied repeal. The ban on CDA officials holding a position in a cooperative provided in R.A. No. 6938 should therefore be taken for what it is, that is, it is a prohibition in addition to those provided in R.A. No. 6713 and specifically applicable to CDA officials and employees. True, R.A. No. 6938 allows CDA officials and employees to become members of cooperatives and enjoy the privileges and benefits attendant to membership. However, R.A. No. 6938 should not be taken as creating in favor of CDA officials and employees an exemption from the coverage of Section 7(d), R.A. No. 6713 considering that the benefits and privileges attendant to membership in a cooperative are not confined solely to availing of loans and not all cooperatives are established for the sole purpose of providing credit facilities to their members.[31] Thus, the limitation on the

[31] ARTICLE 6. *Organization of Cooperatives.* - A cooperative may be organized and registered by at least fifteen (15) persons for any or all of the following purposes:

(1) To encourage thrift and savings mobilization among the members;

(2) To generate funds and extend credit to the members for productive and provident purposes;

(3) To encourage among members systematic production and marketing;

(4) To provide goods and services and other requirements to the members;

(5) To develop expertise and skills among its members;

(6) To acquire lands and provide housing benefits for the members;

(7) To insure against losses of the members;

(8) To promote and advance the economic, social and educational status of the members;

(9) To establish, own, lease or operate cooperative banks, cooperative wholesale and retail complexes, insurance and agricultural/industrial processing enterprises, and public markets;

benefits which respondent may enjoy in connection with her alleged membership in CABMPCI does not lead to absurd results and does not render naught membership in the cooperative or render R.A. No. 6938 ineffectual, contrary to respondent's assertions. We find that such limitation is but a necessary consequence of the privilege of holding a public office and is akin to the other limitations that, although interfering with a public servant's private rights, are nonetheless deemed valid in light of the public trust nature of public employment.

Second, the ratiocination of the CA that respondent should not have been held liable for grave misconduct because of the supposed failure of Martinez to show undue influence is mistaken. The relevant provision under which respondent was charged is Section 7(d) of R.A. No. 6713 which reads:

> SEC. 7. *Prohibited Acts and Transactions*.- In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:
>
> (d) ***Solicitation or acceptance of gifts*. - Public officials and employees shall not solicit or accept,** directly or indirectly, any gift, gratuity, favor, entertainment, **loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.**
>
> xxx xxx xxx
>
> The Ombudsman shall prescribe such regulations as may be necessary to carry out the purpose of this subsection, including pertinent reporting and disclosure requirements.
>
> Nothing in this Act shall be construed to restrict or prohibit any educational, scientific or cultural exchange programs subject to national security requirements. (Emphasis supplied.)

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(10) To coordinate and facilitate the activities of cooperatives; and

(11) To undertake any and all other activities for the effective and efficient implementation of the provisions of this Code.

Said prohibition in Section 7(d) is *malum prohibitum*. It is the commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated. Therefore, it is immaterial whether respondent has fully paid her loans since the law prohibits the mere act of soliciting a loan under the circumstances provided in Section 7(d) of R.A. No. 6713. Neither is undue influence on respondent's part required to be proven as held by the CA. Whether respondent used her position or authority as a CDA official is of no consequence in the determination of her administrative liability. And considering that respondent admitted having taken two loans from CABMPCI, which is a cooperative whose operations are directly regulated by respondent's office, respondent was correctly meted the penalty of suspension by the Deputy Ombudsman for Luzon for violation of Section 7(d). The CA committed reversible error when it granted respondent's petition for review which should have been dismissed for lack of merit.

One last note. Aside from the reversal of the appellate court's decision which exonerated respondent from administrative liability, Martinez also prays, in the interest of justice, that the October 30, 2002 CA decision nullifying the October 16, 2001 RTC decision and the corresponding writ of execution issued against respondent's husband, be reversed and set aside.

This we cannot grant.

The CA decision has already attained finality on November 13, 2003 after this Court denied the petition for review on *certiorari* assailing such decision. As held in the case of *Mocorro, Jr. v. Ramirez*:[32]

x x x A definitive final judgment, however erroneous, is no longer subject to change or revision.

A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct

[32] G.R. No. 178366, July 28, 2008, 560 SCRA 362.

erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/ resolutions of a court must reach a point of finality set by the law. The noble purpose is to write *finis* to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.[33]

WHEREFORE, the May 6, 2005 Decision and August 8, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 86896 are *REVERSED and SET ASIDE*. The September 15, 2004 Order of the Office of the Deputy Ombudsman for Luzon in OMB-L-A-02-0803-L is *REINSTATED and UPHELD*.

No costs.

SO ORDERED.

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

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[33] *Id.* at 372-373, citing *Collantes v. Court of Appeals*, G.R. No. 169604, March 6, 2007, 517 SCRA 561, 562 and *Peña v. Government Service Insurance System (GSIS)*, G.R. No. 159520, September 19, 2006, 502 SCRA 383, 404-405.

FIRST DIVISION

[G.R. No. 175457. July 6, 2011]

RUPERTO A. AMBIL, JR., *petitioner, vs.* **SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. No. 175482. July 6, 2011]

ALEXANDRINO R. APELADO, SR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); ELEMENTS.— Petitioners were charged with violation of Section 3(e) of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act x x x. In order to hold a person liable under this provision, the following elements must concur: (1) the accused must be a public officer discharging administrative, judicial or official functions; (2) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

2. ID.; ID.; ID.; THE ACCUSED MUST BE A PUBLIC OFFICER DISCHARGING OFFICIAL FUNCTIONS AND THE JURISDICTION OVER HIM LAY WITH THE SANDIGANBAYAN.— As to the first element, there is no question that petitioners are public officers discharging official functions and that jurisdiction over them lay with the Sandiganbayan. Jurisdiction of the Sandiganbayan over public officers charged with violation of the Anti-Graft Law is provided under Section 4 of Presidential Decree No. 1606, as amended by R.A. No. 8249. xxx Thus, the jurisdiction of the Sandiganbayan over petitioner Ambil, Jr. is beyond question. The same is true

as regards petitioner Apelado, Sr. As to him, a Certification from the Provincial Government Department Head of the HRMO shows that his position as Provincial Warden is classified as Salary Grade 22. Nonetheless, it is only when none of the accused are occupying positions corresponding to salary grade '27' or higher shall exclusive jurisdiction be vested in the lower courts. Here, petitioner Apelado, Sr. was charged as a co-principal with Governor Ambil, Jr., over whose position the Sandiganbayan has jurisdiction. Accordingly, he was correctly tried jointly with said public officer in the proper court which had exclusive original jurisdiction over them – the Sandiganbayan.

3. ID.; ID.; ID.; MANIFEST PARTIALITY AND EVIDENT BAD FAITH; DULY ESTABLISHED IN CASE AT BAR.— In this case, we find that petitioners displayed manifest partiality and evident bad faith in transferring the detention of Mayor Adalim to petitioner Ambil, Jr.'s house. There is no merit to petitioner Ambil, Jr.'s contention that he is authorized to transfer the detention of prisoners by virtue of his power as the "Provincial Jailer" of Eastern Samar. x x x [I]t is the provincial government and not the governor alone which has authority to exercise control and supervision over provincial jails. In any case, neither of said powers authorizes the doing of acts beyond the parameters set by law. On the contrary, subordinates must be enjoined to act within the bounds of law. In the event that the subordinate performs an act *ultra vires*, rules may be laid down on how the act should be done, but always in conformity with the law. xxx [T]he power to order the release or transfer of a person under detention by legal process is vested in the court, not in the provincial government, much less the governor. xxx Still, petitioner Ambil, Jr. insisted on his supposed authority as a "provincial jailer." Said petitioner's usurpation of the court's authority, not to mention his open and willful defiance to official advice in order to accommodate a former political party mate, betray his unmistakable bias and the evident bad faith that attended his actions.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; POWER OF CONTROL AND POWER OF SUPERVISION, DISTINGUISHED.— The power of control is the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the

latter. An officer in control lays down the rules in the doing of an act. If they are not followed, he may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself. On the other hand, the power of supervision means "overseeing or the authority of an officer to see to it that the subordinate officers perform their duties." If the subordinate officers fail or neglect to fulfill their duties, the official may take such action or step as prescribed by law to make them perform their duties. Essentially, the power of supervision means no more than the power of ensuring that laws are faithfully executed, or that subordinate officers act within the law. The supervisor or superintendent merely sees to it that the rules are followed, but he does not lay down the rules, nor does he have discretion to modify or replace them.

5. CRIMINAL LAW; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); A PROSECUTION THEREFOR WILL LIE REGARDLESS OF WHETHER THE ACCUSED PUBLIC OFFICER IS CHARGED WITH THE GRANT OF LICENSES OR PERMITS OR OTHER CONCESSIONS.— [I]n *Mejorada v. Sandiganbayan*[,] xxx we held that a prosecution for violation of Section 3(e) of the Anti-Graft Law will lie regardless of whether or not the accused public officer is "charged with the grant of licenses or permits or other concessions." x x x In the more recent case of *Cruz v. Sandiganbayan*, we affirmed that a prosecution for violation of said provision will lie regardless of whether the accused public officer is charged with the grant of licenses or permits or other concessions.

6. ID.; ID.; ELEMENTS; GIVING BY A PUBLIC OFFICER OF UNWARRANTED BENEFITS, ADVANTAGE OR PREFERENCE TO A PRIVATE PARTY, EXPLAINED.— In drafting the Anti-Graft Law, the lawmakers opted to use "private party" rather than "private person" to describe the recipient of the unwarranted benefits, advantage or preference for a reason. The term "party" is a technical word having a precise meaning in legal parlance as distinguished from "person" which, in general usage, refers to a human being. Thus, a private person simply pertains to one who is not a public officer. While a private party is more comprehensive in scope to mean either a private person or a public officer acting in a private capacity

to protect his personal interest. In the present case, when petitioners transferred Mayor Adalim from the provincial jail and detained him at petitioner Ambil, Jr.'s residence, they accorded such privilege to Adalim, not in his official capacity as a mayor, but as a detainee charged with murder. Thus, for purposes of applying the provisions of Section 3(e), R.A. No. 3019, Adalim was a private party. Moreover, in order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another in the exercise of his official, administrative or judicial functions. The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another. Without a court order, petitioners transferred Adalim and detained him in a place other than the provincial jail. The latter was housed in much more comfortable quarters, provided better nourishment, was free to move about the house and watch television. Petitioners readily extended these benefits to Adalim on the mere representation of his lawyers that the mayor's life would be put in danger inside the provincial jail.

7. ID.; JUSTIFYING CIRCUMSTANCES; FULFILLMENT OF DUTY OR LAWFUL EXERCISE OF RIGHT OR OFFICE; REQUISITES; NOT PRESENT IN CASE AT BAR.— [P]etitioner Ambil, Jr. invokes the justifying circumstance of fulfillment of duty or lawful exercise of right or office. Under paragraph 5, Article 11 of the RPC, any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office does not incur any criminal liability. In order for this justifying circumstance to apply, two requisites must be satisfied: (1) the accused acted in the performance of a duty or in the lawful exercise of a right or office; and (2) the injury caused or the offense committed be the necessary consequence of the *due* performance of duty or the lawful exercise of such right or office. Both requisites are lacking in petitioner Ambil, Jr.'s case.

8. ID.; ID.; OBEDIENCE TO AN ORDER ISSUED FOR SOME LAWFUL PURPOSE; REQUISITES; NOT DULY ESTABLISHED IN CASE AT BAR.— [P]etitioner Apelado,

Sr. invokes the justifying circumstance of obedience to an order issued for some lawful purpose. Under paragraph 6, Article 11 of the RPC, any person who acts in obedience to an order issued by a superior for some lawful purpose does not incur any criminal liability. For this justifying circumstance to apply, the following requisites must be present: (1) an order has been issued by a superior; (2) such order must be for some lawful purpose; and (3) the means used by the subordinate to carry out said order is lawful. Only the first requisite is present in this case.

9. ID.; PERSONS CRIMINALLY LIABLE FOR FELONIES; PRINCIPAL BY DIRECT PARTICIPATION; LIABILITY OF PETITIONER AS A PRINCIPAL BY DIRECT PARTICIPATION, SUFFICIENTLY PROVEN IN CASE AT BAR.— While the order for Adalim's transfer emanated from petitioner Ambil, Jr., who was then Governor, neither said order nor the means employed by petitioner Apelado, Sr. to carry it out was lawful. In his capacity as the Provincial Jail Warden of Eastern Samar, petitioner Apelado, Sr. fetched Mayor Adalim at the provincial jail and, unarmed with a court order, transported him to the house of petitioner Ambil, Jr. This makes him liable as a principal by direct participation under Article 17(1) of the RPC.

10. ID.; CONSPIRACY; PRESENT IN CASE AT BAR.— An accepted badge of conspiracy is when the accused by their acts aimed at the same object, one performing one part of and another performing another so as to complete it with a view to the attainment of the same object, and their acts although apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments. Conspiracy was sufficiently demonstrated by petitioner Apelado, Sr.'s willful cooperation in executing petitioner Ambil, Jr.'s order to move Adalim from jail, despite the absence of a court order. Petitioner Apelado, Sr., a law graduate, cannot hide behind the cloak of ignorance of the law. The Rule requiring a court order to transfer a person under detention by legal process is elementary. Truth be told, even petitioner governor who is unschooled in the intricacies of the law expressed reservations on his power to transfer Adalim. All said, the concerted acts of petitioners Ambil, Jr. and Apelado, Sr. resulting in the violation charged, makes them equally responsible as conspirators.

11. ID.; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); PENALTY IN CASE AT BAR.— As regards the penalty imposed upon petitioners, Section 9(a) of R.A. No. 3019 punishes a public officer or a private person who violates Section 3 of R.A. No. 3019 with imprisonment for not less than six (6) years and one (1) month to not more than fifteen (15) years and perpetual disqualification from public office. Under Section 1 of the Indeterminate Sentence Law or Act No. 4103, as amended by Act No. 4225, if the offense is punished by a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. Thus, the penalty imposed by the Sandiganbayan upon petitioner Ambil, Jr. of imprisonment for nine (9) years, eight (8) months and one (1) day to twelve (12) years and four (4) months is in accord with law. As a co-principal without the benefit of an incomplete justifying circumstance to his credit, petitioner Apelado, Sr. shall suffer the same penalty.

APPEARANCES OF COUNSEL

Narciso A. Tadeo for Ruperto A. Ambil, Jr.
Elmer C. Solidon for Alexandrino R. Apelado, Sr.
The Solicitor General for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us are two consolidated petitions for review on *certiorari* filed by petitioner Ruperto A. Ambil, Jr.[1] and petitioner Alexandrino R. Apelado, Sr.[2] assailing the Decision[3] promulgated on

[1] *Rollo* (G.R. No. 175457), pp. 8-34.

[2] *Rollo* (G.R. No. 175482), pp. 8-15.

[3] *Id.* at 16-24; *rollo* (G.R. No. 175457), pp. 35-43. Penned by Associate Justice Roland B. Jurado with Presiding Justice Teresita J. Leonardo-De Castro (now a member of this Court) and Associate Justice Diosdado M. Peralta (also now a member of this Court) concurring.

September 16, 2005 and Resolution[4] dated November 8, 2006 of the Sandiganbayan in Criminal Case No. 25892.

The present controversy arose from a letter[5] of Atty. David B. Loste, President of the Eastern Samar Chapter of the Integrated Bar of the Philippines (IBP), to the Office of the Ombudsman, praying for an investigation into the alleged transfer of then Mayor Francisco Adalim, an accused in Criminal Case No. 10963 for murder, from the provincial jail of Eastern Samar to the residence of petitioner, then Governor Ruperto A. Ambil, Jr. In a Report[6] dated January 4, 1999, the National Bureau of Investigation (NBI) recommended the filing of criminal charges against petitioner Ambil, Jr. for violation of Section 3(e)[7] of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended. On September 22, 1999, the new President of the IBP, Eastern Samar Chapter, informed the Ombudsman that the IBP is no longer interested in pursuing the case against petitioners. Thus, he recommended the dismissal of the complaint against petitioners.[8]

Nonetheless, in an Information[9] dated January 31, 2000, petitioners Ambil, Jr. and Alexandrino R. Apelado, Sr. were

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[4] *Id.* at 26-44; *id.* at 44-62.

[5] Exhibit "D". Dated September 11, 1998.

[6] Records, Vol. I, pp. 10-18.

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

xxx xxx xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

xxx xxx xxx

[8] Records, Vol. I, pp. 64-65.

[9] *Id.* at 1-2.

charged with violation of Section 3(e) of R.A. No. 3019, together with SPO3 Felipe A. Balano. Upon reinvestigation, the Office of the Ombudsman issued a Memorandum[10] dated August 4, 2000, recommending the dismissal of the complaint as regards Balano and the amendment of the Information to include the charge of Delivering Prisoners from Jail under Article 156[11] of the Revised Penal Code, as amended, (RPC) against the remaining accused. The Amended Information[12] reads:

That on or about the 6th day of September 1998, and for sometime prior [or] subsequent thereto, [in] the Municipality of Borongan, Province of Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, [the] above-named accused, Ruperto A. Ambil, Jr.[,] being then the Provincial Governor of Eastern Samar, and Alexandrino R. Apelado, being then the Provincial Warden of Eastern Samar, both having been public officers, duly elected, appointed and qualified as such, committing the offense in relation to office, conniving and confederating together and mutually helping x x x each other, with deliberate intent, manifest partiality and evident bad faith, did then and there wilfully, unlawfully and criminally order and cause the release from the Provincial Jail of detention prisoner Mayor Francisco Adalim, accused in Criminal Case No. 10963, for Murder, by virtue of a warrant of Arrest issued by Honorable Arnulfo P. Bugtas, Presiding Judge, RTC-Branch 2, Borongan, Eastern Samar, and thereafter placed said detention prisoner (Mayor Francisco Adalim) under accused RUPERTO A. AMBIL, JR.'s custody, by allowing said Mayor Adalim to stay at accused Ambil's residence for a period of Eighty-Five (85) days, more or less which act was done without any court order, thus accused in the performance of official functions had given unwarranted benefits and advantage to detainee Mayor Francisco Adalim to the prejudice of the government.

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[10] *Id.* at 102-104.

[11] Art. 156. *Delivering prisoners from jail*. - The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who shall remove from any jail or penal establishment any person confined therein or shall help the escape of such person, by means of violence, intimidation or bribery. If other means are used, the penalty of *arresto mayor* shall be imposed.

xxx xxx xxx

[12] Records, Vol. I, pp. 100-101.

CONTRARY TO LAW.

BAIL BOND RECOMMENDED: ₱30,000.00 each.[13]

On arraignment, petitioners pleaded not guilty and posted bail.

At the pre-trial, petitioners admitted the allegations in the Information. They reason, however, that Adalim's transfer was justified considering the imminent threats upon his person and the dangers posed by his detention at the provincial jail. According to petitioners, Adalim's sister, Atty. Juliana A. Adalim-White, had sent numerous prisoners to the same jail where Mayor Adalim was to be held.

Consequently, the prosecution no longer offered testimonial evidence and rested its case after the admission of its documentary exhibits. Petitioners filed a Motion for Leave to File Demurrer to Evidence with Reservation to Present Evidence in Case of Denial[14] but the same was denied.

At the trial, petitioners presented three witnesses: petitioner Ambil, Jr., Atty. Juliana A. Adalim-White and Mayor Francisco C. Adalim.

Petitioner Ambil, Jr. testified that he was the Governor of Eastern Samar from 1998 to 2001. According to him, it was upon the advice of Adalim's lawyers that he directed the transfer of Adalim's detention to his home. He cites poor security in the provincial jail as the primary reason for taking personal custody of Adalim considering that the latter would be in the company of inmates who were put away by his sister and guards identified with his political opponents.[15]

For her part, Atty. White stated that she is the District Public Attorney of Eastern Samar and the sister of Mayor Adalim. She recounted how Mayor Adalim was arrested while they were attending a wedding in Sulat, Eastern Samar, on September 6,

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[13] *Id.* at 100.

[14] *Id.* at 314-316.

[15] TSN, October 8, 2001, pp. 7, 23-30, 33.

1998. According to Atty. White, she sought the alternative custody of Gov. Ambil, Jr. after Provincial Warden and herein petitioner Apelado, Sr. failed to guarantee the mayor's safety.[16]

Meanwhile, Francisco Adalim introduced himself as the Mayor of Taft, Eastern Samar. He confirmed his arrest on September 6, 1998 in connection with a murder case filed against him in the Regional Trial Court (RTC) of Borongan, Eastern Samar. Adalim confirmed Atty. White's account that he spotted inmates who served as bodyguards for, or who are associated with, his political rivals at the provincial jail. He also noticed a prisoner, Roman Akyatan, gesture to him with a raised clenched fist. Sensing danger, he called on his sister for help. Adalim admitted staying at Ambil, Jr.'s residence for almost three months before he posted bail after the charge against him was downgraded to homicide.[17]

Petitioner Apelado, Sr. testified that he was the Provincial Jail Warden of Eastern Samar. He recalls that on September 6, 1998, SPO3 Felipe Balano fetched him at home to assist in the arrest of Mayor Adalim. Allegedly, Atty. White was contesting the legality of Mayor Adalim's arrest and arguing with the jail guards against booking him for detention. At the provincial jail, petitioner was confronted by Atty. White who informed him that he was under the governor, in the latter's capacity as a provincial jailer. Petitioner claims that it is for this reason that he submitted to the governor's order to relinquish custody of Adalim.[18]

Further, petitioner Apelado, Sr. described the physical condition of the jail to be dilapidated and undermanned. According to him, only two guards were incharge of looking after 50 inmates. There were two cells in the jail, each housing 25 inmates, while an isolation cell of 10 square meters was unserviceable at the time. Also, there were several nipa huts within the perimeter for use during conjugal visits.[19]

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[16] TSN, October 9, 2001, pp. 5-7, 22-24.

[17] TSN, March 11, 2002, pp. 4-6, 16, 21.

[18] TSN, March 12, 2002, pp. 11-17, 32.

[19] *Id.* at 21, 60-61.

On September 16, 2005, the Sandiganbayan, First Division, promulgated the assailed Decision[20] finding petitioners guilty of violating Section 3(e) of R.A. No. 3019. The court ruled that in moving Adalim to a private residence, petitioners have conspired to accord him unwarranted benefits in the form of more comfortable quarters with access to television and other privileges that other detainees do not enjoy. It stressed that under the Rules, no person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail.[21]

The Sandiganbayan brushed aside petitioners' defense that Adalim's transfer was made to ensure his safety. It observed that petitioner Ambil, Jr. did not personally verify any actual threat on Adalim's life but relied simply on the advice of Adalim's lawyers. The Sandiganbayan also pointed out the availability of an isolation cell and nipa huts within the 10-meter-high perimeter fence of the jail which could have been used to separate Adalim from other prisoners. Finally, it cited petitioner Ambil, Jr.'s failure to turn over Adalim despite advice from Assistant Secretary Jesus Ingeniero of the Department of Interior and Local Government.

Consequently, the Sandiganbayan sentenced petitioner Ambil, Jr. to an indeterminate penalty of imprisonment for nine (9) years, eight (8) months and one (1) day to twelve (12) years and four (4) months. In favor of petitioner Apelado, Sr., the court appreciated the incomplete justifying circumstance of obedience to a superior order and sentenced him to imprisonment for six (6) years and one (1) month to nine (9) years and eight (8) months.

Hence, the present petitions.

Petitioner Ambil, Jr. advances the following issues for our consideration:

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[20] *Supra* note 3.

[21] Sec. 3, Rule 114, RULES OF COURT.

I

WHETHER OR NOT SECTION 3(e) REPUBLIC ACT NO. 3019, AS AMENDED, APPLIES TO PETITIONER'S CASE BEFORE THE SANDIGANBAYAN.

II

WHETHER OR NOT A PUBLIC OFFICER SUCH AS PETITIONER IS A PRIVATE PARTY FOR PURPOSES OF SECTION 3(e), REPUBLIC ACT NO. 3019, AS AMENDED.

III

WHETHER OR NOT PETITIONER ACTED WITH DELIBERATE INTENT, MANIFEST PARTIALITY, EVIDENT BAD FAITH OR GROSS INEXCUSABLE NEGLIGENCE IN THE CONTEXT OF SAID SECTION 3(e).

IV

WHETHER OR NOT PETITIONER AS PROVINCIAL GOVERNOR AND JAILER UNDER SECTIONS 1730 AND 1733, ARTICLE III, CHAPTER 45 OF THE ADMINISTRATIVE CODE OF 1917 AND SECTION 61, CHAPTER V, REPUBLIC ACT 6975 HAS THE AUTHORITY TO TAKE CUSTODY OF A DETENTION PRISONER.

V

WHETHER OR NOT PETITIONER IS ENTITLED TO THE JUSTIFYING CIRCUMSTANCE OF FULFILLMENT OF A DUTY OR THE LAWFUL EXERCISE OF A RIGHT OR OFFICE.

VI

WHETHER OR NOT PETITIONER SHOULD HAVE BEEN ACQUITTED BECAUSE THE PROSECUTION EVIDENCE DID NOT ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.[22]

For his part, petitioner Apelado, Sr. imputes the following errors on the Sandiganbayan:

I

THERE WAS MISAPPREHENSION OF FACTS AND/OR MISAPPLICATION OF THE LAW AND JURISPRUDENCE IN

[22] *Rollo* (G.R. No. 175457), pp. 16-17.

CONVICTING ACCUSED APELADO, EITHER AS PRINCIPAL OR IN CONSPIRACY WITH HIS CO-ACCUSED AMBIL.

II

IN THE ABSENCE OF COMPETENT PROOF BEYOND REASONABLE DOUBT OF CONSPIRACY BETWEEN ACCUSED AMBIL AND HEREIN PETITIONER, THE LATTER SHOULD BE ACCORDED FULL CREDIT FOR THE JUSTIFYING CIRCUMSTANCE UNDER PARAGRAPH 6, ARTICLE 11 OF THE REVISED PENAL CODE.

III

THE COURT *A QUO'*S BASIS IN CONVICTING BOTH ACCUSED AMBIL AND HEREIN PETITIONER OF HAVING GIVEN MAYOR ADALIM "UNWARRANTED BENEFITS AND ADVANTAGE TO THE PREJUDICE x x x OF THE GOVERNMENT IS, AT THE MOST, SPECULATIVE.[23]

The issues raised by petitioner Ambil, Jr. can be summed up into three: (1) Whether he is guilty beyond reasonable doubt of violating Section 3(e), R.A. No. 3019; (2) Whether a provincial governor has authority to take personal custody of a detention prisoner; and (3) Whether he is entitled to the justifying circumstance of fulfillment of duty under Article 11(5)[24] of the RPC.

Meanwhile, petitioner Apelado, Sr.'s assignment of errors can be condensed into two: (1) Whether he is guilty beyond reasonable doubt of violating Section 3(e), R.A. No. 3019; and (2) Whether he is entitled to the justifying circumstance of obedience to an order issued by a superior for some lawful purpose under Article 11(6)[25] of the RPC.

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[23] *Rollo* (G.R. No. 175482), pp. 11-12.

[24] Art. 11. *Justifying circumstances*.— The following do not incur any criminal liability:

xxx xxx xxx

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

xxx xxx xxx

[25] Art. 11. *Justifying circumstances*.— The following do not incur any criminal liability:

Fundamentally, petitioner Ambil, Jr. argues that Section 3(e), R.A. No. 3019 does not apply to his case because the provision contemplates only transactions of a pecuniary nature. Since the law punishes a public officer who extends unwarranted benefits to a private person, petitioner avers that he cannot be held liable for extending a favor to Mayor Adalim, a public officer. Further, he claims good faith in taking custody of the mayor pursuant to his duty as a "Provincial Jailer" under the Administrative Code of 1917. Considering this, petitioner believes himself entitled to the justifying circumstance of fulfillment of duty or lawful exercise of duty.

Petitioner Apelado, Sr., on the other hand, denies allegations of conspiracy between him and petitioner Ambil, Jr. Petitioner Apelado, Sr. defends that he was merely following the orders of a superior when he transferred the detention of Adalim. As well, he invokes immunity from criminal liability.

For the State, the Office of the Special Prosecutor (OSP) points out the absence of jurisprudence that restricts the application of Section 3(e), R.A. No. 3019 to transactions of a pecuniary nature. The OSP explains that it is enough to show that in performing their functions, petitioners have accorded undue preference to Adalim for liability to attach under the provision. Further, the OSP maintains that Adalim is deemed a private party for purposes of applying Section 3(e), R.A. No. 3019 because the unwarranted benefit redounded, not to his person as a mayor, but to his person as a detention prisoner accused of murder. It suggests further that petitioners were motivated by bad faith as evidenced by their refusal to turn over Adalim despite instruction from Asst. Sec. Ingeniero. The OSP also reiterates petitioners' lack of authority to take custody of a detention prisoner without a court order. Hence, it concludes that petitioners are not entitled to the benefit of any justifying circumstance.

After a careful review of this case, the Court finds the present petitions bereft of merit.

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xxx xxx xxx

6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

Petitioners were charged with violation of Section 3(e) of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act which provides:

> Section. 3. *Corrupt practices of public officers.* - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> xxx xxx xxx
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

In order to hold a person liable under this provision, the following elements must concur: (1) the accused must be a public officer discharging administrative, judicial or official functions; (2) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[26]

As to the first element, there is no question that petitioners are public officers discharging official functions and that jurisdiction over them lay with the Sandiganbayan. Jurisdiction of the Sandiganbayan over public officers charged with violation of the Anti-Graft Law is provided under Section 4 of Presidential Decree No. 1606,[27] as amended by

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[26] *Ong v. People*, G.R. No. 176546, September 25, 2009, 601 SCRA 47, 53-54.

[27] REVISING PRESIDENTIAL DECREE NO. 1486 CREATING A SPECIAL COURT TO BE KNOWN AS "SANDIGANBAYAN" AND FOR OTHER PURPOSES.

R.A. No. 8249.[28] The pertinent portions of Section 4, P.D. No. 1606, as amended, read as follows:

SEC. 4. *Jurisdiction.*—The *Sandiganbayan* shall exercise exclusive original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), *specifically including*:

(a) Provincial governors, vice-governors, members of the *sangguniang panlalawigan* and provincial treasurers, assessors, engineers and other provincial department heads[;]

xxx xxx xxx

In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdiction as provided in *Batas Pambansa Blg*. 129, as amended.

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Thus, the jurisdiction of the Sandiganbayan over petitioner Ambil, Jr. is beyond question. The same is true as regards

[28] AN ACT FURTHER DEFINING THE JURISDICTION OF THE *SANDIGANBAYAN*, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 1606, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

petitioner Apelado, Sr. As to him, a Certification[29] from the Provincial Government Department Head of the HRMO shows that his position as Provincial Warden is classified as Salary Grade 22. Nonetheless, it is only when none of the accused are occupying positions corresponding to salary grade '27' or higher shall exclusive jurisdiction be vested in the lower courts. Here, petitioner Apelado, Sr. was charged as a co-principal with Governor Ambil, Jr., over whose position the Sandiganbayan has jurisdiction. Accordingly, he was correctly tried jointly with said public officer in the proper court which had exclusive original jurisdiction over them – the Sandiganbayan.

The second element, for its part, describes the three ways by which a violation of Section 3(e) of R.A. No. 3019 may be committed, that is, through manifest partiality, evident bad faith or gross inexcusable negligence.

In *Sison v. People*,[30] we defined "partiality," "bad faith" and "gross negligence" as follows:

> "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." xxx[31]

In this case, we find that petitioners displayed manifest partiality and evident bad faith in transferring the detention of Mayor Adalim to petitioner Ambil, Jr.'s house. There is no merit to petitioner Ambil, Jr.'s contention that he is authorized to transfer

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[29] Records, Vol. I, p. 43.

[30] G.R. Nos. 170339, 170398-403, March 9, 2010, 614 SCRA 670.

[31] *Id.* at 680.

the detention of prisoners by virtue of his power as the "Provincial Jailer" of Eastern Samar.

Section 28 of the Local Government Code draws the extent of the power of local chief executives over the units of the Philippine National Police within their jurisdiction:

> SEC. 28. *Powers of Local Chief Executives over the Units of the Philippine National Police*.—The extent of operational supervision and control of local chief executives over the police force, fire protection unit, and jail management personnel assigned in their respective jurisdictions shall be governed by the provisions of Republic Act Numbered Sixty-nine hundred seventy-five (R.A. No. 6975), otherwise known as "*The Department of the Interior and Local Government Act of 1990*," and the rules and regulations issued pursuant thereto.

In particular, Section 61, Chapter 5 of R.A. No. 6975[32] on the Bureau of Jail Management and Penology provides:

> Sec. 61. *Powers and Functions*. - The Jail Bureau shall exercise supervision and control over all city and municipal jails. **The provincial jails shall be supervised and controlled by the provincial government** within its jurisdiction, whose expenses shall be subsidized by the National Government for not more than three (3) years after the effectivity of this Act.

The power of control is the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.[33] An officer in control lays down the rules in the doing of an act. If they are not followed, he may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself.[34]

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[32] AN ACT ESTABLISHING THE PHILIPPINE NATIONAL POLICE UNDER A REORGANIZED DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, AND FOR OTHER PURPOSES.

[33] *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140-141.

[34] *Id.* at 142.

On the other hand, the power of supervision means "overseeing or the authority of an officer to see to it that the subordinate officers perform their duties."[35] If the subordinate officers fail or neglect to fulfill their duties, the official may take such action or step as prescribed by law to make them perform their duties. Essentially, the power of supervision means no more than the power of ensuring that laws are faithfully executed, or that subordinate officers act within the law.[36] The supervisor or superintendent merely sees to it that the rules are followed, but he does not lay down the rules, nor does he have discretion to modify or replace them.[37]

Significantly, it is the provincial government and not the governor alone which has authority to exercise control and supervision over provincial jails. In any case, neither of said powers authorizes the doing of acts beyond the parameters set by law. On the contrary, subordinates must be enjoined to act within the bounds of law. In the event that the subordinate performs an act *ultra vires*, rules may be laid down on how the act should be done, but always in conformity with the law.

In a desperate attempt to stretch the scope of his powers, petitioner Ambil, Jr. cites Section 1731, Article III of the Administrative Code of 1917 on Provincial jails in support. Section 1731 provides:

SEC. 1731. *Provincial governor as keeper of jail.*—**The governor of the province shall be charged with the keeping of the provincial jail, and it shall be his duty to administer the same in accordance with law and the regulations prescribed for the government of provincial prisons.** The immediate custody and supervision of the jail may be committed to the care of a jailer to be appointed by the provincial governor. The position of jailer shall be regarded as within the unclassified civil service but may be filled in the manner in which classified positions are filled, and if so filled, the appointee shall be entitled to all the benefits and privileges of classified employees, except that he shall hold office only during the term of office of

[35] *Joson v. Torres*, G.R. No. 131255, May 20, 1998, 290 SCRA 279, 301.

[36] *Id.*

[37] *Drilon v. Lim, supra* at 142.

the appointing governor and until a successor in the office of the jailer is appointed and qualified, unless sooner separated. **The provincial governor shall, under the direction of the provincial board and at the expense of the province, supply proper food and clothing for the prisoners;** though the provincial board may, in its discretion, let the contract for the feeding of the prisoners to some other person. (Emphasis supplied.)

This provision survived the advent of the Administrative Code of 1987. But again, nowhere did said provision designate the provincial governor as the "provincial jailer," or even slightly suggest that he is empowered to take personal custody of prisoners. What is clear from the cited provision is that the provincial governor's duty as a jail keeper is confined to the administration of the jail and the procurement of food and clothing for the prisoners. After all, administrative acts pertain only to those acts which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body or such as are devolved upon it[38] by the Constitution. Therefore, in the exercise of his administrative powers, the governor can only enforce the law but not supplant it.

Besides, the only reference to a transfer of prisoners in said article is found in Section 1737[39] under which prisoners may be turned over to the jail of the neighboring province in case the provincial jail be insecure or insufficient to accommodate all provincial prisoners. However, this provision has been superseded by Section 3, Rule 114 of the Revised Rules of Criminal Procedure, as amended. Section 3, Rule 114 provides:

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[38] H.C. Black, *BLACK'S LAW DICTIONARY*, 1979 Ed., 42.

[39] SEC. 1737. *Transfer of prisoners to jail of neighboring province.*- In case there should be no jail in any province, or in case a provincial jail of any province be insecure or insufficient for the accommodation of all provincial prisoners, it shall be the duty of the provincial board to make arrangements for the safe-keeping of the prisoners of the province with the provincial board of some neighboring province in the jail of such neighboring province, and when such arrangement has been made it shall be the duty of the officer having custody of the prisoner to commit him to the jail of such neighboring province, and he shall be there detained with the same legal effect as though confined in the jail of the province where the offense for which he was arrested was committed.

SEC. 3. *No release or transfer except on court order or bail.*- No person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail.

Indubitably, the power to order the release or transfer of a person under detention by legal process is vested in the court, not in the provincial government, much less the governor. This was amply clarified by Asst. Sec. Ingeniero in his communication[40] dated October 6, 1998 addressed to petitioner Ambil, Jr. Asst. Sec. Ingeniero wrote:

06 October 1996

GOVERNOR RUPERTO AMBIL
Provincial Capitol
Borongan, Eastern Samar

Dear Sir:

This has reference to the letter of **Atty. Edwin B. Docena,** and the reports earlier received by this Department, relative to your alleged action in taking into custody **Mayor Francisco "Aising" Adalim** of Taft, that province, who has been previously arrested by virtue by a warrant of arrest issued in Criminal Case No. 10963.

If the report is true, it appears that your actuation is not in accord with the provision of Section 3, Rule 113 of the Rules of Court, which mandates that an arrested person be delivered to the nearest police station or jail.

Moreover, invoking **Section 61 of RA 6975** as legal basis in taking custody of the accused municipal mayor is misplaced. Said section merely speaks of the power of supervision vested unto the provincial governor over provincial jails. It does not, definitely, include the power to take in custody any person in detention.

In view of the foregoing, you are hereby enjoined to conduct yourself within the bounds of law and to immediately deliver Mayor Adalim to the provincial jail in order to avoid legal complications.

Please be guided accordingly.

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[40] Exhibit "Q".

Very truly yours,

(SGD.)
JESUS I. INGENIERO
Assistant Secretary

Still, petitioner Ambil, Jr. insisted on his supposed authority as a "provincial jailer." Said petitioner's usurpation of the court's authority, not to mention his open and willful defiance to official advice in order to accommodate a former political party mate,[41] betray his unmistakable bias and the evident bad faith that attended his actions.

Likewise amply established beyond reasonable doubt is the third element of the crime. As mentioned above, in order to hold a person liable for violation of Section 3(e), R.A. No. 3019, it is required that the act constituting the offense consist of either (1) causing undue injury to any party, including the government, or (2) giving any private party any unwarranted benefits, advantage or preference in the discharge by the accused of his official, administrative or judicial functions.

In the case at hand, the Information specifically accused petitioners of giving unwarranted benefits and advantage to Mayor Adalim, a public officer charged with murder, by causing his release from prison and detaining him instead at the house of petitioner Ambil, Jr. Petitioner Ambil, Jr. negates the applicability of Section 3(e), R.A. No. 3019 in this case on two points. First, Section 3(e) is not applicable to him allegedly because the last sentence thereof provides that the "provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses, permits or other concessions" and he is not such government officer or employee. Second, the purported unwarranted benefit was accorded not to a private party but to a public officer.

However, as regards his first contention, it appears that petitioner Ambil, Jr. has obviously lost sight, if he is not altogether unaware,

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[41] TSN, October 8, 2001, p. 55.

of our ruling in *Mejorada v. Sandiganbayan*[42] where we held that a prosecution for violation of Section 3(e) of the Anti-Graft Law will lie regardless of whether or not the accused public officer is "charged with the grant of licenses or permits or other concessions." Following is an excerpt of what we said in *Mejorada*,

> Section 3 cited above enumerates in eleven subsections the corrupt practices of any public officers (sic) declared unlawful. Its reference to "any public officer" is without distinction or qualification and it specifies the acts declared unlawful. We agree with the view adopted by the Solicitor General that the last sentence of paragraph [Section 3] (e) is intended to make clear the inclusion of officers and employees of officers (sic) or government corporations which, under the ordinary concept of "public officers" may not come within the term. *It is a strained construction of the provision to read it as applying exclusively to public officers charged with the duty of granting licenses or permits or other concessions.*[43] (Italics supplied.)

In the more recent case of *Cruz v. Sandiganbayan*,[44] we affirmed that a prosecution for violation of said provision will lie regardless of whether the accused public officer is charged with the grant of licenses or permits or other concessions.[45]

Meanwhile, regarding petitioner Ambil, Jr.'s second contention, Section 2(b) of R.A. No. 3019 defines a "public officer" to include elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exemption service receiving compensation, even nominal from the government. Evidently, Mayor Adalim is one. But considering that Section 3(e) of R.A. No. 3019 punishes the giving by a public officer of unwarranted benefits to a private party, does the fact that Mayor Adalim was the recipient of such benefits take petitioners' case beyond the ambit of said law?

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[42] Nos. 51065-72, June 30, 1987, 151 SCRA 399.

[43] *Id.* at 405.

[44] G.R. No. 134493, August 16, 2005, 467 SCRA 52.

[45] *Id.* at 60.

We believe not.

In drafting the Anti-Graft Law, the lawmakers opted to use "private party" rather than "private person" to describe the recipient of the unwarranted benefits, advantage or preference for a reason. The term "party" is a technical word having a precise meaning in legal parlance[46] as distinguished from "person" which, in general usage, refers to a human being.[47] Thus, a private person simply pertains to one who is not a public officer. While a private party is more comprehensive in scope to mean either a private person or a public officer acting in a private capacity to protect his personal interest.

In the present case, when petitioners transferred Mayor Adalim from the provincial jail and detained him at petitioner Ambil, Jr.'s residence, they accorded such privilege to Adalim, not in his official capacity as a mayor, but as a detainee charged with murder. Thus, for purposes of applying the provisions of Section 3(e), R.A. No. 3019, Adalim was a private party.

Moreover, in order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another in the exercise of his official, administrative or judicial functions.[48] The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.[49]

Without a court order, petitioners transferred Adalim and detained him in a place other than the provincial jail. The latter was housed in much more comfortable quarters, provided better nourishment, was free to move about the house and watch

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[46] H.C. BLACK, *BLACK'S LAW DICTIONARY*, 1979 Ed., 1010.

[47] *Id.* at 1028.

[48] *Sison v. People, supra* at 682.

[49] *Id.* at 681-682.

television. Petitioners readily extended these benefits to Adalim on the mere representation of his lawyers that the mayor's life would be put in danger inside the provincial jail.

As the Sandiganbayan ruled, however, petitioners were unable to establish the existence of any risk on Adalim's safety. To be sure, the latter would not be alone in having unfriendly company in lockup. Yet, even if we treat Akyatan's gesture of raising a closed fist at Adalim as a threat of aggression, the same would still not constitute a special and compelling reason to warrant Adalim's detention outside the provincial jail. For one, there were nipa huts within the perimeter fence of the jail which could have been used to separate Adalim from the rest of the prisoners while the isolation cell was undergoing repair. Anyhow, such repair could not have exceeded the 85 days that Adalim stayed in petitioner Ambil, Jr.'s house. More importantly, even if Adalim could have proven the presence of an imminent peril on his person to petitioners, a court order was still indispensable for his transfer.

The foregoing, indeed, negates the application of the justifying circumstances claimed by petitioners.

Specifically, petitioner Ambil, Jr. invokes the justifying circumstance of fulfillment of duty or lawful exercise of right or office. Under paragraph 5, Article 11 of the RPC, any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office does not incur any criminal liability. In order for this justifying circumstance to apply, two requisites must be satisfied: (1) the accused acted in the performance of a duty or in the lawful exercise of a right or office; and (2) the injury caused or the offense committed be the necessary consequence of the *due* performance of duty or the lawful exercise of such right or office.[50] Both requisites are lacking in petitioner Ambil, Jr.'s case.

As we have earlier determined, petitioner Ambil, Jr. exceeded his authority when he ordered the transfer and detention of

[50] *Valeroso v. People*, G.R. No. 149718, September 29, 2003, 412 SCRA 257, 261.

Adalim at his house. Needless to state, the resulting violation of the Anti-Graft Law did not proceed from the due performance of his duty or lawful exercise of his office.

In like manner, petitioner Apelado, Sr. invokes the justifying circumstance of obedience to an order issued for some lawful purpose. Under paragraph 6, Article 11 of the RPC, any person who acts in obedience to an order issued by a superior for some lawful purpose does not incur any criminal liability. For this justifying circumstance to apply, the following requisites must be present: (1) an order has been issued by a superior; (2) such order must be for some lawful purpose; and (3) the means used by the subordinate to carry out said order is lawful.[51] Only the first requisite is present in this case.

While the order for Adalim's transfer emanated from petitioner Ambil, Jr., who was then Governor, neither said order nor the means employed by petitioner Apelado, Sr. to carry it out was lawful. In his capacity as the Provincial Jail Warden of Eastern Samar, petitioner Apelado, Sr. fetched Mayor Adalim at the provincial jail and, unarmed with a court order, transported him to the house of petitioner Ambil, Jr. This makes him liable as a principal by direct participation under Article 17(1)[52] of the RPC.

An accepted badge of conspiracy is when the accused by their acts aimed at the same object, one performing one part of and another performing another so as to complete it with a view to the attainment of the same object, and their acts although apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.[53]

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[51] L.B. Reyes, *THE REVISED PENAL CODE*, Book One, p. 213.

[52] Art. 17. *Principals*. - The following are considered principals:

1. Those who take a direct part in the execution of the act;

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[53] *People v. Serrano*, G.R. No. 179038, May 6, 2010, 620 SCRA 327, 336-337.

Conspiracy was sufficiently demonstrated by petitioner Apelado, Sr.'s willful cooperation in executing petitioner Ambil, Jr.'s order to move Adalim from jail, despite the absence of a court order. Petitioner Apelado, Sr., a law graduate, cannot hide behind the cloak of ignorance of the law. The Rule requiring a court order to transfer a person under detention by legal process is elementary. Truth be told, even petitioner governor who is unschooled in the intricacies of the law expressed reservations on his power to transfer Adalim. All said, the concerted acts of petitioners Ambil, Jr. and Apelado, Sr. resulting in the violation charged, makes them equally responsible as conspirators.

As regards the penalty imposed upon petitioners, Section 9(a) of R.A. No. 3019 punishes a public officer or a private person who violates Section 3 of R.A. No. 3019 with imprisonment for not less than six (6) years and one (1) month to not more than fifteen (15) years and perpetual disqualification from public office. Under Section 1 of the Indeterminate Sentence Law or Act No. 4103, as amended by Act No. 4225, if the offense is punished by a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

Thus, the penalty imposed by the Sandiganbayan upon petitioner Ambil, Jr. of imprisonment for nine (9) years, eight (8) months and one (1) day to twelve (12) years and four (4) months is in accord with law. As a co-principal without the benefit of an incomplete justifying circumstance to his credit, petitioner Apelado, Sr. shall suffer the same penalty.

WHEREFORE, the consolidated petitions are *DENIED*. The Decision of the Sandiganbayan in Criminal Case No. 25892 is *AFFIRMED WITH MODIFICATION*. We find petitioners Ruperto A. Ambil, Jr. and Alexandrino R. Apelado, Sr. guilty beyond reasonable doubt of violating Section 3(e), R.A. No. 3019. Petitioner Alexandrino R. Apelado, Sr. is, likewise, sentenced to an indeterminate penalty of imprisonment for nine (9) years, eight (8) months and one (1) day to twelve (12) years and four (4) months.

With costs against the petitioners.

SO ORDERED.

Corona, C.J. (Chairperson), Carpio,[*] *Bersamin,* and *del Castillo, JJ.,* concur.

FIRST DIVISION

[G.R. No. 175926. July 6, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RESTITUTO CARANDANG, HENRY MILAN and JACKMAN CHUA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; CONSPIRACY; DULY ESTABLISHED IN CASE AT BAR.— Milan's and Chua's arguments focus on the lack of direct evidence showing that they conspired with Carandang during the latter's act of shooting the three victims. However, as we have held in *People v. Sumalpong,* conspiracy may also be proven by other means x x x. In the case at bar, the conclusion that Milan and Chua conspired with Carandang was established by their acts (1) before Carandang shot the victims (Milan's closing the door when the police officers introduced themselves, allowing Carandang to wait in ambush), and (2) after the shooting (Chua's directive to Milan to attack SPO1 Montecalvo and Milan's following such instruction). Contrary to the suppositions of appellants, these facts are **not** meant to prove that Chua is a principal by inducement, or that Milan's act of attacking SPO1 Montecalvo was what made him

[*] Designated additional member per Raffle dated July 4, 2011 in lieu of Associate Justice Teresita J. Leonardo-De Castro who recused herself due to prior action in the Sandiganbayan.

a principal by direct participation. Instead, these facts are convincing circumstantial evidence of the unity of purpose in the minds of the three. As co-conspirators, all three are considered principals by direct participation.

2. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER THE POSITIVE TESTIMONY OF THE PROSECUTION'S WITNESS.— Appellants' attempt to instill doubts in our minds that Chua shouted *"sugurin mo na"* to Milan, who then ran towards SPO1 Montecalvo, must fail. SPO1 Estores's positive testimony on this matter prevails over the plain denials of Milan and Chua. SPO1 Estores has no reason to lie about the events he witnessed on April 5, 2001. As part of the team that was attacked on that day, it could even be expected that he is interested in having only the real perpetrators punished.

3. ID.; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY CONCLUSIVE ON THE SUPREME COURT; EXCEPTIONS.— [F]actual findings of the trial court, especially those affirmed by the Court of Appeals, are conclusive on this Court when supported by the evidence on record. It was the trial court that was able to observe the demeanors of the witnesses, and is consequently in a better position to determine which of the witnesses are telling the truth. Thus, this Court, as a general rule, would not review the factual findings of the courts *a quo*, except in certain instances such as when: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to the findings of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

4. CRIMINAL LAW; CONSPIRACY; ARISES ON THE VERY MOMENT THE PLOTTERS AGREE, EXPRESSLY OR IMPLIEDLY, TO COMMIT THE SUBJECT FELONY.— Neither can the rapid turn of events be considered to negate a finding of conspiracy. Unlike evident premeditation, there is no requirement for conspiracy to exist that there be a sufficient period of time to elapse to afford full opportunity for meditation and reflection. Instead, conspiracy arises on the very moment the plotters agree, expressly or impliedly, to commit the subject felony.

5. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; WHAT IS DECISIVE FOR THIS QUALIFYING CIRCUMSTANCE IS THAT THE EXECUTION OF THE ATTACK MADE IT IMPOSSIBLE FOR THE VICTIMS TO DEFEND THEMSELVES OR RETALIATE.— As held by the trial court and the Court of Appeals, Milan's act of closing the door facilitated the commission of the crime, allowing Carandang to wait in ambush. The sudden gunshots when the police officers pushed the door open illustrate the intention of appellants and Carandang to prevent any chance for the police officers to defend themselves. Treachery is thus present in the case at bar, as what is decisive for this qualifying circumstance is that the execution of the attack made it impossible for the victims to defend themselves or to retaliate.

6. ID.; MURDER; PENALTY IN CASE AT BAR.— The trial court correctly sentenced appellants to suffer the penalty of *reclusion perpetua* in Criminal Case Nos. Q-01-100061 and Q-01-100062. The penalty for murder under Article 248 of the Revised Penal Code is *reclusion perpetua* to death. Applying Article 63 of the same Code, since there was no other modifying circumstance other than the qualifying circumstance of treachery, the penalty that should be imposed is *reclusion perpetua*.

7. ID.; FRUSTRATED MURDER; PENALTY IN CASE AT BAR.— In Criminal Case No. Q-01-100063, the Court of Appeals correctly modified the penalty for the frustrated murder of SPO1 Montecalvo. Under Article 50 in connection with Article 61, paragraph 2 of the Revised Penal Code, the penalty for frustrated murder is one degree lower than *reclusion perpetua* to death, which is *reclusion temporal*. *Reclusion temporal*

has a range of 12 years and 1 day to 20 years. Its medium period, which should be applied in this case considering that there is no modifying circumstance other than the qualifying circumstance of treachery, is 14 years, 8 months and 1 day to 17 years and 4 months – the range of the maximum term of the indeterminate penalty under Section 1 of the Indeterminate Sentence Law. The minimum term of the indeterminate penalty should then be within the range of the penalty next lower to *reclusion temporal*, and thus may be any term within *prision mayor*, the range of which is 6 years and 1 day to 12 years. The modified term of 6 years and 1 day of *prision mayor* as minimum, to 14 years, 8 months and 1 day of *reclusion temporal* as maximum, is within these ranges.

8. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— The civil liabilities of appellants should, however, be modified in accordance with current jurisprudence. Thus, in Criminal Case Nos. Q-01-100061 and Q-01-100062, the award of ₱50,000.00 as civil indemnity for each victim must be increased to ₱75,000.00. In cases of murder and homicide, civil indemnity of ₱75,000.00 and moral damages of ₱50,000.00 are awarded automatically, without need of allegation and proof other than the death of the victim. Appellants are furthermore solidarily liable to each victim for ₱30,000.00 as exemplary damages, which is awarded when the crime was committed with an aggravating circumstance, be it generic or qualifying. However, since Carandang did not appeal, he is only solidarily liable with Milan and Chua with respect to the amounts awarded by the Court of Appeals, since the Court of Appeals' Decision has become final and executory with respect to him. The additional amounts (₱25,000.00 as civil indemnity and ₱30,000.00 as exemplary damages) shall be borne only by Milan and Chua, who are hereby held liable therefor solidarily. In Criminal Case No. Q-01-100063, the solidary liability of Milan and Chua for moral damages to SPO1 Wilfredo Montecalvo is likewise increased to ₱40,000.00, in accordance with prevailing jurisprudence. An award of ₱20,000.00 as exemplary damages is also warranted. The additional amounts (₱20,000.00 as moral damages and ₱20,000.00 as exemplary damages) are likewise to be solidarily borne only by Milan and Chua.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Rigorose & Galindez Law Offices for accused-appellants.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal by Henry Milan and Jackman Chua from the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 01934 dated May 10, 2006. Said Decision affirmed that of the Regional Trial Court (RTC) convicting them and one Restituto Carandang for two counts of murder and one count of frustrated murder in Criminal Cases No. Q-01-100061, Q-01-100062 and Q-01-100063, the Informations for which read:

Criminal Case No. Q-01-100061

That on or about the 5th day of April 2001, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another, did then and there, willfully, unlawfully and feloniously with intent to kill, taking advantage of superior strength and with treachery and evident premeditation, attack, assault and employ personal violence upon the person of PO2 DIONISIO ALONZO *Y* SALGO, by then and there shooting the latter several times with the use of a firearm of unknown caliber hitting him on the different parts of the body, thereby inflicting upon him serious and mortal gunshot wounds which were the direct and immediate cause of his death, to the damage and prejudice of the immediate heirs of said PO2 DIONISIO ALONZO *Y* SALGO.

That the crime was committed in contempt of or with insult to the public authorities.[2]

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[1] *Rollo*, pp. 3-22; penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring.

[2] Records, p. 2.

Criminal Case No. Q-01-100062

That on or about the 5th day of April, 2001, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another, did then and there, willfully, unlawfully and feloniously with intent to kill, taking advantage of superior strength and with treachery and evident premeditation, attack, assault and employ personal violence upon the person of SPO2 WILFREDO RED *Y* PILAR, by then and there shooting the latter several times with the use of a firearm of unknown caliber, hitting him on the different parts of the body and as soon as the said victim fell on the ground, by placing a hand grenade (sic) underneath the body which directly caused an explosion and mutilated the body which directly caused the death of SPO2 WILFREDO RED *Y* PILAR, to the damage and prejudice of the heirs of the victim in such amount as may be awarded to them under the provisions of the Civil Code.

That the crime was committed in contempt of or with insult to the public authorities.[3]

Criminal Case No. Q-01-100063

That on or about the 5th day of April, 2001, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill with evident premeditation and with treachery, did then and there willfully, unlawfully and feloniously, assault, attack and employ personal violence upon the person of SPO1 WILFREDO MONTECALVO *Y* DALIDA, by then and there shooting the latter with the use of a firearm of unknown caliber, hitting him on his neck, thereby inflicting upon him serious and mortal injuries, the offender thus performing all the acts of execution which would have produced the crime of murder as a consequence, but nevertheless did not produce it by reasons or causes independent of the will of the perpetrators, that is the timely and able medical assistance rendered to said SPO1 WILFREDO MONTECALVO *Y* DALIDA, to the damage and prejudice of the said offended party.

That the crime was committed in contempt of or with insult to the public authorities.[4]

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[3] *Id.* at 6.

[4] *Id.* at 10.

On May 15, 2001, accused-appellants Carandang, Milan and Chua pleaded not guilty to the crimes charged.

The prosecution evidence, culled from the testimonies of Senior Police Officer (SPO) 1 Wilfredo Montecalvo, SPO1 Rodolfo Estores, Police Senior Inspector (P/Sr. Insp.) Virgilio Calaro, P/Supt. Manuel Roxas and Dr. Wilson Tan, yielded the following version of the facts:

In the afternoon of April 5, 2001, the drug enforcement unit of the La Loma Police Station 1 received a request for assistance from the sister of accused Milan regarding a drug deal that would allegedly take place in her house at Calavite St., Brgy. Salvacion, Quezon City. The station commander called SPO2 Wilfredo Pilar Red and instructed him to talk to Milan's sister, who was in their office. SPO2 Red, accompanied by Police Officer (PO) 2 Dionisio Alonzo, SPO1 Estores and SPO1 Montecalvo, talked to Milan's sister. Thereafter, SPO2 Red formed a team composed of the officers who accompanied him during the interrogation, with him as team leader. The team received further instructions from the station commander then proceeded to Calavite Street aboard two vehicles, a mobile patrol car and an unmarked car.[5]

When the team reached the place at around 4:00 p.m.,[6] they alighted from their vehicles and surrounded Milan's house. SPO1 Montecalvo's group went to the left side of the house, while SPO2 Red's group proceeded to the right. The two groups eventually met at the back of the house near Milan's room. The door to Milan's room was open, enabling the police officers to see Carandang, Milan and Chua inside. SPO2 Red told the group that the persons inside the room would not put up a fight, making them confident that nothing violent would erupt. However, when the group introduced themselves as police officers, Milan immediately shut the door.[7]

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[5] TSN, August 8, 2001, pp. 6-13.

[6] TSN, November 12, 2001, p. 5.

[7] TSN, August 8, 2001, pp. 14-18.

PO2 Alonzo and SPO2 Red pushed the door open, causing it to fall and propelling them inside the room. PO2 Alonzo shouted "*Walang gagalaw!*" Suddenly, gunshots rang, hitting PO2 Alonzo and SPO2 Red who dropped to the floor one after the other. Due to the suddenness of the attack, PO2 Alonzo and SPO2 Red were not able to return fire and were instantly killed by the barrage of gunshots. SPO1 Montecalvo, who was right behind SPO2 Red, was still aiming his firearm at the assailants when Carandang shot and hit him. SPO1 Montecalvo fell to the ground. SPO1 Estores heard Chua say to Milan, "*Sugurin mo na!*" Milan lunged towards SPO1 Montecalvo, but the latter was able to fire his gun and hit Milan. SPO1 Estores went inside the house and pulled SPO1 Montecalvo out.[8]

Reinforcements came at around 4:30 p.m. upon the arrival of P/Sr. Insp. Calaro, Chief Operations Officer of the La Loma Police Station 1, and P/Supt. Roxas, the Deputy Station Commander of Police Station 1 at the time of the incident.[9] SPO1 Montecalvo was brought to the Chinese General Hospital. Milan stepped out of the house and was also brought to a hospital,[10] but Carandang and Chua remained holed up inside the house for several hours. There was a lengthy negotiation for the surrender of Carandang and Chua, during which they requested for the presence of a certain Colonel Reyes and media man Ramon Tulfo.[11] It was around 11:00 p.m. to 12:00 midnight when Carandang and Chua surrendered.[12] SPO2 Red and PO2 Alonzo were found dead inside the house, their bodies slumped on the floor with broken legs and gunshot and grenade shrapnel wounds.[13]

Dr. Winston Tan, Medico-Legal Officer of the Philippine National Police (PNP) Crime Laboratory, conducted the post-mortem examination of the bodies of SPO2 Red and PO2 Alonzo.

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[8] TSN, October 16, 2001, pp. 5-9.

[9] TSN, September 10, 2001, pp. 5-7.

[10] TSN, September 17, 2001, pp. 6-7.

[11] *Id.* at 10-14.

[12] TSN, September 10, 2001, p. 7.

[13] TSN, September 17, 2001, pp. 15-16.

He found that the gunshot wounds of Red and Alonzo were the cause of their deaths.[14]

According to SPO1 Montecalvo's account, Dr. Bu Castro of the Chinese General Hospital operated on him, removing a bullet from the right portion of his nape. SPO1 Montecalvo's hospitalization expenses amounted to ₱14,324.48. He testified that it was a nightmarish experience for him as he feared that he might be paralyzed later on.[15]

The defense presented the three accused as witnesses, testifying as follows:

Carandang claims that he had no firearm during the incident, and that it was the police officers who fired all the shots. He was in Milan's house during the incident in order to ask Milan to accompany him to convert his cellular phone's SIM card. When he arrived at Milan's place, he found Milan and Chua playing a card game. A short time later, there was banging on the door. The door of the house was destroyed and gunfire suddenly erupted, prompting him to take cover under a bed. Chua cried out to him that he was hit and that he might lose blood. Milan ran outside and sustained injuries as well. There was an explosion near the door, causing burns on Carandang's left arm. Gunfire continued coming from different directions for two to three minutes. Suddenly, the place became dark as the lights went out.[16]

Since gunshots were still heard every now and then, Carandang stayed in the house and did not come out. Col. Tor, the new Chief of the Criminal Investigation Division (CID) Sikatuna, negotiated for Carandang to come out. Carandang requested for the presence of his wife, Col. Doroteo Reyes and media man Ramon Tulfo. He went out of the house at around midnight when the three arrived.[17]

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[14] Records, pp. 91-92.

[15] TSN, August 15, 2001, pp. 7-19.

[16] TSN, December 10, 2001, pp. 4-11.

[17] *Id.* at 7-9.

Milan testified that he was at home in Calavite St. at the time of the incident. He knew Carandang for seven months. Chua was their neighbor. While playing a card game inside his room, they heard someone pounding at the door. He stood and approached the door to check. The door was destroyed, and two unidentified men barged in. Gunshots erupted. He was hit on the left side of his body. He ran out of the room, leaving Chua and Carandang behind. As he was doing so, he saw his mother lying down and shouting "*Itigil niyo ang putukan; maraming matatanda dito!*" Milan was then hit on his left leg by another gunshot.[18]

Chua testified that he went to the house of Milan at around noontime of April 4, 2001 to play a card game. They played inside Milan's ground floor room. Five to ten minutes later, Carandang arrived and laid down on the bed. Chua did not pay much attention as Milan and Carandang discussed about cellular phones. Later, they heard a loud banging in the door as if it was being forced open. Milan stood up to see what was happening. Chua remained seated and Carandang was still on the bed. The door was forcibly opened. Chua heard successive gunshots and was hit on his left big toe. He ducked on the floor near the bed to avoid being hit further. He remained in that position for several hours until he lost consciousness. He was already being treated at the Chinese General Hospital when he regained consciousness. In said hospital, a paraffin test was conducted upon him.[19]

P/Sr. Insp. Grace Eustaquio, Forensic Chemist of the PNP Crime Laboratory, later testified that the paraffin test on Chua yielded a negative result for gunpowder nitrates, but that performed on Carandang produced a positive result. She was not able to conduct a paraffin test on Milan, who just came from the operating room when she saw him. Milan seemed to be in pain and refused to be examined.[20]

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[18] TSN, April 1, 2002, pp. 3-9.

[19] TSN, April 22, 2002, pp. 4-15.

[20] TSN, September 9, 2002, pp. 3-13.

On April 22, 2003, the trial court rendered its Decision[21] finding Carandang, Milan and Chua guilty of two counts of murder and one count of frustrated murder:

WHEREFORE, finding the accused RESTITUTO CARANDANG, HENRY MILAN AND JACKMAN CHUA *guilty* beyond reasonable doubt of the crime of murder described and penalized under Article 249 of the Revised Penal Code in relation to Article 63 of the same Code, for the killing of SPO2 Wilfredo Pilar Red and PO2 Dionisio Alonzo qualified by treachery and acting in conspiracy with each other, they are hereby sentenced to suffer the penalty of *reclusion perpetua* for each count of murder and to indemnify the heirs of the victims, jointly and severally, as follows:

To the heirs of SPO2 Wilfredo Red:

1. ₱50,000.00 as civil indemnity;
2. ₱50,000.00 as moral damages;
3. ₱149,734.00 as actual damages; and
4. ₱752,580.00 as compensatory damages

To the heirs of PO2 Dionisio Alonzo:

1. ₱50,000.00 as civil indemnity;
2. ₱50,000.00 as moral damages;
3. ₱139,910.00 as actual damages; and
4. ₱522,960.00 as compensatory damages.

Likewise, finding the accused Restituto Carandang, Henry Milan and Jackman Chua guilty beyond reasonable doubt of the crime of frustrated murder, described and penalized under Article 249 in relation to Article 6, paragraph 2, having acted in conspiracy with each other and applying the Indeterminate Sentence Law, they are hereby sentenced to suffer imprisonment of six (6) years of *prision mayor* to twelve (12) years and one (1) day of *reclusion temporal*, and to indemnify the victim Wilfredo Montecalvo as follows:

1. ₱14,000.00 as actual damages;
2. ₱20,000.00 as moral damages;

[21] Records, pp. 272-294.

3. ₱20,000.00 as reasonable attorney's fees; and

4. To pay the costs.[22]

Carandang, Milan and Chua appealed to this Court.[23] The appeals were separately docketed as G.R. Nos. 160510-12.[24] Pursuant, however, to the decision of this Court in *People v. Mateo*,[25] the appeals were transferred[26] to the Court of Appeals, where they were assigned a single docket number, CA-G.R. CR.-H.C. No. 01934.

On May 10, 2006, the Court of Appeals rendered the assailed Decision modifying the Decision of the trial court:

> WHEREFORE, premises considered, the Decision of the Regional Trial Court of Quezon City, Branch 76, in Criminal Case Nos. Q-01-100061-63 finding accused-appellants guilty beyond reasonable doubt of two (2) counts of Murder and one (1) count of Frustrated Murder is hereby AFFIRMED with MODIFICATIONS as follows:
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> 1) In Criminal Case Nos. Q-01-100061 and Q-01-100062, accused-appellants are hereby ordered to pay the heirs of PO2 Dionisio S. Alonzo and SPO2 Wilfredo P. Red an indemnity for loss of earning capacity in the amount of ₱2,140,980.69 and ₱2,269,243.62, respectively; and
>
> 2) In Criminal Case No. Q-01-100063, accused-appellants are hereby instead sentenced to suffer an indeterminate prison term of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.
>
> With costs against the accused-appellants.[27]

Milan and Chua appealed to this Court anew.[28] Carandang did not appeal, and instead presented a letter informing this

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[22] *Id.* at 293-294.

[23] CA *rollo*, pp. 58-59.

[24] *Id.* at 64.

[25] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[26] CA *rollo*, pp. 239-240.

[27] *Rollo*, p. 21.

[28] *Id.* at 23-24.

Court that he is no longer interested in pursuing an appeal.[29] On April 9, 2008, Milan and Chua filed a Supplemental Appellant's Brief to further discuss the Assignment of Errors they presented in their September 28, 2004 Appellant's Brief:

I.

The court *a quo* erred in holding that there was conspiracy among the appellants in the case at bar.

II.

Assuming *arguendo* that conspiracy exists, the court *a quo* gravely erred in convicting them of the crime of murder and frustrated murder instead of homicide and frustrated homicide only, the qualifying circumstance of treachery not having been duly proven to have attended the commission of the crimes charged.[30]

The trial court had ruled that Carandang, Milan and Chua acted in conspiracy in the commission of the crimes charged. Thus, despite the established fact that it was Carandang who fired the gun which hit SPO2 Red, PO2 Alonzo and SPO1 Montecalvo, all three accused were held equally criminally responsible therefor. The trial court explained that Carandang, Milan and Chua's actuations showed that they acted in concert against the police officers. The pertinent portion of the RTC Decision reads:

Milan, Carandang and Chua were all inside the room of Milan. Upon arrival of police officers Red, Alonzo and the others and having identified themselves as police officers, the door was closed and after Alonzo and Red pushed it open and as Alonzo shouted, "*walang gagalaw*," immediately shots rang out from inside the room, felling Alonzo, then Red, then Montecalvo. Chua was heard by Estores to shout to Milan: "*Sugurin mo na*" (tsn, October 16, 2001, page 8). And as Milan lunged at Montecalvo, the latter shot him.

That the three acted in concert can be gleaned from their actuations. First, when they learned of the presence of the police officers, they closed the door. Not one of them came out to talk peacefully with

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[29] *Id.* at 29.

[30] CA *rollo*, pp. 135-136.

the police officers. Instead, Carandang opened fire, Alonzo and Red did not even have the chance to touch their firearms at that instant.[31]

In affirming this ruling, the Court of Appeals further expounded on the acts of Milan and Chua showing that they acted in concert with Carandang, to wit:

> In the present case, when appellants were alerted of the presence of the police officers, Milan immediately closed the door. Thereafter, when the police officers were finally able to break open said door, Carandang peppered them with bullets. PO2 Alonzo and SPO2 Red died instantly as a result while SPO1 Montecalvo was mortally wounded. Then, upon seeing their victims helplessly lying on the floor and seriously wounded, Chua ordered Milan to attack the police officers. Following the order, Milan rushed towards Montecalvo but the latter, however, was able to shoot him.
>
> At first glance, Milan's act of closing the door may seem a trivial contribution in the furtherance of the crime. On second look, however, that act actually facilitated the commission of the crime. The brief moment during which the police officers were trying to open the door paved the way for the appellants to take strategic positions which gave them a vantage point in staging their assault. Thus, when SPO2 Red and PO2 Alonzo were finally able to get inside, they were instantly killed by the sudden barrage of gunfire. In fact, because of the suddenness of the attack, said police officers were not able to return fire.
>
> Insofar as Chua is concerned, his participation in the conspiracy consisted of lending encouragement and moral ascendancy to his co-conspirators as evidenced by the fact that he ordered Milan to attack the already fallen police officers with the obvious intention to finish them off. Moreover, he did not immediately surrender even when he had the opportunity to do so but instead chose to stay with Carandang inside the room until their arrest.[32]

Milan and Chua object to the conclusion that they were in conspiracy with Carandang due to their acts of closing the door and not peaceably talking to the police officers. According to them, those acts were caused by their being frightened by the

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[31] Records, p. 287.

[32] *Rollo*, p. 17.

police officers who were allegedly in full battle gear.[33] Milan and Chua further assert that the fortuitous and unexpected character of the encounter and the rapid turn of events should have ruled out a finding of conspiracy.[34] They claim that the incident happened so fast, giving them no opportunity to stop Carandang.[35]

Appellants contest the factual finding that Chua directed Milan to go after SPO1 Montecalvo, alleging that they were both unarmed and that there was no way for Milan to attack an armed person. What really happened, according to them, was that Milan ran out of the room for safety and not to attack SPO1 Montecalvo.[36] Milan claims that he was already injured in the stomach when he ran out, and it was natural for him to seek safety.

Assuming *arguendo* that Chua uttered "*Sugurin mo na*!" to Milan, appellants argue that no crime was committed due to the same as all the victims had already been shot when said words were shouted.[37] Furthermore, it appears to have been uttered as a result of indiscretion or lack of reflection and did not inherently carry with it inducement or temptation.[38]

In the Supplemental Brief, Milan and Chua point out that the assault on the victims was the result of the impulsive act of Carandang and was not a result of any agreement or a concerted action of all the accused.[39] They claim that when the shootout ensued, Chua immediately dove down near the bed while Milan ran out of the room out of fear.[40] It is allegedly hard to imagine that SPO1 Montecalvo with certainty heard Chua utter the phrase

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[33] CA *rollo*, p. 138.

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

[35] *Id.* at 142-143.

[36] *Id.* at 143-146.

[37] *Id.* at 146-151.

[38] *Id.* at 151.

[39] *Rollo*, p. 54.

[40] *Id.* at 53.

"Sugurin mo na," considering that the incident happened so fast, there were lots of gunshots.[41]

To summarize, Milan's and Chua's arguments focus on the lack of direct evidence showing that they conspired with Carandang during the latter's act of shooting the three victims. However, as we have held in *People v. Sumalpong*,[42] conspiracy may also be proven by other means:

> Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. *Evidence need not establish the actual agreement among the conspirators showing a preconceived plan or motive for the commission of the crime. Proof of concerted action before, during and after the crime, which demonstrates their unity of design and objective, is sufficient.* When conspiracy is established, the act of one is the act of all regardless of the degree of participation of each.[43]

In the case at bar, the conclusion that Milan and Chua conspired with Carandang was established by their acts (1) before Carandang shot the victims (Milan's closing the door when the police officers introduced themselves, allowing Carandang to wait in ambush), and (2) after the shooting (Chua's directive to Milan to attack SPO1 Montecalvo and Milan's following such instruction). Contrary to the suppositions of appellants, these facts are **not** meant to prove that Chua is a principal by inducement, or that Milan's act of attacking SPO1 Montecalvo was what made him a principal by direct participation. Instead, these facts are convincing circumstantial evidence of the unity of purpose in the minds of the three. As co-conspirators, all three are considered principals by direct participation.

Appellants' attempt to instill doubts in our minds that Chua shouted *"sugurin mo na"* to Milan, who then ran towards SPO1 Montecalvo, must fail. SPO1 Estores's positive testimony[44] on

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[41] *Id.* at 54.

[42] 348 Phil. 501 (1998).

[43] *Id.* at 524-525.

[44] TSN, October 16, 2001, pp. 6-8.

this matter prevails over the plain denials of Milan and Chua. SPO1 Estores has no reason to lie about the events he witnessed on April 5, 2001. As part of the team that was attacked on that day, it could even be expected that he is interested in having only the real perpetrators punished.

Furthermore, we have time and again ruled that factual findings of the trial court, especially those affirmed by the Court of Appeals, are conclusive on this Court when supported by the evidence on record.[45] It was the trial court that was able to observe the demeanors of the witnesses, and is consequently in a better position to determine which of the witnesses are telling the truth. Thus, this Court, as a general rule, would not review the factual findings of the courts *a quo*, except in certain instances such as when: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to the findings of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[46]

Neither can the rapid turn of events be considered to negate a finding of conspiracy. Unlike evident premeditation, there is no requirement for conspiracy to exist that there be a sufficient period of time to elapse to afford full opportunity for meditation and reflection. Instead, conspiracy arises on the very moment the plotters agree, expressly or impliedly, to commit the subject felony.[47]

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[45] *People v. Barde*, G.R. No. 183094, September 22, 2010.

[46] *Pelonia v. People*, G.R. No. 168997, April 13, 2007, 521 SCRA 207, 219.

[47] *People v. Baldimo and Derilo*, 338 Phil. 350, 375 (1997).

As held by the trial court and the Court of Appeals, Milan's act of closing the door facilitated the commission of the crime, allowing Carandang to wait in ambush. The sudden gunshots when the police officers pushed the door open illustrate the intention of appellants and Carandang to prevent any chance for the police officers to defend themselves. Treachery is thus present in the case at bar, as what is decisive for this qualifying circumstance is that the execution of the attack made it impossible for the victims to defend themselves or to retaliate.[48]

The trial court correctly sentenced appellants to suffer the penalty of *reclusion perpetua* in Criminal Case Nos. Q-01-100061 and Q-01-100062. The penalty for murder under Article 248[49] of the Revised Penal Code is *reclusion perpetua* to death. Applying Article 63[50] of the same Code, since there was no

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[48] *People v. Garin*, 476 Phil. 455, 476 (2004).

[49] Art. 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

2. In consideration of a price, reward, or promise;

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or any other public calamity;

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[50] Art. 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:

other modifying circumstance other than the qualifying circumstance of treachery, the penalty that should be imposed is *reclusion perpetua*.

In Criminal Case No. Q-01-100063, the Court of Appeals correctly modified the penalty for the frustrated murder of SPO1 Montecalvo. Under Article 50[51] in connection with Article 61, paragraph 2[52] of the Revised Penal Code, the penalty for frustrated murder is one degree lower than *reclusion perpetua* to death, which is *reclusion temporal*. *Reclusion temporal* has a range of 12 years and 1 day to 20 years. Its medium period, which should be applied in this case considering that there is no modifying circumstance other than the qualifying circumstance of treachery, is 14 years, 8 months and 1 day to 17 years and 4 months – the range of the maximum term of the indeterminate penalty under

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1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

[51] Art. 50. *Penalty to be imposed upon principals of a frustrated crime.* — The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principals in a frustrated felony.

[52] Art. 61. *Rules of graduating penalties.* — For the purpose of graduating the penalties which, according to the provisions of Articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

xxx xxx xxx

2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.

Section 1[53] of the Indeterminate Sentence Law. The minimum term of the indeterminate penalty should then be within the range of the penalty next lower to *reclusion temporal*, and thus may be any term within *prision mayor*, the range of which is 6 years and 1 day to 12 years. The modified term of 6 years and 1 day of *prision mayor* as minimum, to 14 years, 8 months and 1 day of *reclusion temporal* as maximum, is within these ranges.

The civil liabilities of appellants should, however, be modified in accordance with current jurisprudence. Thus, in Criminal Case Nos. Q-01-100061 and Q-01-100062, the award of ₱50,000.00 as civil indemnity for each victim must be increased to ₱75,000.00.[54] In cases of murder and homicide, civil indemnity of ₱75,000.00 and moral damages of ₱50,000.00 are awarded automatically, without need of allegation and proof other than the death of the victim.[55] Appellants are furthermore solidarily liable to each victim for ₱30,000.00 as exemplary damages, which is awarded when the crime was committed with an aggravating circumstance, be it generic or qualifying.[56] However, since Carandang did not appeal, he is only solidarily liable with Milan and Chua with respect to the amounts awarded by the Court of Appeals, since the Court of Appeals' Decision has become final and executory with respect to him. The additional

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[53] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

[54] *People v. Orias and Elarcosa*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 437.

[55] *Id.*

[56] *People v. Regalario*, G.R. No. 174483, March 31, 2009, 582 SCRA 738, 761.

amounts (₱25,000.00 as civil indemnity and ₱30,000.00 as exemplary damages) shall be borne only by Milan and Chua, who are hereby held liable therefor solidarily.

In Criminal Case No. Q-01-100063, the solidary liability of Milan and Chua for moral damages to SPO1 Wilfredo Montecalvo is likewise increased to ₱40,000.00, in accordance with prevailing jurisprudence.[57] An award of ₱20,000.00 as exemplary damages is also warranted.[58] The additional amounts (₱20,000.00 as moral damages and ₱20,000.00 as exemplary damages) are likewise to be solidarily borne only by Milan and Chua.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01934 dated May 10, 2006 is hereby *AFFIRMED*, with the following *MODIFICATIONS*:

1. In Criminal Case Nos. Q-01-100061 and Q-01-100062, appellants Henry Milan and Jackman Chua are held solidarily liable for the amount of ₱25,000.00 as civil indemnity and ₱30,000.00 as exemplary damages to the heirs of each of the victims, PO2 Dionisio S. Alonzo and SPO2 Wilfredo P. Red, in addition to the amounts to which they are solidarily liable with Restituto Carandang as held in CA-G.R. CR.-H.C. No. 01934. Thus, to summarize the rulings of the lower courts and this Court:

    a. The **heirs of SPO2 Wilfredo Red** are entitled to the following amounts:

        i. **₱75,000.00 as civil indemnity**, ₱50,000.00 of which shall be solidarily borne by *Carandang, Milan and Chua*, while ₱25,000.00 shall be the solidary liability of *Milan and Chua only*;

        ii. **₱50,000.00 as moral damages** to be solidarily borne by *Carandang, Milan and Chua*;

        iii. **₱149,734.00 as actual damages** to be solidarily borne by *Carandang, Milan and Chua*;

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[57] *People v. Mokammad*, G.R. No. 180594, August 19, 2009, 596 SCRA 497, 513-514.

[58] *Id*.

iv. **₱2,140,980.00 as indemnity for loss of earning capacity** to be solidarily borne by *Carandang, Milan and Chua*; and

v. **₱30,000.00 as exemplary damages** to be solidarily borne by *Milan and Chua only*;

b. The **heirs of PO2 Dionisio Alonzo** are entitled to the following amounts:

i. **₱75,000.00 as civil indemnity**, ₱50,000.00 of which shall be solidarily borne by *Carandang, Milan and Chua*, while ₱25,000.00 shall be the solidary liability of *Milan and Chua only*;

ii. **₱50,000.00 as moral damages** to be solidarily borne by *Carandang, Milan and Chua*;

iii. **₱139,910.00 as actual damages** to be solidarily borne by *Carandang, Milan and Chua*;

iv. **₱2,269,243.62 as indemnity for loss of earning capacity** to be solidarily borne by *Carandang, Milan and Chua*;

v. **₱30,000.00 as exemplary damages** to be solidarily borne by *Milan and Chua only*;

2. In Criminal Case No. Q-01-100063, appellants Henry Milan and Jackman Chua are held solidarily liable for the amount of ₱20,000.00 as moral damages and ₱20,000.00 as exemplary damages to SPO1 Wilfredo Montecalvo, in addition to the amounts to which they are solidarily liable with Restituto Carandang as held in CA-G.R. CR.-H.C. No. 01934. Thus, to summarize the rulings of the lower courts and this Court, **SPO1 Wilfredo Montecalvo** is entitled to the following amounts:

i. **₱14,000.00 as actual damages** to be solidarily borne by *Carandang, Milan and Chua*;

ii. **₱40,000.00 as moral damages**, ₱20,000.00 of which shall be solidarily borne by *Carandang, Milan and Chua*, while ₱20,000.00 shall be the solidary liability of *Milan and Chua only*;

iii. **₱20,000.00 as exemplary damages** to be solidarily borne by *Milan and Chua only*; and

iv. **₱20,000.00 as reasonable attorney's fees**, to be solidarily borne by *Carandang, Milan and Chua*.

3. Appellants are further ordered to pay interest on all damages awarded at the legal rate of Six Percent (6%) *per annum* from date of finality of this judgment.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, del Castillo, and *Mendoza,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 184253. July 6, 2011]

REPUBLIC OF THE PHILIPPINES, through the PHILIPPINE NAVY, represented by CAPT. RUFO R. VILLANUEVA, substituted by CAPT. PANCRACIO O. ALFONSO, and now by CAPT. BENEDICTO G. SANCEDA PN, *petitioner, vs.* **CPO MAGDALENO PERALTA PN (Ret.), CPO ROMEO ESTALLO PN (Ret.), CPO ERNESTO RAQUION PN (Ret.), MSGT SALVADOR RAGAS PM (Ret.), MSGT DOMINGO MALACAT PM (Ret.), MSGT CONSTANTINO CANONIGO PM (Ret.), and AMELIA MANGUBAT,** *respondents.* **MSGT ALFREDO BANTOG PM (Ret.), MSGT RODOLFO VELASCO PM (Ret.), and NAVY ENLISTEDMEN HOMEOWNERS ASSOCIATION, INC.,** *respondent-intervenors.*

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[*] Per Raffle dated June 27, 2011.

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; LEASE; CONTRACTUAL STIPULATIONS EMPOWERING THE LESSOR TO REPOSSESS THE LEASED PROPERTY EXTRAJUDICIALLY FROM A LESSEE WHOSE LEASE HAD EXPIRED IS VALID; CASE AT BAR.— Contractual stipulations empowering the lessor to repossess the leased property extrajudicially from a lessee whose lease has expired have been held to be valid. Being the law between the parties, they must be respected. The occupancy by respondents and intervenors of the military quarters is covered by contracts of lease. x x x Respondents and intervenors had long retired from military service. Therefore, they are no longer entitled to stay in the military quarters because their contracts of lease have been terminated by their retirement from the service. Respondents and intervenors, who are no longer in the military service, are occupying quarters in the Bonifacio Naval Station, a military facility or reservation that is subject to special military regulations commensurate to the requirements of safety and protection of military equipment and personnel. The naval facility is outside the commerce of man and the lease of quarters to military personnel in the service is merely incidental to their military service. Such lease is not an ordinary lease of a residential or commercial building. Upon retirement of the military personnel, their quarters have to be occupied by the military personnel in the active service who replace them.

2. ID.; ID.; ID.; STIPULATIONS AUTHORIZING THE USE OF "ALL NECESSARY FORCE" OR "REASONABLE FORCE" IN MAKING RE-ENTRY UPON THE EXPIRATION OF THE LEASE IS LEGAL; CASE AT BAR.— In *Viray v. Intermediate Appellate Court,* we pointed out that there is considerable authority in American law upholding the validity of stipulations authorizing the use of "all necessary force" or "reasonable force" in making re-entry upon the expiration of the lease. x x x In their lease contracts, respondents and intervenors agreed to comply with regulations which may be promulgated by petitioner even after their contracts have been executed. One of these regulations is PN Housing Administration x x x. There is also Standing Operation Procedure No. 6 regarding the forcible eviction of tenants/

> occupants from military quarters x x x. Since respondents and intervenors agreed to abide by the foregoing regulations of the military facility, judicial action is no longer necessary to evict respondents and intervenors from the military quarters. Respondents and intervenors authorized petitioner to extrajudicially take over the possession of the leased military housing quarters after their retirement. This is also in line with the policy of the Armed Forces of the Philippines and the Philippine Navy to provide military quarters for the exclusive use of military personnel who are in the active service.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Norman Gabriel for Navy Enlistedmen Homeowners Association, Inc.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 31 January 2008 Decision[2] and 1 August 2008 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 96463. In its 31 January 2008 Decision, the Court of Appeals dismissed petitioner Republic of the Philippines' (petitioner) petition for *certiorari* and affirmed the 10 October 2003 Order of the Regional Trial Court of Makati City, Branch 56 (trial court), ruling that petitioner cannot evict respondents CPO Magdaleno Peralta PN (Ret.), CPO Romeo Estallo PN (Ret.), CPO Ernesto Raquion PN (Ret.), MSGT Salvador Ragas (PM) (Ret.), MSGT Domingo Malacat PM (Ret.), MSGT Constantino Canonigo PM (Ret.), and the deceased spouse of Amelia Mangubat (respondents) and intervenors MSGT Alfredo Bantog PM (Ret.)

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

[2] *Rollo*, pp. 47-61. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Lucas P. Bersamin (now a member of this Court) and Estela M. Perlas-Bernabe, concurring.

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

and MSGT Rodolfo Velasco PM (Ret.) from the leased military quarters without a court order. In its 1 August 2008 Resolution, the Court of Appeals denied petitioner's motion for reconsideration.

The Facts

When respondents and intervenors were still in the active service at the Philippine Navy, all of them were awarded military quarters at the Military Enlistedmen Quarters (MEQ) located inside the Bonifacio Naval Station (BNS), Fort Bonifacio, Makati City. Respondents and intervenors entered into contracts of lease with the BNS Commander for their occupation of the said quarters.[4] Subsequently, members of the Philippine Navy and Marines occupying the BNS quarters, including respondents and intervenors, formed the Navy Enlistedmen Homeowner's Association, Inc. (NEHAI). However, even after their retirement, respondents and intervenors continued to occupy their assigned quarters.

Sometime in February 1996, NEHAI filed before the Regional Trial Court of Makati City a petition for declaratory relief against the Department of Environment and Natural Resources, Land Management Bureau, and the Armed Forces of the Philippines Officer's Village docketed as Civil Case No. 96-150. NEHAI claimed that its members, as actual occupants of the MEQ, have the right of first priority to purchase the MEQ property under the provisions of Proclamation No. 461,[5] in relation to Republic Act Nos. 274[6] and 730.[7]

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[4] *Id.* at 64-73.

[5] Excluding From the Operation of Proclamation No. 423 dated July 12, 1957, which Established the Military Reservation Known as Fort William McKinley (now Fort Andres Bonifacio) Situated in the Municipalities of Pasig, Taguig, and Parañaque, Province of Rizal, and Pasay City, Island of Luzon, and Declaring the Same as AFP Officers' Village to be Disposed of Under the Provisions of Republic Act Nos. 274 and 730.

[6] An Act Authorizing the Director of Lands to Subdivide the Lands Within Military Reservations Belonging to the Republic of the Philippines which are no Longer Needed for Military Purposes, and to Dispose of the same by Sale subject to Certain Conditions, and for Other Purposes. Approved on 15 June 1948.

[7] An Act to Permit the Sale Without Public Auction of Public Lands of the Republic of the Philippines for Residential Purposes to Qualified Applicants Under Certain Conditions. Approved on 18 June 1952.

In March 1996, respondents Estallo, Raquion and Ragas received letters from the BNS Commander advising them to vacate their respective quarters. NEHAI's counsel replied and informed the BNS Commander of their pending petition for declaratory relief and asked that the eviction be deferred until the court has rendered a decision. The BNS Commander denied NEHAI's request. Respondents were again ordered to vacate their quarters.

To forestall their ejectment, respondents filed a complaint for injunction with prayer for the issuance of preliminary injunction and/or temporary restraining order against the Philippine Navy before the trial court. The case was docketed as Civil Case No. 96-801.

Intervenors Bantog and Velasco joined respondents' cause by filing a complaint-in-intervention.

On 10 October 2003, the trial court granted respondents' and intervenors' application for preliminary injunction.[8] According to the trial court, the BNS Commander cannot forcibly evict respondents and intervenors without any court order. If the BNS Commander evicts them, it would violate their right against eviction under Republic Act No. 7279.[9] The trial court added that the proper recourse of the BNS Commander was to file a complaint for unlawful detainer against respondents and intervenors.

Petitioner filed a motion for reconsideration.[10] NEHAI also filed a motion for intervention[11] and attached its complaint-in-intervention.[12] NEHAI alleged that it has legal interest in the

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[8] *Rollo*, pp. 98-101. Penned by Judge Nemesio S. Felix.

[9] An Act to Provide for a Comprehensive and Continuing Urban Development and Housing Program, Establish the Mechanism for its Implementation, and for Other Purposes. Approved on 24 March 1992.

[10] *Rollo*, pp. 102-122.

[11] *Id.* at 144-146.

[12] *Id.* at 147-153.

matter and that it will be prejudiced by the distribution or disposition of the MEQ property. Petitioner filed an opposition to NEHAI's motion.[13]

On 31 July 2006, the trial court issued an Omnibus Order[14] denying petitioner's motion for reconsideration and granting NEHAI's motion to intervene. The trial court said that NEHAI has the legal personality to intervene and that the intervention will not delay or prejudice the adjudication of the rights of the original parties. The trial court also enjoined the BNS Commander from effecting the eviction of all the members of NEHAI from their respective quarters.

Petitioner filed a motion for reconsideration. In its 20 September 2006 Order, the trial court denied petitioner's motion.

Petitioner filed a petition for *certiorari* before the Court of Appeals. Petitioner asked the Court of Appeals to annul the trial court's 20 September 2006 Order, 31 July 2006 Omnibus Order, and 10 October 2003 Order on the ground of lack or excess of jurisdiction.

In its 31 January 2008 Decision, the Court of Appeals dismissed the petition for lack of merit. The dispositive portion of the 31 January 2008 Decision reads:

> WHEREFORE, for lack of merit, the petition is **DISMISSED**. Upon the view that the Court takes on the right of the members of NEHAI to intervene in Civil Case No. 96-801, NEHAI is **DIRECTED** to amend the title of the Complaint-In-Intervention and the averments therein by disclosing the names of its principals and bringing the action in a representative capacity.
>
> SO ORDERED.[15]

Petitioner filed a motion for reconsideration. In its 1 August 2008 Resolution, the Court of Appeals denied petitioner's motion.

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[13] *Id.* at 123-131.

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

[15] *Id.* at 60.

Hence, this appeal.

The Ruling of the Court of Appeals

The Court of Appeals ruled that the trial court acted within its jurisdiction in issuing the writ of preliminary injunction. While the Court of Appeals agreed that contractual stipulations empowering the lessor to repossess the leased property extrajudicially from a lessee whose lease has expired have been held to be valid, procedural due process dictates that petitioner resort to judicial processes to question respondents' and intervenors' right to occupy the leased quarters. According to the Court of Appeals, an ejectment suit is necessary to resolve the issue.

The Court of Appeals agreed with petitioner that NEHAI cannot intervene on behalf of its members in the guise of a class suit since not all the requisites of a class suit are present. However, the Court of Appeals did not dismiss NEHAI's complaint-in-intervention because its individual members have legal interest in the subject matter in litigation entitling them to intervene in the proceedings. To avoid multiplicity of suits, the Court of Appeals construed the complaint-in-intervention as a suit brought by NEHAI as the representative of its members and ordered NEHAI to disclose the names of its principals and amend the complaint-in-intervention accordingly.

The Issue

Petitioner raises this sole issue:

WHETHER UNDER THE FACTS HEREOF, THERE IS AN INDISPENSABLE NEED FOR PETITIONER TO FILE AN EJECTMENT SUIT BEFORE IT MAY EVICT RESPONDENTS AND INTERVENORS FROM THE SUBJECT MILITARY HOUSING QUARTERS.[16]

The Ruling of the Court

The petition has merit.

[16] *Id.* at 30.

Petitioner argues that a judicial action is not necessary to evict respondents and intervenors from the leased military quarters because their contracts of lease have long expired. Petitioner adds that the contracts of lease specifically authorized petitioner to extrajudicially take over the possession of the leased military quarters after the expiration of their contracts.

Contractual stipulations empowering the lessor to repossess the leased property extrajudicially from a lessee whose lease has expired have been held to be valid.[17] Being the law between the parties, they must be respected.

The occupancy by respondents and intervenors of the military quarters is covered by contracts of lease.[18] The following stipulations can be found in the contracts of lease:

> 3. That the party of the Second Part hereby binds himself to leave or vacate this assigned quarters on the effective day of his **retirement**/ reversion/separation from the AFP.[19]

> 7. That the term or duration of this contract shall be for an inclusive period of three (3) years reckoned from the date of actual or constructive occupancy, subject to renewal for another three (3) years at the option of the Party of the First Part. However, the three year term may be accelerated and terminated earlier by either of the following: (a) Discharge/separation of an enlisted personnel prior to his term of enlistment or upon expiration of his current term of enlistment by reason of and under the provision on pertinent laws and regulations; (b) Reversion to inactive status of an officer prior to the date of his extended tour of active duty or upon the date of expiration of said extended tour of duty by reason of and under the provisions of pertinent laws and regulations; (c) Separation of a regular officer from the military service either by resignation or by action of the Efficiency and Separation Board or other modes prescribed by laws or regulations; (d) **Retirement from the military service, whether optional or compulsory, of a regular or Reserve officer**

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[17] *Viray v. Intermediate Appellate Court*, G.R. No. 81015, 4 July 1991, 198 SCRA 786; *Consing v. Jamandre*, 159-A Phil. 291 (1975).

[18] *Rollo*, pp. 64-73.

[19] *Id.* at 66-67.

or enlisted personnel; (e) Failure of the Party of the Second Part to either pay/liquidate his rentals and/or water light bills; and (f) Failure of the Party of the Second Part to comply with the provisions of PNHB Circular Nr 12 dated 20 October 1978, post regulations and other similar regulations, and/or violation of any of the terms and conditions of this contract.[20] (Emphasis supplied)

Respondents and intervenors had long retired from military service. Therefore, they are no longer entitled to stay in the military quarters because their contracts of lease have been terminated by their retirement from the service.

Respondents and intervenors, who are no longer in the military service, are occupying quarters in the Bonifacio Naval Station, a military facility or reservation that is subject to special military regulations commensurate to the requirements of safety and protection of military equipment and personnel. The naval facility is outside the commerce of man[21] and the lease of quarters to military personnel in the service is merely incidental to their military service. Such lease is not an ordinary lease of a residential or commercial building. Upon retirement of the military personnel, their quarters have to be occupied by the military personnel in the active service who replace them.

In *Viray v. Intermediate Appellate Court*,[22] we pointed out that there is considerable authority in American law upholding the validity of stipulations authorizing the use of "all necessary force" or "reasonable force" in making re-entry upon the expiration of the lease. We stated:

Although the authorities are not in entire accord, the better view seems to be, even in jurisdictions adopting the view that the landlord cannot forcibly eject a tenant who wrongfully holds without incurring civil liability, that nevertheless, where a lease provides that if the tenant holds over after the expiration of his term, the landlord may

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[20] *Id.* at 64-65, 68, 70 and 72.

[21] See *Republic v. Southside Homeowner's Association Inc.*, G.R. No. 156951, 22 September 2006, 502 SCRA 587.

[22] *Supra* note 17.

enter and take possession of the premises, using all necessary force to obtain the actual possession thereof, and that such entry should not be regarded as trespass, be sued for as such, or in any wise be considered unlawful, the landlord may forcibly expel the tenant upon the termination of the tenancy, using no more force than necessary, and will not be liable to the tenant therefor, such a condition in a lease being valid.[23]

In their lease contracts, respondents and intervenors agreed to comply with regulations which may be promulgated by petitioner even after their contracts have been executed.[24] One of these regulations is PN Housing Administration[25] which provides the following rules:

6. Tenancy

xxx xxx xxx

g. **The awardee shall be allowed to occupy military quarters until his retirement**, separation, reversion or discharge from the active service or unless sooner terminated for cause or other authorized purposes. **The termination of occupancy shall be made in writing and with appropriate termination orders** in accordance with sub para 8 below.

h. Thirty (30) days before retirement/separation/reversion/ discharge from the service of the occupant, the Post Commander shall inform the occupant in a formal letter that the quarters assigned to him shall be vacated immediately upon retirement/separation. For valid reasons, a written request for extension, not to exceed sixty (60) days, may be granted by PNHB upon the recommendation of the Post/Station Commander. Positional Quarters shall be vacated immediately upon relief from position.

xxx xxx xxx

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[23] *Id.* at 792.

[24] *Rollo*, pp. 64-68, 70 and 72.The contracts of lease provide:

5. That the Party of the Second Part agrees to comply with existing Post Regulations and those which may hereafter be promulgated by competent authorities.

[25] *Id.* at 81-85. The same rules can be found in the AFP Housing Regulations, *id.* at 74-80.

l. **Forcible eviction shall be instituted against military personnel who have violated this Circular, Post regulations, conditions of the contract,** shown undesirable habits and traits of character, or have become security risks.[26]

There is also Standing Operation Procedure No. 6[27] regarding the forcible eviction of tenants/occupants from military quarters which provides:

III. POLICIES:

xxx xxx xxx

b. Occupants of such quarters/similar structures/housing facilities shall, upon their retirement, discharge and/or separation from the service, cease to be entitled to the privilege of occupying such dwelling. They must, therefore, vacate them within sixty (60) calendar days from the effective date of their retirement, discharge and/or separation.

xxx xxx xxx

e. **Occupants/tenants covered by paras b, c and/or d hereof who refuse to vacate their quarters/similar structures/housing facilities shall be summarily forcibly evicted**.

IV. PROCEDURES:

xxx xxx xxx

d. Upon determination by the Executive committee that there is a ground for the summary/forcible eviction of a tenant/occupant, the Committee, thru its Chairman, will notify in writing the tenant/occupant concerned about the violation. Said letter will be personally delivered by the Deputy TPMG and/or his authorized representative to the concerned tenant/occupant.

e. **If no positive action is taken by the tenant/occupant concerned to voluntarily vacate the quarters within seven (7) days from receipt of the notice, the Committee shall then summon the Post Engineer and Post MP to execute the forcible eviction.** (Emphasis supplied)

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[26] *Id.* at 84.

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

Since respondents and intervenors agreed to abide by the foregoing regulations of the military facility, judicial action is no longer necessary to evict respondents and intervenors from the military quarters. Respondents and intervenors authorized petitioner to extrajudicially take over the possession of the leased military housing quarters after their retirement. This is also in line with the policy of the Armed Forces of the Philippines and the Philippine Navy to provide military quarters for the exclusive use of military personnel who are in the active service.[28]

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 31 January 2008 Decision and 1 August 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 96463. Petitioner Republic of the Philippines, through the Philippine Navy, may extrajudicially evict respondents CPO Magdaleno Peralta PN (Ret.), CPO Romeo Estallo PN (Ret.), CPO Ernesto Raquion PN (Ret.), MSGT Salvador Ragas PM (Ret.), MSGT Domingo Malacat PM (Ret.), MSGT Constantino Canonigo PM (Ret.), and Amelia Mangubat and intervenors MSGT Alfredo Bantog PM (Ret.) and MSGT Rodolfo Velasco PM (Ret.) from their military quarters.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Perez,* and *Sereno, JJ.*, concur.

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[28] *Id.* at 96. Standard Operating Procedure No. 6 provides:

a. Military quarters, other similar structures and/or housing facilities are for the exclusive use of military personnel who are in the active service.

[*] Designated acting member per Special Order No. 1006 dated 10 June 2011.

SECOND DIVISION

[G.R. No. 190795. July 6, 2011]

NATIONAL ASSOCIATION OF ELECTRICITY CONSUMERS FOR REFORMS, INC. (NASECORE), represented by PETRONILO ILAGAN; FEDERATION OF VILLAGE ASSOCIATIONS (FOVA), represented by SIEGFRIEDO VELOSO; and FEDERATION OF LAS PIÑAS VILLAGE ASSOCIATION (FOLVA), represented by BONIFACIO DAZO, *petitioners, vs.* **ENERGY REGULATORY COMMISSION (ERC) and MANILA ELECTRIC COMPANY, INC. (MERALCO),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES FIRST PROPOSED IN THE REPLY TO THE COMMENT ON THE PETITION FOR REVIEW, NOT CORRECT; PROPER PROCEDURE WAS TO ASK THE COURT TO ALLOW AMENDMENT OF PETITION FOR THE INCLUSION OF THE NEW ISSUES.— We have ruled that "issues not previously ventilated cannot be raised for the first time on appeal, much less when first proposed in the reply to the comment on the petition for review." To allow petitioners to blindside Meralco with newly raised issues violates the latter's due process rights. Having been raised for the first time, this Court cannot rule on the issues regarding the unreasonableness of Meralco's rates and the validity of the choice of the Performance –Based Regulation (PBR) method. If petitioners wanted to include these issues for resolution, the proper procedure was for them to ask this Court to allow them to amend their Petition for the inclusion of the aforementioned issues. Thus, we rule that the sole issue for resolution in this case is whether or not petitioners' right to due process of law was violated when the ERC issued its Order before the expiration of the period granted to petitioners to file their comment.]

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; DUE PROCESS; NOT VIOLATED IN CASE AT

BAR WHERE ERC RENDERED DECISION PREMATURELY BUT ORDERED THE AGGRIEVED PARTIES TO FILE THEIR COMMENTS ON A MOTION FOR RECONSIDERATION.— [P]etitioners were required to file their comment on the formal offer of evidence of Meralco. However, the ERC rendered its Decision prior to the lapse of the period granted to petitioners. According to petitioners, ERC's failure to accord them a reasonable opportunity to present their oppositions or comments on the application of Meralco clearly denied them due process of law. x x x Where opportunity to be heard either through oral arguments or through pleadings is granted, there is no denial of due process. It must not be overlooked that prior to the issuance of the assailed Decision, petitioners were given several opportunities to attend the hearings and to present all their pleadings and evidence in the MAP case. Petitioners voluntarily failed to appear in most of those hearings. Although it is true that the ERC erred in prematurely issuing its Decision, its subsequent act of ordering petitioners to file their comments on Mallillin's MR cured this defect. We have held that any defect in the observance of due process requirements is cured by the filing of a MR. Thus, denial of due process cannot be invoked by a party who has had the opportunity to be heard on his MR. Even though petitioners never filed a MR, the fact that they were still given notice of Mallillin's filing of a MR and the opportunity to file their comments thereto makes immaterial ERC's failure to admit their comment in the MAP case. After all, petitioners' allegations in their unfiled comment could have still, easily and just as effectively, been raised in the MAP case by incorporating the arguments in the comment to be filed in the MR case. It must be remembered that the standard of due process impressed upon administrative tribunals allows a certain degree of latitude as long as fairness is not ignored.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUIRES PRIOR MOTION FOR RECONSIDERATION; FAILURE TO COMPLY THEREWITH NOT EXCUSED ABSENT CONCRETE, COMPELLING AND VALID REASONS.— Section 1, Rule 23 of the ERC'S Rules of Procedure expressly provides for the remedy of filing a motion for reconsideration. x x x Rule 65 of the Rules of Civil

Procedure provides that a petition for *certiorari* may be filed when "there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." The "plain" and "adequate remedy" referred to in Rule 65 is a motion for reconsideration of the assailed decision. Thus, it is a well-settled rule that the filing of a motion for reconsideration is a condition *sine qua non* before the filing of a special civil action for *certiorari*. The purpose of this rule is to give the lower court the opportunity to correct itself. However, this requirement is not an ironclad rule. The prior filing of a motion for reconsideration may be dispensed with if petitioners are able to show a concrete, compelling, and valid reason for doing so. The Court may brush aside the procedural barrier and take cognizance of the petition if it raises an issue of paramount importance and constitutional significance. x x x The general statements used by Petitioner to excuse their direct recourse to this Court are not the "concrete, compelling, and valid reasons" required by jurisprudence to justify their failure to comply with the mandated procedural requirements. In addition to this, the "urgency" of the resolution of matters raised by petitioners is negated, by the fact that rates approved by the ERC, in the exercise of its rate-fixing powers, are in a sense, inherently only provisional.

4. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; NOT APPRECIATED AS ALLEGED IRREPARABLE INJURY SOUGHT TO BE DETERRED COULD HAVE BEEN AVOIDED HAD PETITIONERS BEEN MORE VIGILANT IN PROTECTING THEIR RIGHTS.— The purpose of a TRO is to prevent a threatened wrong and to protect the property or rights involved from further injury, until the issues can be determined after a hearing on the merits. Under Section 5, Rule 58 of the 1997 Rules of Civil Procedure, a TRO may be issued only if it appears from the facts shown by affidavits or by a verified application that great or irreparable injury would be incurred by an applicant before the writ of preliminary injunction could be heard. If such irreparable injury would result from the non-issuance of the requested writ or if the "extreme urgency" referred to by petitioners indeed exists, then they should have been more vigilant in protecting their rights. As they have all been duly notified of the proceedings in the ERC case, they should have appeared before the ERC and participated in the trials. We

find that petitioners erred in thinking that the non-issuance of the TRO they requested would put consumers in danger of suffering an "irreparable injury." But this asserted injury can be repaired, because, had petitioners participated in the proceedings before the ERC and the latter had found merit in their appeal, the undue increase in electric bills shall be refunded to the consumers.

APPEARANCES OF COUNSEL

Leonardo A. Aurelio for petitioners.

Grace Lu-Santos for Energy Regulatory Commission

Angara Abello Concepcion Regala & Cruz and *Jose Ronald V. Valles* for MERALCO.

D E C I S I O N

SERENO, *J.*:

The Energy Regulatory Commission (ERC), created under the *Electric Power Industry Reform Act of 2001* (EPIRA),[1] used to apply the Return on Rate Base (RORB) method to determine the proper amount a distribution utility (DU) may charge for the services it provides. The RORB scheme had been the method for computing allowable electricity charges in the Philippines for decades, before the onset of the EPIRA. Section 43(f) of the EPIRA allows the ERC to shift from the RORB methodology to alternative forms of internationally accepted rate-setting methodology, subject to multiple conditions.[2] The ERC, through

[1] Republic Act No. 9136.

[2] Sec. 43. *Functions of the ERC.* - The ERC shall promote competition, encourage market development, ensure customer choice and discourage/penalize abuse of market power in the restructured electricity industry. Towards this end, it shall be responsible for the following key functions in the restructured industry:

(f) In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency

a series of resolutions, adopted the Performance-Based Regulation (PBR) method to set the allowable rates DUs may charge their customers.[3] Meralco, a DU, applied for an increase of its distribution rate under the PBR scheme docketed as ERC Case No. 2009-057 RC (MAP2010 case) on 7 August 2009. Petitioners NASECORE, FOLVA, FOVA, and Engineer Robert F. Mallillin (Mallillin) all filed their own Petitions for Intervention to oppose the application of Meralco.[4]

At the initial hearing, on 6 October 2009, the following entered their appearances: (1) Meralco, (2) Mallillin, and (3) FOVA. Petitioners NASECORE and FOLVA failed to appear despite due notice.[5]

Meralco presented its first witness on 13 November 2009. At the date of hearing, FOLVA failed to appear despite due notice.[6] Likewise, on 19 November 2009, the continuation of Meralco's presentation of its witness, petitioners NASECORE,

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> of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form or rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:
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[3] ERC Resolution No. 12-02, Series of 2004, adopting the Distribution Wheeling Rate Guidelines; Rules for Setting Distribution Wheeling Rates for Privately Owned Distribution Utilities, 13 December 2006.

[4] *Rollo* at 1532.

[5] *Id.*

[6] *Id.* at 1532-1533.

FOVA, and FOLVA all failed to appear despite due notice.[7] NASECORE had sent a letter requesting that it be excused from the said hearing, but reserved its right to cross-examine the witness presented by Meralco. The latter objected to this request by virtue of the ERC's Rules of Practice and Procedure. ERC ruled that the absence of NASECORE and FOVA was deemed a waiver of their right to cross-examine Meralco's first witness.[8]

At the 26 November 2009 hearing, NASECORE and FOLVA again failed to attend the hearing despite due notice. Upon motion by Meralco, ERC declared that NASECORE had waived its right to cross-examine the second witness of Meralco for failure to attend the said hearing. ERC then gave Meralco five (5) days from said date of hearing within which to file its Formal Offer of Evidence. FOVA and all the other Intervenors were, likewise, given ten (10) days from receipt thereof to file their comments thereon and fifteen (15) days from said date of hearing to file their position papers or Memoranda.[9]

On 1 December 2009, Meralco filed its Formal Offer of Evidence with compliance. On 7 December 2009, it was directed by ERC to submit additional documents to facilitate the evaluation of its application.

Petitioner NASECORE claims that it was only on 8 December 2009, that it received Meralco's Formal Offer of Evidence, together with a copy of the 7 December 2009 ERC Order. Thus, it believes that it has until 18 December 2009 to file its comment thereon.

On 10 December 2009, Petitioner NASECORE filed with ERC a Manifestation with Motion dated 9 December 2009 requesting that the ERC direct applicant Meralco to furnish intervenor NASECORE all the items in ERC's directive/Order dated 7 December 2009; to furnish Intervenor NASECORE a copy of the Records of the Proceedings of the hearings held on

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[7] *Id.* at 1533.

[8] *Id*.

[9] Decision, ERC Case No. 2009-057 RC, 14 December 2009.

19 and 26 November 2009; and to grant the same intervenor fifteen (15) days, from receipt of applicant's compliance with the ERC's Order dated 7 December 2009, within which to file its comment to applicant's Formal Offer of Evidence.

On 14 December 2009,[10] Meralco's application in the MAP2010 case was approved by ERC. Petitioner NASECORE protests this claiming approval as premature, that there were still four days before the expiration of the period given to it to file its opposition to the formal offer of evidence of Meralco, and before petitioner NASECORE received its copy of the documents Meralco was required to additionally submit in the 7 December 2009 ERC Order.

A day after the aforementioned Decision, or on 15 December 2009, petitioner NASECORE allegedly received the additional documents Meralco submitted in compliance with the ERC's 7 December 2009 Order.

Mallillin filed his Motion for Reconsideration (MR) before the ERC.[11] Instead of filing their own motions for reconsideration, petitioners came directly to this Court via a Petition for *Certiorari* under Rule 65 of the Rules of Court with an Urgent Prayer for the Issuance of a Temporary Restraining Order (TRO) or Status Quo Order.

Allegations in the Instant Petition; Meralco's and ERC's Comments

Petitioners' main assertion is that the ERC Decision approving the MAP2010 application of Meralco is null and void for having been issued in violation of their right to due process of law.[12] They further ask this Court to stay the execution of the aforementioned Decision for being void, to wit:

As already shown earlier, the assailed ERC Decision is a patent nullity due to lack of due process of law. Thus, being a void decision,

[10] *Rollo* at 1535.

[11] *Id.*

[12] *Id.* at 8.

it can not (sic) be the source of any right on the part of MERALCO to collect additional charges from their customers. Invariably, the 4.3 million customers of MERALCO has (sic) no obligation whatsoever to pay additional distribution charges to MERALCO. To implement such void ERC decision, is plainly oppressive, confiscatory, and unjust.[13]

On 26 January 2010, Meralco filed its Comment to the instant Petition. Meralco contends that the said Petition should be denied due course or dismissed for the following reasons:

1. Petitioners have availed of an improper remedy;[14]
2. Petitioners have failed to observe the proper hierarchy of courts;[15]
3. Petitioners were amply afforded the right to participate in the proceedings and have thus been afforded sufficient opportunity to be heard;[16] and
4. Meralco has already voluntarily suspended the implementation of the approved MAP2010 rates rendering the issues raised in this Petition moot.[17]

Meralco furthermore opposes petitioners' prayer for the issuance of a TRO or Status quo order. It argues that petitioners failed to present an "urgent and paramount necessity" for the issuance of the writ considering that Meralco already voluntarily suspended the implementation of the assailed Decision pending resolution of Mallillin's MR. In fact, on 1 February 2010, ERC issued an Order suspending the implementation of the 14 December 2009 Decision pending the resolution of Mallillin's MR.

On 27 August 2010, ERC filed its Comment. The ERC argued that a Petition for *Certiorari* under Rule 65 is not the proper

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[13] *Id.* at 13.

[14] *Id.* at 362-368.

[15] *Id.* at 368-370.

[16] *Id.* at 370-376.

[17] *Id.* at 376-377.

remedy in the case at bar; that there was no denial of petitioners' right to procedural due process; and that its 10 March 2010 order has rendered the instant petition moot. In this Order, the ERC granted the MR of Mallillin and directed the implementation of the therein reflected revised distribution rates.

New Allegations in the Reply and Meralco's Comment Thereon

On 8 April 2010, petitioners filed their Reply to Meralco's Comment. In their Reply, petitioners, for the first time, put forward the following arguments:

(1) Meralco, from 2003-2008, has been earning more than the 12% rate of recovery considered by law as just and reasonable.

Petitioners newly argue that the ERC erred in approving Meralco's application for increasing its charges in spite of the validation by the Commission on Audit (COA), through a report, of a computation showing Meralco's income as exceeding the 12% mandated by law. Petitioners conclude thus:

> In view of the COA Audit Report (x x x), the position of the herein petitioners were validated, *i.e.*, that Meralco's rate increase of ₱0.0865/KWh granted in 2003 was not only unnecessary but also unreasonable, hence MERALCO should not only be ordered to roll back its rate but also to refund its excess revenues to consumers.

(2) Questionable rate-setting methodology adopted by ERC.

According to petitioners, this Court ordered the ERC to consider the 2003 increase it granted to Meralco as provisional until it has taken action on the COA Audit Report but that ERC disregarded this order because of its adamant position that the PBR rate fixing methodology is the "be-all-and-end-all" of its rate fixing function while sacrificing the interests of millions of consumers.[18]

They argue that it is not the validity of the rate setting methodology employed but the reasonableness of the rates to

[18] *Id.* at 462-463.

be applied that ought to be the controlling factor in determining the rates that a public utility should be allowed to implement.[19]

Thus, the ERC should not limit itself with the use of the PBR method if it would result in unreasonable rates. Rather, the ERC should have the authority to employ *any method* so long as the result was reasonable to both consumer and investor. In effect, petitioners are asking this court to adopt the end result doctrine, which was pronounced by the U.S. Supreme Court in *National Power Commission v. Hope Natural Gas Co*.[20] and cited in the concurring opinion of former Chief Justice Fred Ruiz Castro in *Republic v. Medina*.[21]

Petitioners contend that the use of the PBR method results in disadvantage to the public, *viz*:

> In fine, MERALCO succeeded in wangling from the ERC through an internationally accepted rate-setting methodology (*i.e*, Performance Based Rate [PBR]) a rate that will not only guarantee that its operations shall remain viable but a rate that will give it astronomical profits at the expense of the consuming public whom it is obligated to serve.

A table showing that the common stockholders of Meralco, for the last 21 years, had earned 424% on their actual investment, per year, was also presented by petitioners. Petitioners conclude that these numbers negate any argument that Meralco needs a rate increase, irrespective of any under rate methodology applied.[22]

The Issue of the Validity of the PBR was not Squarely Raised in this Petition; the Sole Issue is the Denial of Due Process

We have ruled that "issues not previously ventilated cannot be raised for the first time on appeal, much less when first proposed in the reply to the comment on the petition for review."[23]

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[19] *Id.* at 473.

[20] 320 U.S. 591 (1944).

[21] G.R. No. L-32068, 4 October 1971, 41 SCRA 643.

[22] *Rollo* at 476.

[23] *Sps. Rasdas v. Estenor*, G.R. No. 157605, 13 December 2005, 477 SCRA 538.

To allow petitioners to blindside Meralco with such newly raised issues violates the latter's due process rights. Having been raised for the first time, this Court cannot rule on the issues regarding the unreasonableness of Meralco's rates and the validity of the choice of the PBR method. If petitioners wanted to include these issues for resolution, the proper procedure was for them to ask this Court to allow them to amend their Petition for the inclusion of the aforementioned issues. Thus, we rule that the sole issue for resolution in this case is whether or not petitioners' right to due process of law was violated when the ERC issued its Order before the expiration of the period granted to petitioners to file their comment.

There Has Been No Denial of Due Process, at most only an Irregularity in the Precipitate Issuance of the Assailed Decision, which Irregularity ERC has Sought to Remedy

In *Cooperative Devt. Authority v. Dolefil Agrarian Reform Beneficiaries Coop., Inc. et al.*,[24] it was held that the appellate court violated the therein petitioners' right to be heard when it rendered judgment against them without allowing them to file their comment or opposition.

In the case at bar, petitioners were required to file their comment on the formal offer of evidence of Meralco. However, the ERC rendered its Decision prior to the lapse of the period granted to petitioners. According to petitioners, ERC's failure to accord them a reasonable opportunity to present their oppositions or comments on the application of Meralco clearly denied them due process of law. The ERC committed grave abuse of discretion when it deprived them of their opportunity to be heard.

This prompted Petitioners to file the present Petition on 20 January 2010.

This Court is of the Opinion that considering the facts in this case, including all the events that occurred both prior to and

[24] G.R. No. 137489, 29 May 2002, 382 SCRA 552.

subsequent to the issuance of the 14 December 2010 Decision, the ERC did not deprive petitioners of their right to be heard.

Petitioners claim that that they were not given a chance to submit their evidence or memorandum in support of their position that Meralco had been charging rates that were beyond the 12% reasonable rate of return established in jurisprudence.[25] The records show, however, that they had been given notice to attend all the hearings conducted by the ERC, but that they voluntarily failed to appear in or attend those hearings.

Furthermore, after the issuance of the assailed Order, Mallillin filed an MR before petitioners filed their Petition in this Court. On 25 January 2010, the ERC issued an Order directing Petitioners NASECORE, FOLVA, and FOVA to file their respective comments on Mallillin's MR. Petitioners were given a period of ten days from receipt of the order, to file their comments. The ERC also scheduled the hearing on the said MR on 5 February 2010.

On 26 January 2010, Meralco filed a Manifestation and Motion wherein it expressed its decision to voluntarily suspend the implementation of the 14 December 2009 Decision pending the ERC's resolution of Mallillin's MR.

Instead of filing their comments, petitioners NASECORE and FOVA, through separate letters respectively dated 28 January 2010 and 31 January 2010, sought to excuse themselves from participating in the proceedings before the ERC on the ground that they have already filed the present Petition.

On 1 February 2010, the ERC issued an Order suspending the implementation of the herein questioned 14 December 2010 Decision pending the resolution of the MR.

During the 5 February 2010 hearing, only Meralco appeared. Neither petitioners nor Mallillin participated in the proceedings.

On 10 March 2010, ERC issued an Order granting the MR with modification, the dispositive portion of which reads:

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[25] *Rollo* at 468.

WHEREFORE, the foregoing premises considered, the "Motion for Reconsideration" filed by Engr. Robert F. Mallillin is hereby GRANTED WITH MODIFICATION. Accordingly, MERALCO is hereby directed to implement the revised distribution rates, excluding all rate distortions, as shown in the foregoing table. Consequently, the Order dated February 1, 2010 issued by the Commission granting the deferment of the implementation of the Decision dated December 14, 2009 pending final resolution of Engr. Mallillin's motions is hereby LIFTED.

SO ORDERED.[26]

Where opportunity to be heard either through oral arguments or through pleadings is granted, there is no denial of due process. It must not be overlooked that prior to the issuance of the assailed Decision, petitioners were given several opportunities to attend the hearings and to present all their pleadings and evidence in the MAP2010 case. Petitioners voluntarily failed to appear in most of those hearings.

Although it is true that the ERC erred in prematurely issuing its Decision, its subsequent act of ordering petitioners to file their comments on Mallillin's MR cured this defect. We have held that any defect in the observance of due process requirements is cured by the filing of a MR.[27] Thus, denial of due process cannot be invoked by a party who has had the opportunity to be heard on his MR.[28] Even though petitioners never filed a MR, the fact that they were still given notice of Mallillin's filing of a MR and the opportunity to file their comments thereto makes immaterial ERC's failure to admit their comment in the MAP2010 case. After all, petitioners' allegations in their unfiled comment could have still, easily and just as effectively, been raised in the MAP2010 case by incorporating the arguments in the comment to be filed in the MR case. It must be remembered that the standard of due process impressed upon administrative

[26] *Id.* at 1547.

[27] *A.Z. Arnaiz Realty, Inc. v. Office of the President*, G.R. No. 170623, 9 July 2010.

[28] *Samalio v. Court of Appeals*, G.R. No. 140079,31 March 2005, 454 SCRA 463, 473.

tribunals allows a certain degree of latitude as long as fairness is not ignored.[29]

The opportunity granted by the ERC of, technically, allowing petitioners to finally be able to file their comment in the case, resolves the procedural irregularity previously inflicted upon petitioners.

We find that there has been no denial of due process and that any irregularity in the premature issuance of the assailed Decision has been remedied by the ERC through its Order which gave petitioners the right to participate in the hearing of the MR filed by Mallillin.

Petitioners have Chosen the Wrong Remedy and the Wrong Forum; the Real Motive for Bringing Petition was to Obtain an indefinite TRO, this the Court cannot Countenance

Section 1, Rule 23 of the ERC'S Rules of Procedure expressly provides for the remedy of filing a motion for reconsideration, *viz*:

A party adversely affected by a final order, resolution, or decision of the Commission rendered in an adjudicative proceeding may, within fifteen (15) days from receipt of a copy thereof, file a motion for reconsideration. In its motion, the movant may also request for reopening of the proceeding for the purpose of taking additional evidence in accordance with Section 17 of Rule 18. No more than one motion for reconsideration by each party shall be entertained.

Rule 65 of the Rules of Civil Procedure provides that a petition for *certiorari* may be filed when "there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." The "plain" and "adequate remedy" referred to in Rule 65 is a motion for reconsideration of the assailed decision.[30] Thus,

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[29] *Supra* note 26.

[30] *Sim v. NLRC, et al.*, G.R. No. 157376, 2 October 2007, 534 SCRA 515.

it is a well-settled rule that the filing of a motion for reconsideration is a condition *sine qua non* before the filing of a special civil action for certiorari.[31] The purpose of this rule is to give the lower court the opportunity to correct itself.[32] However, this requirement is not an ironclad rule. The prior filing of a motion for reconsideration may be dispensed with if petitioners are able to show a concrete, compelling, and valid reason for doing so.[33] The Court may brush aside the procedural barrier and take cognizance of the petition if it raises an issue of paramount importance and constitutional significance.[34] Thus:

> True, we had, on certain occasions, entertained direct recourse to this Court as an exception to the rule on hierarchy of courts. In those exceptional cases, however, we recognized an exception because it was dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.[35]

Petitioners claim that they did not file any motion for reconsideration with the ERC "in order to prevent the imminent miscarriage of justice, that the issue involves the principles of social justice, that the Decision sought to be set aside is a patent nullity and that the need for relief therefore is extremely urgent"[36]; because they believe that the same would be a futile exercise considering that the ERC had blatantly disregarded the

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[31] *Republic of the Phil. v. Sandiganbayan, et al.*, G.R. Nos. 141796 and 141804, 15 June 2005, 460 SCRA 146.

[32] *Metro Transit Organization, Inc. and Bantang, Jr. v. CA, et al.*, G.R. No. 142133, November 19, 2002, 392 SCRA 229.

[33] *Cervantes v. Court of Appeals*, G.R. No. 166755, 18 November 2005, 475 SCRA 562, 569.

[34] *Bayan (Bagong Alyansang Makabayan) v. Zamora*, G.R. No. 138570, 10 October 2010, 342 SCRA 449.

[35] *Chong, et al. v. Dela Cruz, et al.*, G.R. No. 184948, 21 July 2009, 593 SCRA 311, citing *Gelidon v. De la Rama*, G.R. No. 105072, 9 December 1993, 228 SCRA 322, 326-327.

[36] *Rollo* at 7-8, citing *ABS-CBN Broadcasting Corporation v. Comelec*, 323 SCRA 811 (2000).

Supreme Court directive to consider the last increase of Meralco as provisional until ERC has taken action on the COA Audit Report;[37] and because "an appeal would be slow, inadequate, and insufficient."[38]

They also claim that the direct resort to the Supreme Court resorted to by them is in order "to timely prevent a grave injustice to the 4.3 million customers of Meralco who stand to suffer by reason of a patently void decision by ERC which would result in additional monthly billing of at least half a billion pesos";[39] because "time is of the essence"; and because "transcendental constitutional issues" are involved in this case.[40]

Petitioners further argue that their decision to go directly to this Court is justified "because of the number of consumers affected by the said Decision; because the amount involved in the controversy is so huge (₱605.25 million [plus 12% VAT] additional billing per month); because it is violative of the provisions of EPIRA; because it is contrary to the constitutional provisions on social justice, and because it is in utter disregard of the COA Audit Report."[41]

We do not uphold petitioners' arguments on this matter.

In *Cervantes v. CA,*[42] this Court ruled:

It must be emphasized that a writ of *certiorari* is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of *certiorari* must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. Petitioner may not arrogate to himself the determination of whether a motion for reconsideration

[37] *Id.* at 462.

[38] *Id.* at 8, citing *SMI Development Corporation v. Republic*, 323 SCRA 682 (2000).

[39] *Id.* at 7.

[40] *Id.* at 8.

[41] *Id.* at 46.

[42] G.R. No. 166755, 18 November 2005, 475 SCRA 562.

is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner failed to do. Thus, the Court of Appeals correctly dismissed the petition.

The general statements used by Petitioner to excuse their direct recourse to this Court are not the "concrete, compelling, and valid reasons" required by jurisprudence to justify their failure to comply with the mandated procedural requirements. In addition to this, the "urgency" of the resolution of matters raised by petitioners is negated, by the fact that rates approved by the ERC, in the exercise of its rate-fixing powers, are in a sense, inherently only provisional.

Furthermore, this Court finds that the real motive behind the filing of the present Petition is to obtain an indefinite TRO and this, the Court cannot countenance. Section 9, Rule 58 of the Rules of Court provides the rules for permanent injunctions, to wit:

Sec. 9. When final injunction granted.

If after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined, the court shall grant a final injunction perpetually restraining the party or person enjoined from the commission or continuance of the act or acts or confirming the preliminary mandatory injunction.

Petitioners assert that this Court should issue a TRO because of the huge amount that would unduly burden the consumers with the continued application of the MAP2010 rates. According to petitioners, "if not stayed, the present financial hardships of 4.3 million MERALCO customers due to the global financial meltdown and the recent calamities in the country will surely further worsen." Petitioners also claim that there is an extreme urgency to secure a TRO, considering that the assailed Decision is immediately executory.

The purpose of a TRO is to prevent a threatened wrong and to protect the property or rights involved from further injury, until the issues can be determined after a hearing on the

merits.[43] Under Section 5, Rule 58 of the 1997 Rules of Civil Procedure, a TRO may be issued only if it appears from the facts shown by affidavits or by a verified application that great or irreparable injury would be incurred by an applicant before the writ of preliminary injunction could be heard.

If such irreparable injury would result from the non-issuance of the requested writ or if the "extreme urgency" referred to by petitioners indeed exists, then they should have been more vigilant in protecting their rights. As they have all been duly notified of the proceedings in the ERC case, they should have appeared before the ERC and participated in the trials.

We find that petitioners erred in thinking that the non-issuance of the TRO they requested would put consumers in danger of suffering an "irreparable injury." But this asserted injury can be repaired, because, had petitioners participated in the proceedings before the ERC and the latter had found merit in their appeal, the undue increase in electric bills shall be refunded to the consumers.

All the other issues raised by petitioners in connection with the MAP2010 case are factual in nature and should be raised before the ERC not before this Court. Allegations and issues in connection with the rate increases under ERC Case No. 2008-018- RC and ERC Case No. 2008-004-RC, including the question of whether Meralco improperly exceeded the 12% maximum rate of return provided by law, are more properly to be disposed of in another pending case, G.R. No. 191150.[44]

Before finally disposing of this case, we deem it proper to warn the ERC that it cannot give a deadline to parties before it that it will not respect. Even though the ERC, as an administrative agency, is not bound by the rigidity of certain procedural requirements, it is still bound by law and practice to observe

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[43] *Lim v. Pacquing, et al.*, G.R. Nos. 115044 and 117263, 27 January 1995, citing *Ohio Oil Co. v. Conway*, 279 U.S. 813, 73 L. Ed. 972, 49 S. Ct. 256; *Gobbi v. Dilao*, 58 Or. 14, 111 pp. 49, 113, p. 57.

[44] *NASECORE, et al. v. MERALCO.*

the fundamental and essential requirements of due process in justiciable cases presented before it.

WHEREFORE, the instant petition is hereby *DISMISSED.*

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 192235. July 6, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROLANDO LAYLO *y* CEPRES,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF DRUGS; NECESSARY ELEMENTS.— The elements necessary for the prosecution of illegal sale of drugs are: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment.

2. ID.; ID.; ATTEMPTED SALE OF DANGEROUS DRUGS; PRESENT IN CASE AT BAR.— Section 26(b), Article II of RA 9165 provides: Section 26. *Attempt or Conspiracy.* – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act: x x x (b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled

[*] Additional member of the Second Division as per Special Order No. 1031 dated 30 June 2011.

precursor and essential chemical; x x x Here, appellant intended to sell shabu and commenced by overt acts the commission of the intended crime by showing the substance to PO1 Reyes and PO1 Pastor. The sale was aborted when the police officers identified themselves and placed appellant and Ritwal under arrest. From the testimonies of the witnesses, the prosecution was able to establish that there was an attempt to sell *shabu*. In addition, the plastic sachets were presented in court as evidence of *corpus delicti*. Thus, the elements of the crime charged were sufficiently established by evidence.

3. ID.; ID.; ALLEGATION OF FRAME-UP, WEAK DEFENSE NOT SUBSTANTIATED IN CASE AT BAR.— Appellant claims that he was a victim of a frame up. However, he failed to substantiate his claim. The witnesses presented by the defense were not able to positively affirm that illegal drugs were planted on appellant by the police officers when they testified that "they saw someone place something inside appellant's jacket." In *Quinicot v. People*, we held that allegations of frame-up and extortion by police officers are common and standard defenses in most dangerous drugs cases. They are viewed by the Court with disfavor, for such defenses can easily be concocted and fabricated.

4. ID.; ID.; EXISTING FAMILIARITY BETWEEN BUYER AND SELLER, NOT MATERIAL.— Appellant asserts that it is unbelievable that he would be so foolish and reckless to offer to sell *shabu* to strangers. In *People v. de Guzman*, we have ruled that peddlers of illicit drugs have been known, with ever increasing casualness and recklessness, to offer and sell their wares for the right price to anybody, be they strangers or not. What matters is not the existing familiarity between the buyer and the seller, or the time and venue of the sale, but the fact of agreement as well as the act constituting the sale and delivery of the prohibited drugs.

5. ID.; ID.; DENIAL; CANNOT PREVAIL OVER PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES.— Appellant did not attribute any ill-motive on the part of the police officers. The presumption of regularity in the performance of the police officers' official duties should prevail over the self-serving denial of appellant.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is an appeal assailing the Decision[1] dated 28 January 2010 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03631. The CA affirmed the Decision[2] dated 16 September 2008 of the Regional Trial Court (RTC) of Binangonan, Rizal, Branch 67, in Criminal Case No. 06-017, convicting appellant Rolando Laylo *y* Cepres (Laylo) of violation of Section 26(b), Article II (Attempted Sale of Dangerous Drugs)[3] of Republic Act No. 9165[4] (RA 9165) or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On 21 December 2005, two separate Informations against appellant Laylo and Melitona Ritwal (Ritwal) were filed with

[1] *Rollo*, pp. 2-13. Penned by Justice Amelita G. Tolentino with Justices Arturo G. Tayag and Elihu A. Ybañez, concurring.

[2] CA *rollo*, pp. 6-8. Penned by Presiding Judge Dennis Patrick Z. Perez.

[3] Section 26. *Attempt or Conspiracy.* – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

xxx xxx xxx

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical; x x x

[4] An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, As Amended, Providing Funds Therefor, and for Other Purposes. Approved on 23 January 2002 and took effect on 7 June 2002.

the RTC of Binangonan, Rizal, Branch 67, docketed as Criminal Case Nos. 06-017 and 06-018, respectively. The information against Laylo states:

Criminal Case No. 06-017

That on or about the 17th day of December, 2005, in the Municipality of Binangonan, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell any dangerous drug, did then and there willfully, unlawfully, and knowingly attempt to sell, deliver, and give away *shabu* to PO1 Angelito G. Reyes, 0.04 gram of white crystalline substance contained in two (2) heat-sealed transparent plastic sachets which were found positive to the test for Methylamphetamine Hydrochloride, also known as *shabu*, a dangerous drug, thus commencing the commission of the crime of illegal sale but did not perform all the acts of execution which would produce such crime by reason of some cause or accident other than the accused's own spontaneous desistance, that is, said PO1 Angelito G. Reyes introduced himself as policeman, arrested the accused and confiscated the two (2) above-mentioned sachets from the latter.

CONTRARY TO LAW.[5]

Upon arraignment, both accused pleaded not guilty. Joint trial on the merits ensued. However, during the trial, Ritwal jumped bail and was tried in *absentia*. Thus, Ritwal was deemed to have waived the presentation of her evidence and the case was submitted for decision without any evidence on her part.

The prosecution presented two witnesses: Police Officer 1 (PO1) Angelito G. Reyes (PO1 Reyes) and PO1 Gem A. Pastor (PO1 Pastor), the poseur-buyers in the attempted sale of illegal drugs.

The prosecution summed up its version of the facts: In the afternoon of 17 December 2005, PO1 Reyes and PO1 Pastor, both wearing civilian clothes, were conducting anti-drug surveillance operations at Lozana Street, Calumpang, Binangonan, Rizal. While the police officers were in front of a *sari-sari* store at around 5:40 p.m., appellant Laylo and his live-in partner,

[5] CA *rollo*, pp. 40-41.

Ritwal, approached them and asked, "*Gusto mong umiskor ng shabu*?" PO1 Reyes replied, "*Bakit mayroon ka ba*?" Laylo then brought out two plastic bags containing *shabu* and told the police officers, "*Dos (₱200.00) ang isa*." Upon hearing this, the police officers introduced themselves as cops. PO1 Reyes immediately arrested Laylo. Ritwal, on the other, tried to get away but PO1 Pastor caught up with her. PO1 Pastor then frisked Ritwal and found another sachet of *shabu* in a SIM card case which Ritwal was carrying.

PO1 Reyes and PO1 Pastor marked the three plastic sachets of shabu recovered from Laylo and Ritwal and forwarded them to the Philippine National Police Crime Laboratory for forensic testing. Forensic Chemist Police Inspector Yehla C. Manaog conducted the laboratory examination on the specimens submitted and found the recovered items positive for methylamphetamine hydrochloride or *shabu*, a dangerous drug.

The police officers charged Laylo for attempted sale of illegal drugs and used the two plastic sachets containing *shabu* as basis while Ritwal was charged for possession of illegal drugs using as basis the third sachet containing 0.02 grams of *shabu*.

The defense, on the other hand, presented different versions of the facts. The witnesses presented were: appellant Laylo; Laylo's three neighbors namely Rodrigo Panaon, Jr., Marlon de Leon, and Teresita Marquez.

Laylo testified that while he and his common-law wife, Ritwal, were walking on the street, two men grabbed them. The two men, who they later identified as PO1 Reyes and PO1 Pastor, dragged them to their house. Once inside, the police officers placed two plastic sachets in each of their pockets. Afterwards, they were brought to the police station where, despite protests and claims that the drugs were planted on them, they were arrested and charged.

To corroborate Laylo's testimony, the defense presented Laylo's three neighbors. Marlon de Leon (de Leon), also a close friend of the couple, testified that he was taking care of the Laylo and Ritwal's child when he heard a commotion. He

saw men, whom de Leon identified as assets, holding the couple and claimed that he saw one of them put something, which he described as "plastic," in the left side of Laylo's jacket.

Rodrigo Panaon, Jr. (Panaon) narrated that on 17 December 2005, at around 5:00 or 6:00 p.m., he was on his way home when he saw Laylo arguing with three men in an alley. He overheard Laylo uttering, "*Bakit ba*? *Bakit ba*?" Later, Panaon saw a commotion taking place at Laylo's backyard. The three men arrested Laylo while the latter shouted, "*Mga kapitbahay, tulungan ninyo kami, kami'y dinadampot*." Then Panaon saw someone place something inside the jacket of Laylo as he heard Laylo say, "*Wala kayong makukuha dito*."

Teresita Marquez (Marquez) testified that while she was fetching water from the well on 17 December 2005, at around 5:00 or 6:00 p.m., she heard Laylo's son shouting, "*Amang, Amang*." Marquez then saw the child run to his father, who was with several male companions. Then someone pulled Laylo's collar and frisked him. Marquez overheard someone uttering, "*Wala po, wala po*." Marquez went home after the incident. At around 9:00 in the evening, Ritwal's daughter visited her and borrowed money for Laylo and Ritwal's release. Marquez then accompanied Ritwal's daughter to the municipal hall, where a man demanded ₱40,000.00 for the couple's release.

In its Decision dated 16 September 2008, the RTC found Laylo and Ritwal guilty beyond reasonable doubt of violations of RA 9165. The RTC gave credence to the testimonies of the police officers, who were presumed to have performed their duties in a regular manner. The RTC stated that Reyes and Pastor were straightforward and candid in their testimonies and unshaken by cross-examination. Their testimonies were unflawed by inconsistencies or contradictions in their material points. The RTC added that the denial of appellant Laylo is weak and self-serving and his allegation of planting of evidence or frame-up can be easily concocted. Thus, Laylo's defense cannot be given credence over the positive and clear testimonies of the prosecution witnesses. The dispositive portion of the decision states:

We thus find accused Rolando Laylo *GUILTY* beyond reasonable doubt of violating Section 26(b) of R.A. No. 9165 and sentence him to suffer a penalty of life imprisonment and to pay a fine of ₱500,000.00. We also find accused Melitona Ritwal *GUILTY* beyond reasonable doubt of violating Section 11 of R.A. No. 9165 and illegally possessing a total of 0.02 grams of Methylamphetamine Hydrochloride or *shabu* and accordingly sentence her to suffer an indeterminate penalty of 12 years and one day as minimum to 13 years as maximum and to pay a fine of ₱300,000.00.

Let the drug samples in this case be forwarded to the Philippine Drug Enforcement Agency (PDEA) for proper disposition. Furnish PDEA with a copy of this Decision per OCA Circular No. 70-2007.

SO ORDERED.[6]

Laylo filed an appeal with the CA. Laylo imputed the following errors on the RTC:

I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSE CHARGED DESPITE THE PROSECUTION WITNESS' PATENTLY FABRICATED ACCOUNTS.

II. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSE CHARGED WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

III. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE APPREHENDING OFFICERS' FAILURE TO PRESERVE THE INTEGRITY OF THE ALLEGED SEIZED *SHABU*.[7]

The Ruling of the Court of Appeals

In a Decision dated 28 January 2010, the CA affirmed the decision of the RTC. The dispositive portion of the decision states:

WHEREFORE, premises considered, the appeal is DISMISSED for lack of merit. The challenged decision of the court *a quo* is AFFIRMED. Costs against the accused-appellant.

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

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

SO ORDERED.[8]

Hence, this appeal.

The Ruling of the Court

The appeal lacks merit.

The elements necessary for the prosecution of illegal sale of drugs are: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment.[9]

In the present case, PO1 Reyes narrated in court the circumstances of the illegal sale:

PROS. ARAGONES:
Q: What time did you proceed to that place of surveillance?
A: 5:40 p.m., Ma'am.

Q: And what happened when you and PO1 Gem Pastor went there?
A: When we were making standby at a nearby store there was a man talking with a woman, the man asked me if we want to have a shot of *shabu*.

Q: What was your reply?
A: "*Bakit, meron ka ba*?"

Q: How did that other person react to that question, what did he tell you, if any?
A: "*Gusto mong umiskor ng shabu*?"

Q: What happened after that?
A: I replied, "*Bakit meron ka ba*?" then he showed me two small plastic bags containing *shabu*, Ma'am.

Q: How big is that bag, Mr. Witness?
A: Small, Ma'am.

Q: Can you tell us the size?
A: (Demonstrating) Almost one inch the size of a cigarette, Ma'am.

COURT: It was in a plastic not in foil?

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[8] *Rollo*, p. 12.

[9] *People v. Llamado*, G.R. No. 185278, 13 March 2009, 581 SCRA 544, citing *People v. Ong*, G.R. No. 175940, 6 February 2008, 544 SCRA 123.

A: Yes, your Honor.

PROS. ARAGONES:

Q: After showing you two plastic bags, what happened?
A: I introduced myself as a police officer then I caught this man and confiscated the two small plastic bag containing *shabu*.

Q: How about the lady?
A: My partner caught the woman because she was intending to run away and he got from her right hand Smart SIM card case containing one small plastic.[10]

PO1 Pastor corroborated the testimony of PO1 Reyes:

PROS. ARAGONES:
Q: Mr. Witness, while you were conducting surveillance on December 17, 2005, what happened?
A: While we were conducting surveillance at Lozana Street, Calumpang, Binangonan, Rizal, while we were at the store, two (2) persons approached us, one male and one female, Ma'am.

Q: Who were those persons? Did you come to know the name of those persons?
A: At that time I don't know the names but when they were brought to the police station I came to know their names, Ma'am.

Q: What are the names of these two persons?
A: Rolando Laylo and Melitona Ritwal, Ma'am.

Q: At that time they approached you during the time you were conducting surveillance at Lozana Street, what happened?
A: The male person approached PO1 Reyes and asked if "*iiskor,*" Ma'am.

Q: What was the reply of PO1 Reyes?
A: He answered "*Bakit meron ka ba*?"

Q: When that answer was given by Reyes, what did that male person do?
A: He produced two (2) small plastic sachets containing allegedly *shabu* and he said "*dos ang isa*."

COURT: What do you mean by "*dos ang isa*"?

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[10] CA *rollo,* pp. 82-83.

A: Php 200.00, Your Honor.

PROS. ARAGONES:
Q: Where were you when that male person produced two (2) small plastic sachets?
A: I was beside PO1 Reyes, Ma'am.

Q: After he showed the plastic sachets containing drugs, what happened next?
A: We introduced ourselves as policemen, Ma'am.

Q: After you introduced yourselves, what happened next?
A: PO1 Reyes arrested the male person while I arrested the female person, Ma'am.

Q: Why did you arrest the woman?
A: At that time, she was about to run I confiscated from her a SIM card case, Ma'am.

COURT: What was the contents of the SIM card case?
A: One (1) piece of alleged *shabu*, Your Honor.[11]

From the testimonies given, PO1 Reyes and PO1 Pastor testified that they were the poseur-buyers in the sale. Both positively identified appellant as the seller of the substance contained in plastic sachets which were found to be positive for *shabu*. The same plastic sachets were likewise identified by the prosecution witnesses when presented in court. Even the consideration of ₱200.00 for each sachet had been made known by appellant to the police officers. However, the sale was interrupted when the police officers introduced themselves as cops and immediately arrested appellant and his live-in partner Ritwal. Thus, the sale was not consummated but merely attempted. Thus, appellant was charged with attempted sale of dangerous drugs. Section 26(b), Article II of RA 9165 provides:

Section 26. *Attempt or Conspiracy*. – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

[11] *Id.* at 83-85.

xxx xxx xxx

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

xxx xxx xxx

Here, appellant intended to sell *shabu* and commenced by overt acts the commission of the intended crime by showing the substance to PO1 Reyes and PO1 Pastor.[12] The sale was aborted when the police officers identified themselves and placed appellant and Ritwal under arrest. From the testimonies of the witnesses, the prosecution was able to establish that there was an attempt to sell *shabu*. In addition, the plastic sachets were presented in court as evidence of *corpus delicti*. Thus, the elements of the crime charged were sufficiently established by evidence.

Appellant claims that he was a victim of a frame up. However, he failed to substantiate his claim. The witnesses presented by the defense were not able to positively affirm that illegal drugs were planted on appellant by the police officers when they testified that "they saw someone place something inside appellant's jacket." In *Quinicot v. People*,[13] we held that allegations of frame-up and extortion by police officers are common and standard defenses in most dangerous drugs cases. They are viewed by the Court with disfavor, for such defenses can easily be concocted and fabricated.

Appellant asserts that it is unbelievable that he would be so foolish and reckless to offer to sell *shabu* to strangers. In *People v. de Guzman*,[14] we have ruled that peddlers of illicit drugs have been known, with ever increasing casualness and recklessness, to offer and sell their wares for the right price to anybody, be they strangers or not. What matters is not the existing familiarity between the buyer and the seller, or the

[12] *People v. Adam*, 459 Phil. 676 (2003).

[13] G.R. No. 179700, 22 June 2009, 590 SCRA 458.

[14] G.R. No. 177569, 28 November 2007, 539 SCRA 306.

time and venue of the sale, but the fact of agreement as well as the act constituting the sale and delivery of the prohibited drugs.

Further, appellant did not attribute any ill-motive on the part of the police officers. The presumption of regularity in the performance of the police officers' official duties should prevail over the self-serving denial of appellant.[15]

In sum, we see no reason to disturb the findings of the RTC and CA. Appellant was correctly found to be guilty beyond reasonable doubt of violating Section 26(b), Article II of RA 9165.

WHEREFORE, we *DISMISS* the appeal. We *AFFIRM* the Decision dated 28 January 2010 of the Court of Appeals in CA-G.R. CR-H.C. No. 03631.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Perez,* and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 192816. July 6, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOEL GASPAR *y* WILSON,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED. — [W]e reiterate the fundamental rule that

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[15] *People v. Lazaro, Jr.*, G.R. No. 186418, 16 October 2009, 604 SCRA 250.

[*] Designated acting member per Special Order No. 1006 dated 10 June 2011.

findings of the trial court, which are factual in nature and which involve the credibility of witnesses, are accorded respect when no glaring errors, gross misapprehension of facts or speculative, arbitrary and unsupported conclusions can be gathered from such findings. This rule finds an even more stringent application where said findings are sustained by the Court of Appeals, like in the present case.

2. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In a successful prosecution for offenses involving the illegal sale of dangerous 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 for it. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.

3. ID.; ID.; ID.; DELIVERY OF THE CONTRABAND TO THE POSEUR-BUYER AND RECEIPT OF THE MARKED MONEY CONSUMMATE THE BUY-BUST TRANSACTION. — In *People v. Encila*, we held that the delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapment officers and the accused. The crime of illegal sale of dangerous drugs is committed as soon as the sale transaction is consummated.

4. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— [U]nder Section 11, Article II of RA 9165, the elements of the offense of illegal possession of dangerous drugs are: (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.

5. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; FAMILIARITY BETWEEN BUYER AND SELLER, NOT MATERIAL.— Drug pushing, especially the ones done on a small scale, happens instantly. The illegal transaction takes place after the offer to buy is accepted and the exchange is made. x x x In drug related cases, what is relevant is the agreement and acts constituting the sale and delivery of the dangerous

drug between the seller and buyer and not the existing familiarity between them. It is of common knowledge that pushers, especially small-time dealers, peddle prohibited drugs in the open like any articles of commerce. Drug pushers do not confine their nefarious trade to known customers and complete strangers are accommodated provided they have the money to pay.

6. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES IN DRUG CASES, PRESUMED.— In *People vs. De Guzman*, we held that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers. Here, appellant failed to show that the police officers deviated from the regular performance of their duties. Appellant's defense of denial is weak and self-serving. Unless corroborated by other evidence, it cannot overcome the presumption that the police officers have performed their duties in a regular and proper manner.

7. ID.; ID.; CRIMINAL CASES; PRESUMPTION OF INNOCENCE FAILS WHERE PROOF BEYOND REASONABLE DOUBT IS ESTABLISHED.— [W]hile an accused in a criminal case is presumed innocent until proven guilty, the evidence of the prosecution must stand on its own strength and not rely on the weakness of the evidence of the defense. In this case, the quantum of evidence necessary to prove appellant's guilt beyond reasonable doubt had been sufficiently met. Thus, the prosecution was able to overcome appellant's constitutional right to be presumed innocent.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is an appeal assailing the Decision[1] dated 16 March 2010 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02117. The CA affirmed with modification the Decision[2] dated 3 February 2006 of the Regional Trial Court (RTC) of Pasig, Branch 70, in Criminal Case Nos. 12840-D, 12841-D, 12842-D, convicting appellant Joel Gaspar *y* Wilson of violation of (1) Section 5, paragraph 1, Article II (Illegal Sale of *Shabu*);[3] (2) Section 11, 2nd paragraph, No. 3, Article II (Illegal Possession of *Shabu*);[4] and (3) Section 12, Article II (Possession of

[1] *Rollo*, pp. 2-15. Penned by Justice Florito S. Macalino with Justices Rosmari D. Carandang and Ramon M. Bato, Jr., concurring.

[2] CA *rollo*, pp. 21-30. Penned by Judge Pablito M. Rojas.

[3] Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. x x x

[4] Section 11. *Possession of Dangerous Drugs*. - x x x Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

xxx xxx xxx

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Paraphernalia for Dangerous Drugs),[5] all of Republic Act No. 9165[6] (RA 9165) or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On 25 August 2003, four separate Informations[7] for different violations of RA 9165 were filed with the RTC of Pasig, Branch 70. Three informations were against Joel Gaspar *y* Wilson (Gaspar), docketed as Criminal Case Nos. 12840-D, 12841-D and 12842-D. The fourth information was against Leomar San Antonio (San Antonio), docketed as Criminal Case No. 12843-D. The informations state:

Criminal Case No. 12840-D

That, on or about the 22nd day of August, 2003 in the Municipality of San Juan, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to sell any dangerous drug, did then and there willfully, unlawfully, and knowingly sell, deliver and give away to another, 0.04 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which was found positive to the test for Methylamphetamine Hydrochloride known as "*shabu*," a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[8]

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[5] Section 12. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.* - The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body x x x.

[6] An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, As Amended, Providing Funds Therefor, and for Other Purposes. Approved on 23 January 2002 and took effect on 7 June 2002.

[7] CA *rollo*, pp. 11-18.

[8] *Id.* at 11.

Criminal Case No. 12841-D

That, on or about the 22nd day of August, 2003 in the Municipality of San Juan, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully, and knowingly, possess and have in his custody and control 0.08 gram of white crystalline substance contained in two (2) heat-sealed transparent plastic sachets, with 0.04 gram each, which was found positive to the test for Methylamphetamine Hydrochloride, also known as *shabu*, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[9]

Criminal Case No. 12842-D

That, on or about the 22nd day of August, 2003 in the Municipality of San Juan, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, and knowingly, possess and have under his custody and control ten (10) transparent plastic sachets, one (1) improvised water pipe, one (1) plastic container, two (2) disposable lighter, one (1) pair of scissors and one (1) wooden stick, which are all instrument, equipment, apparatuses, or paraphernalia fit or intended for smoking, sniffing, consuming and ingesting "shabu," a dangerous drug, into the body, in violation of the above-cited law.

CONTRARY TO LAW.[10]

Criminal Case No. 12843-D

That, on or about the 22nd day of August, 2003 in the Municipality of San Juan, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully, and knowingly, possess and have in his custody and control 0.04 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which was found positive to the test for Methylamphetamine Hydrochloride, also known as *shabu*, a dangerous drug, in violation of the above-cited law.

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[9] *Id.* at 13.

[10] *Id.* at 15.

CONTRARY TO LAW.[11]

At the arraignment on 6 October 2003, both accused pleaded not guilty.

On 17 November 2003, at the pre-trial conference, the prosecution and defense entered into stipulations of facts regarding the due execution and genuineness of the recovered items marked in evidence, which dispensed with the presentation of the prosecution's witness, Forensic Chemist Isidro Cariño. The stipulations of facts provide:

1. The due execution and genuineness of the Request for Laboratory Examination dated 22 August 2003 which was marked in evidence as Exhibit "A", the Specimens Submitted to be marked as Exhibit "A-1" and the stamp showing receipt thereof by the PNP Crime Laboratory as Exhibit "A-2";

2. The due execution and genuineness, as well as the truth of the contents, of Chemistry Report No. D-1618-03e dated August 22, 2003 issued by Forensic Chemist P/Insp. Isidro Cariño of the Crime Laboratory, Eastern Police District Crime Laboratory Office, Mandaluyong City, which was marked in evidence as Exhibit "B", the findings as appearing on the report as Exhibit "B-1" and the signature of the forensic chemist over his typewritten name likewise as appearing on the report as Exhibit "B-2";

3. The existence of the plastic sachets, but not their source or origin, the contents of which was the subject of the Request for Laboratory Examination, which were marked in evidence as follows: as Exhibit "C" (the transparent plastic bag), as Exhibit "C-1" (the 1st plastic sachet marked JWG buy-bust), as Exhibit "C-2" (the 2nd plastic sachet marked JWG1), as Exhibit "C-3" (the 3rd plastic sachet marked JWG2), as Exhibit "C-4" (the 4th plastic sachet marked LASA), as Exhibit "C-5" (the 5th plastic sachet marked JWG9), as Exhibit "C-6" (the improvised water pipe marked JWG4), as Exhibit "C-7" (the plastic contained marked JWG3), as Exhibit "C-8" (the yellow disposable lighter marked JWG5), as Exhibit "C-9" (the scissors), as Exhibit "C-10" (the pink disposable lighter marked JWG7), as Exhibit "C-11" (the wooden stick marked JWG8) and as Exhibit "C-12" (the nine unused plastic sachets marked JWG10).[12]

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[11] *Id.* at 17.

[12] *Id.* at 23-24.

Shortly after the pre-trial conference, San Antonio jumped bail and did not appear before the RTC during the trial. Thus, San Antonio was deemed to have waived the presentation of his evidence and the case was submitted for decision without any evidence on his part.

The prosecution presented the only witness: Police Officer 1 German Soreta (PO1 Soreta), the poseur-buyer in the buy-bust operation. The other prosecution witness, PO1 Armalito Magumcia (PO1 Magumcia), failed to appear in court despite subpoenas sent to him; thus, his testimony was considered waived in an Order dated 26 April 2005.

The prosecution summed up its version of the facts: On 22 August 2003, at around 11:30 in the morning, the San Juan Police Station Drug Enforcement Unit (DEU) through PO1 Soreta received an information via text message that sale of *shabu* was in progress at the house of a person named Joel Gaspar, appellant in this case, located at No. 26-A Third Street Barangay West Crame, San Juan.

PO1 Soreta immediately informed the head of the DEU, Police Inspector Ricardo Marso (Inspector Marso), regarding the message received. Inspector Marso then directed PO1 Soreta, PO1 Magumcia, PO1 Jeffrey Timado, and PO1 Dave Loterte to verify the report and, if necessary, to conduct a buy-bust operation. Inspector Marso gave PO1 Soreta, as poseur-buyer, two one-hundred peso bills to be used as buy-bust money. After coordinating with the Philippine Drug Enforcement Agency on the planned buy-bust operation, the police officers proceeded to the target area.

Upon reaching the house of Gaspar, the police officers saw two persons just outside the door. One was later identified as Gaspar, who handed something to the other, later identified as San Antonio. After San Antonio left Gaspar's house, the police officers stopped San Antonio and asked him, "*Anong inabot sa iyo*?" San Antonio replied, "*Bakit*?" The police officers said, "*Pulis kami*." San Antonio opened his hand and there was a sachet of *shabu*. The police officers immediately arrested San

Antonio. PO1 Soreta and PO1 Magumcia informed San Antonio of his constitutional rights and turned him over to PO1 Timario.

PO1 Soreta then approached Gaspar, who was already about to enter the house, and told him "*Joel pa-iskor naman ng dalawang piso*." Gaspar went out and asked for payment. After receiving the amount of ₱200.00, Gaspar took out from his right pocket a small transparent plastic sachet and handed it to PO1 Soreta. PO1 Soreta introduced himself as a police officer and arrested and handcuffed Gaspar. The other police officers then rushed to the scene and assisted PO1 Soreta.

The police officers recovered from Gaspar's possession two other small transparent plastic sachets, as well as drug paraphernalia inside the house, which were in plain view from the widely open door. Gaspar and San Antonio were brought to the San Juan Police Station for investigation and filing of charges. The plastic sachets and drug paraphernalia recovered were appropriately marked and brought by PO1 Antazo to the Philippine National Police (PNP) Crime Laboratory for examination. PO1 Soreta also executed an Affidavit of Arrest narrating the circumstances which led to Gaspar's apprehension.

Based on Chemistry Report No. D-1618-03-E dated 22 August 2003,[13] Forensic Chemist Isidro Cariño found the recovered sachets positive for methylamphetamine hydrochloride, a dangerous drug.

The defense, on the other hand, presented Gaspar and Gloria Santiago (Santiago) as witnesses.

Gaspar testified that on 22 August 2003 at about 8:00 in the morning, while he was sleeping with his wife at home, he was awakened by a loud noise and saw two men in civilian attire armed with guns who said, "*Mga pulis Crame kami*." Gaspar asked the men what his offense was but they did not answer him and instead told him to stand up. Gaspar was then handcuffed by one while the other searched the house. The one who made the search, later identified as PO1 Soreta, who did not find

[13] *Id.* at 26.

anything illegal inside the house, told his companion, later identified as PO1 Magumcia, "*Pare, dalhin natin sa Crame yan. Doon natin imbestigahan*." PO1 Magumcia then told Gaspar, "*Tara, sumama ka na*."

At the San Juan Police Station, PO1 Soreta told Gaspar, "*Dito, kaya kitang ilubog dito. Kung magbibigay ka ng treinta, wala na tayong pag-uusapan pa, wala kang kaso*." Gaspar, believing that he did not commit any offense, told them to proceed with the filing of the charge. On 25 August 2003, Gaspar was brought for inquest. Here, Gaspar disclosed that he only came to know his co-accused San Antonio inside the jail.

To corroborate Gaspar's testimony, the defense presented Santiago, a neighbor of Gaspar's who was washing clothes outside her house when the incident occurred. Santiago testified that on 22 August 2003 at around 9:00 in the morning, she saw three persons in civilian clothes kick open the door of Gaspar's house. Two of them entered the house. Filled with fear, Santiago went inside her house and observed the incident from the window. After some time, she saw Gaspar being pulled out of his house. After the group left with Gaspar, Gaspar's wife asked Santiago to accompany her to Camp Crame. Upon reaching Camp Crame, they were told that Gaspar was not brought there. Later, they found out that Gaspar was brought to the San Juan Police Station, which they visited the next day. On cross-examination, Santiago admitted that she did not know what actually transpired inside the house since she only peeped through the window when the incident occurred.

In its Decision dated 3 February 2006, the RTC found Gaspar and San Antonio guilty beyond reasonable doubt of violation of RA 9165. The RTC stated that given the presumption of regularity in the performance of the police officers' official duty and absent any clear showing of bias, malice or ill-motive on the part of the prosecution witness, PO1 Soreta, the court gives credence to his testimony. The RTC added that the testimony of a single witness suffices to support a conviction if it is trustworthy and reliable, such as in this case. The dispositive portion of the decision states:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Criminal Case No. 12840-D accused Joel Gaspar is hereby found GUILTY beyond reasonable doubt of the offense of Violation of Section 5, Article II, Republic Act 9165 (Illegal Sale of *Shabu*), and is hereby sentenced to LIFE IMPRISONMENT and to pay a FINE of Five Hundred Thousand Pesos (PHP 500,000.00).

In Criminal Case No. 12841-D accused Joel Gaspar is likewise found GUILTY beyond reasonable doubt of the offense of Violation of Section 11, Article II, Republic Act 9165 (Illegal Possession of *Shabu*), and is hereby sentenced to suffer imprisonment from Twelve (12) Years and One (1) Day to Twenty (20) Years and to pay a FINE of Three Hundred Thousand Pesos (PHP 300,000.00).

In Criminal Case No. 12842-D accused Joel Gaspar is also found GUILTY beyond reasonable doubt of the offense of Violation of Section 12, Article II, Republic Act 9165 (Possession of Paraphernalia for Dangerous Drugs), and is hereby sentenced to Six (6) Months and One (1) Day to Four (4) Years imprisonment and to pay a FINE of Ten Thousand Pesos (PHP 10,000.00).

In Criminal Case No. 12843-D accused Leomar San Antonio is hereby found GUILTY beyond reasonable doubt of the offense of Violation of Section 11, Article II, Republic Act 9165 (Illegal Possession of *Shabu*) and is hereby sentenced to suffer imprisonment from Twelve (12) Years and One (1) Day to Twenty (20) Years and to pay a FINE of Three Hundred Thousand Pesos (PHP 300,000.00).

Considering the penalty imposed by the Court on accused Joel Gaspar relative to Criminal Case No. 12840-D, his immediate commitment to the National Penitentiary, New Bilibid Prisons, Muntinlupa City, is hereby ordered.

Pursuant to Section 20 of Republic Act 9165, the amount of PHP 200.00 recovered from the accused Joel Gaspar representing the proceeds from the illegal sale of *shabu* is hereby ordered forfeited in favor of the government.

Again, pursuant to Section 21 of the same law, representatives from the Philippine Drug Enforcement Agency (PDEA) are hereby ordered to take charge and have custody over the sachets of *shabu* and drug paraphernalia object of these cases for proper disposition.

SO ORDERED.[14]

Gaspar filed an appeal with the CA. Gaspar imputed the following errors on the RTC:

I. THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE PROSECUTION'S LONE WITNESS AND IN DISREGARDING THE THEORY OF THE DEFENSE.

II. THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR VIOLATION OF SECTIONS 5, 11 & 12 OF REPUBLIC ACT NO. 9165 DESPITE THE FAILURE OF THE PROSECUTION TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.[15]

The Ruling of the Court of Appeals

In a Decision dated 16 March 2010, the CA affirmed with modification the decision of the RTC. The CA found that the prosecution fully discharged its burden of establishing all the elements of the crimes charged. The CA stated that the prosecution was able to prove that the chain of custody of the seized prohibited drugs remained intact from the time the drugs were recovered until they were submitted to the PNP Crime Laboratory for testing. As a result, the integrity and evidentiary value of the drugs seized from Gaspar were duly proven not to have been compromised. The CA added that the *corpus delicti* and the other elements of the crimes charged were sufficiently established by the prosecution beyond reasonable doubt. Thus, the evidence presented by the prosecution prevails over the defense of frame-up alleged by Gaspar, which was not substantiated by clear and convincing evidence. The dispositive portion of the decision states:

WHEREFORE, premises considered, the present appeal of accused-appellant Joel Gaspar *y* Wilson is DENIED. The Decision dated 3 February 2006 of the Regional Trial Court, Branch 70, Pasig City convicting accused-appellant Joel Gaspar *y* Wilson of Violation

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

[15] *Id.* at 49.

of Sections 5, 11, and 12, Article II of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002 in Criminal Case Nos. 12840-D, 12841-D and 12842-D is hereby AFFIRMED WITH MODIFICATION on the penalty imposed to wit:

In Criminal Case No. 12840-D accused-appellant is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a FINE of Five Hundred Thousand Pesos (PHP 500,000.00).

In **Criminal Case No. 12841-D** accused-appellant is hereby sentenced to suffer the **penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY as minimum to FIFTEEN (15) YEARS as maximum** and to pay a fine of THREE HUNDRED THOUSAND PESOS (₱300,000.00), as provided in Section 11, Article II, RA No. 9165; and

In **Criminal Case No. 12842-D** accused-appellant is hereby sentenced to suffer the **penalty of SIX (6) MONTHS and ONE (1) DAY, as minimum, to TWO (2) YEARS and SEVEN (7) MONTHS, as maximum** and to pay a fine of TEN THOUSAND PESOS (₱10,000.00), as provided in Section 12, Article II, RA No. 9165.

SO ORDERED.[16]

Appellant Gaspar now comes before the Court, submitting that the Decision dated 16 March 2010 of the CA is contrary to facts, law and applicable jurisprudence.

The Ruling of the Court

The appeal lacks merit.

At the outset, we reiterate the fundamental rule that findings of the trial court, which are factual in nature and which involve the credibility of witnesses, are accorded respect when no glaring errors, gross misapprehension of facts or speculative, arbitrary and unsupported conclusions can be gathered from such findings.[17] This rule finds an even more stringent application where said

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[16] *Rollo*, pp. 14-15.

[17] *People v. De Guzman*, G.R. No. 177569, 28 November 2007, 539 SCRA 306.

findings are sustained by the Court of Appeals, like in the present case.

In a successful prosecution for offenses involving the illegal sale of dangerous 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 for it.[18] What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[19]

In Criminal Case No. 12840-D, all these elements were present. PO1 Soreta testified that he was the poseur-buyer in the buy-bust operation conducted and identified Gaspar as seller of the plastic sachet containing *shabu* in exchange for a consideration of ₱200.00. The sale was consummated after the exchange of buy-bust money and plastic sachet occurred. In *People v. Encila*,[20] we held that the delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapment officers and the accused. The crime of illegal sale of dangerous drugs is committed as soon as the sale transaction is consummated.

On the other hand, under Section 11, Article II of RA 9165, the elements of the offense of illegal possession of dangerous drugs are: (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.[21]

Again, in Criminal Case No. 12841-D, all of these elements were duly proven. PO1 Soreta properly identified appellant as the one he transacted with in the buy-bust operation and later

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[18] *People v. Politico*, G.R. No. 191394, 18 October 2010, 633 SCRA 404, citing *People v. Alberto*, G.R. No. 179717, 5 February 2010, 611 SCRA 706.

[19] *Supra* note 17.

[20] G.R. No. 182419, 10 February 2009, 578 SCRA 341.

[21] *People v. Lagata*, 452 Phil. 846 (2003).

arrested after the sale took place. After being arrested in *flagrante delicto*, the police officers found in appellant's possession two small transparent plastic sachets each containing 0.04 gram of *shabu*, a prohibited drug, which appellant was not authorized to possess.

Next, appellant asserts that the recovery of the drug paraphernalia seen from outside the house because of the widely open door is unbelievable since no person in his right mind would display the same for anyone to see.

We disagree. Drug pushing, especially the ones done on a small scale, happens instantly. The illegal transaction takes place after the offer to buy is accepted and the exchange is made. Since Gaspar was already about to enter the house, he may not have intended to keep the door open when PO1 Soreta approached him to carry out a sale transaction. Thus, at the time the arrest was made, it would not have been improbable for the drug paraphernalia to be seen from outside because of the open door.

Appellant also claims that it is highly unlikely that PO1 Soreta could have easily bought *shabu* from him given that PO1 Soreta is a complete stranger.

In drug related cases, what is relevant is the agreement and acts constituting the sale and delivery of the dangerous drug between the seller and buyer and not the existing familiarity between them. It is of common knowledge that pushers, especially small-time dealers, peddle prohibited drugs in the open like any articles of commerce.[22] Drug pushers do not confine their nefarious trade to known customers and complete strangers are accommodated provided they have the money to pay.[23] Thus, it is not improbable that Gaspar sold *shabu* to a complete stranger like PO1 Soreta who presented himself as a buyer.

Appellant further insists that the courts relied mainly on the version of the prosecution's lone witness and placed more weight

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[22] *People v. Merabueno*, G.R. No. 87179, 14 December 1994, 239 SCRA 197.

[23] *People v. Solon*, 314 Phil. 495 (1995).

on the presumption of regularity in the performance of duty instead of the accused's right to be presumed innocent.

In *People v. De Guzman*,[24] we held that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers. Here, appellant failed to show that the police officers deviated from the regular performance of their duties. Appellant's defense of denial is weak and self-serving. Unless corroborated by other evidence, it cannot overcome the presumption that the police officers have performed their duties in a regular and proper manner.

Also, while an accused in a criminal case is presumed innocent until proven guilty, the evidence of the prosecution must stand on its own strength and not rely on the weakness of the evidence of the defense.[25] In this case, the quantum of evidence necessary to prove appellant's guilt beyond reasonable doubt had been sufficiently met. Thus, the prosecution was able to overcome appellant's constitutional right to be presumed innocent.

In sum, we find no cogent reason to depart from the decision of the RTC and CA. Gaspar is guilty beyond reasonable doubt of violation of Sections 5, 11 and 12, Article II of Republic Act No. 9165.

WHEREFORE, we *DISMISS* the appeal. We *AFFIRM* the Decision dated 16 March 2010 of the Court of Appeals in CA-G.R. CR-H.C. No. 02117.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Perez,* and *Sereno, JJ.,* concur.

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[24] *Supra* note 17.

[25] *Id*.

[*] Designated acting member per Special Order No. 1006 dated 10 June 2011.

THIRD DIVISION

[A.M. No. P-11-2945. July 13, 2011]
(Formerly OCA-I.P.I. No. 11-3590-P)

RE: LEAVE DIVISION, OFFICE OF ADMINISTRATIVE SERVICES, OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **FRANCISCO A. PUA, JR., Clerk of Court V, Regional Trial Court, Branch 55, Lucena City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE MEMORANDUM CIRCULAR NO. 23; HABITUALLY TARDY.— Civil Service Memorandum Circular No. 23, Series of 1998 provides that "[a]ny employee shall be considered habitually tardy if he incurs tardiness, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester or at least two (2) consecutive months during the year."

2. ID.; ID.; COURT EMPLOYEES; CLERK OF COURT; ROLE IN THE ADMINISTRATION OF JUSTICE.— It cannot be stressed enough that the Clerk of Court plays a vital role in ensuring the prompt and sound administration of justice. His office is the hub of adjudicative and administrative orders, processes and concerns. He is specifically imbued with the mandate to safeguard the integrity of the court as well as the efficiency of its proceedings, to preserve respect for and loyalty to it, to maintain the authenticity or correctness of court records, and to uphold the confidence of the public in the administration of justice. Thus, he is required to be persons of competence, honesty and probity.

3. ID.; ID.; HABITUAL TARDINESS; PENALTIES.— The Court has indeed consistently held that moral obligations, performance of household chores, traffic problems and health, domestic and financial concerns are not sufficient reasons to excuse habitual tardiness. Under Section 52 (C) (4), Rule VI of Civil Service Memorandum Circular No. 19, Series of 1999, habitual tardiness is penalized as follows: First Offense – Reprimand;

Second Offense – Suspension for 1-30 days; Third Offense – Dismissal from the service.

R E S O L U T I O N

MENDOZA, *J.*:

This matter concerns the habitual tardiness of Francisco A. Pua, Jr. *(Pua)*, Clerk of Court V of the Regional Trial Court, Branch 55 of Lucena City *(RTC)*.

The Facts

The facts of the case are summarized by the Office of the Court Administrator *(OCA)* in its Agenda Report[1] dated April 19, 2011, as follows:

A Report from the Leave Division, Office of Administrative Services, Office of the Court Administrator, dated 10 January 2011, shows that Francisco A. Pua, Jr., Clerk of Court, Regional Trial Court, Branch 55, Lucena City, incurred tardiness as follows:

MONTH AND YEAR	NO. OF TIMES TARDY
July 2010	16
August 2010	15
September 2010	18
October 2010	12

In a COMMENT dated 18 February 2011, respondent Pua, Jr. acknowledges the tardiness he incurred but attributes the same to family concerns. Respondent Pua, Jr. states that before reporting for work, he has to attend to the care and meeting needs of his two (2) children and lack of household which have made it more difficult to meet the demands of both work and family. Hence, respondent Pua seeks the indulgence of the Court and undertakes to exert all efforts to improve work performance.

[1] *Rollo*, pp. 15-16.

The Office of the Court Administrator's Recommendation

In view of the foregoing facts, the OCA found Pua guilty of habitual tardiness and opined that his explanation to justify his habitual tardiness should not merit any consideration. It further recommended that Pua be reprimanded and warned that a repetition of the same or similar offense will warrant the imposition of a more severe penalty.[2]

The Court's Ruling

The Court approves the OCA's finding and the recommendation.

Civil Service Memorandum Circular No. 23, Series of 1998 provides that "[a]ny employee shall be considered habitually tardy if he incurs tardiness, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester or at least two (2) consecutive months during the year."

Based on the above-cited provision, it is undeniable that Pua has been habitually tardy. Such administrative offense seriously compromises work efficiency and hampers public service. By being habitually tardy, he has fallen short of the stringent standard of conduct demanded from everyone connected with the administration of justice.

It cannot be stressed enough that the Clerk of Court plays a vital role in ensuring the prompt and sound administration of justice.[3] His office is the hub of adjudicative and administrative orders, processes and concerns.[4] He is specifically imbued with the mandate to safeguard the integrity of the court as well as the efficiency of its proceedings, to preserve respect for and loyalty to it, to maintain the authenticity or correctness of court records, and to uphold the confidence of the public in the administration of justice.[5] Thus, he is required to be persons of competence, honesty and probity.[6]

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[2] *Id*. at 15.

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

[4] *Solidbank Corporation v. Capoon Jr.*, 351 Phil. 936 (1998).

[5] *Marasigan v. Buena*, 348 Phil. 1 (1998).

[6] *Cain v. Neri*, 369 Phil. 465 (1999).

As correctly noted by the OCA, none of the reasons relied upon by Pua to justify his habitual tardiness merits the Court's consideration. The Court has indeed consistently held that moral obligations, performance of household chores, traffic problems and health, domestic and financial concerns are not sufficient reasons to excuse habitual tardiness.[7]

Under Section 52 (C) (4), Rule VI of Civil Service Memorandum Circular No. 19, Series of 1999,[8] habitual tardiness is penalized as follows:

First Offense – Reprimand
Second Offense – Suspension for 1-30 days
Third Offense – Dismissal from the service

Since this is the first time that Pua has incurred habitual tardiness, he should be reprimanded, as recommended by the OCA.

WHEREFORE, the Court finds Francisco A. Pua, Jr., Clerk of Court V of the Regional Trial Court, Branch 55, Lucena City, administratively liable for habitual tardiness. He is hereby *REPRIMANDED* and *WARNED* that a repetition of the same or a similar offense will warrant the imposition of a more severe penalty.

SO ORDERED.

Carpio,[*] *Velasco, Jr., Abad,* and *Sereno,*[**] *JJ.,* concur.

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[7] *Marquez v. Fernandez,* A.M. No. P-07-2358, October 19, 2010; *Re*: *Failure of Various Employees to Register their Time of Arrival and/or Departure from Office in the Chronolog Machine,* A.M. No. 2005-21-SC, September 28, 2010, citing *Re: Supreme Court Employees Incurring Habitual Tardiness in the 2nd Semester of 2005,* A.M. No. 2006-11-SC, September 13, 2006, 501 SCRA 638.

[8] *Re-Imposition of Corresponding Penalties for Habitual Tardiness Committed During the Second Semester of 2002,* 456 Phil. 183 (2003).

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 1029 dated June 30, 2011.

[**] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

THIRD DIVISION

[A.M. No. P-11-2946. July 13, 2011]
(Formerly A.M. No. 11-5-52-MTCC)

RE: DROPPING FROM THE ROLLS OF CORNELIO RENIETTE CABRERA, Utility Worker I, Municipal Trial Court in Cities, Branch 1, Lipa City.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ABSENCE WITHOUT OFFICIAL LEAVE (AWOL) FOR AT LEAST 30 WORKING DAYS WARRANTS SEPARATION FROM SERVICE.— Pursuant to Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Civil Service Resolution No. 070631, an employee's absence without official leave for at least 30 working days warrants his separation from the service. The Rule specifically provides: x x x

2. ID.; ID.; COURT EMPLOYEES; REQUIRED DECORUM; VIOLATED WHEN COURT EMPLOYEE CABRERA WENT AWOL.— Every so often, it has been declared that any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the judiciary, shall not be countenanced. Indeed, a public office is a public trust. Public officers must at all times be accountable to the people, serve them with the utmost degree of responsibility, integrity, loyalty, and efficiency. By going on AWOL, Cabrera grossly disregarded and neglected the duties of his office. He failed to adhere to the high standards of public accountability imposed on all those in government service. Specifically for court personnel, their conduct and behavior are circumscribed with the heavy burden of responsibility. This Court shall not tolerate any act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or tend to diminish the faith of the people in the judiciary.

3. ID.; ID.; DROPPING FROM THE ROLLS; NON-DISCIPLINARY IN NATURE.— Under Section 2 (2.6), Rule XII of the Revised

Omnibus Rules on Appointments and Other Personnel Actions, the dropping from the rolls as a mode of separation from service is "non-disciplinary in nature and shall not result in the forfeiture of any benefits on the part of the official or employee nor in disqualifying him from re-employment in the government." While there is jurisprudence to the effect that a court employee's AWOL for a prolonged period of time warrants the penalty of dismissal from the service *and* the forfeiture of his benefits, the Court, given the circumstances of the case, is inclined to adhere to the evaluation and recommendation of the OCA, and refrain from imposing the administrative penalties of forfeiture of benefits and disqualification from re-employment.

R E S O L U T I O N

MENDOZA, *J.*:

The present administrative matter concerns Cornelio Reniette Cabrera *(Cabrera)*, Utility Worker I of the Municipal Trial Court in Cities, Branch 1 of Lipa City *(MTCC)*. Records of the Office of the Court Administrator *(OCA)* disclose that Cabrera has failed to file his Daily Time Records *(DTRs)* from October 2010 up to present and to seek leave for any of his absences.[1]

It appears that on October 22, 2010, the OCA received Cabrera's sick leave applications[2] for the month of September 2010, which covered a total of eleven (11) days. Due to lack of proper documentation, Presiding Judge Renato M. Castillo disapproved the applications for sick leave.

On October 28, 2010, the OCA sent a telegram[3] to Cabrera requiring him to submit a medical certificate to support his applications for leave. Cabrera, however, did not comply.

On December 1, 2010, the OCA forwarded Cabrera's applications for sick leave to the Office of Dr. Prudencio Banzon,

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

[2] *Id.* at 5-7.

[3] *Id.* at 8.

Jr. *(Dr. Banzon, Jr.)*, Senior Chief Judicial Staff Officer of the Court,[4] which also disapproved said application due to lack of proper documentation.[5] The OCA sent another telegram[6] to Cabrera on December 1, 2010, requiring him to submit his DTRs for October and November 2010. Once again, Cabrera failed to comply.

In a letter[7] dated December 9, 2010, Percival C. Bañaga, the MTCC Branch Clerk of Court, informed the OCA that Cabrera had continuously failed to report for work without leave since October 20, 2010 up to the present and that he had not filed his DTRs for the months of October and November 2010.

This prompted the OCA to send two (2) tracer letters[8] to Cabrera - one to his residential address and another to his court station, directing that he submit his DTRs for the months of October and November 2010. This time, the OCA warned Cabrera that his name would be recommended for dropping from the rolls if he failed to comply.

Despite being served the tracer letters,[9] Cabrera failed to heed the directive of the OCA. Thus, on December 9, 2010, the OCA issued its Memorandum[10] ordering the withholding of Cabrera's salaries and benefits.

In its evaluation of the matter, the OCA submitted its Agenda Report[11] dated May 17, 2011, wherein, referring to Section 63, Rule XVI of the Omnibus Rules on Leave it recommended that Cabrera's name be dropped from the rolls for being absent without leave *(AWOL)*. The OCA further recommended that

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[4] *Id.* at 9.

[5] *Id.* at 10.

[6] *Id.* at 11.

[7] *Id.* at 12.

[8] *Id.* at 13-14.

[9] *Id.* at 17-18

[10] *Id.* at 19.

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

Cabrera's position be declared vacant and that he be informed at his residential address on record of his separation from the service or the dropping of his name from the rolls.

The OCA Report also informed the Court that upon verification, Cabrera had not filed any application for retirement and that no previous administrative complaint had been filed against him.

The OCA's recommendation is well-taken.

Pursuant to Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Civil Service Resolution No. 070631, an employee's absence without official leave for at least 30 working days warrants his separation from the service. The Rule specifically provides:

> Sec. 63. *Effect of absences without approved leave*.-An official or employee who is continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. However, when it is clear under the obtaining circumstances that the official or employee concerned, has established a scheme to circumvent the rule by incurring substantial absences though less than thirty working (30) days 3x in a semester, such that a pattern is already apparent, dropping from the rolls without notice may likewise be justified.
>
> If the number of unauthorized absences incurred is less than thirty (30) working days, a written Return-to-Work-Order shall be served to him at his last known address on record. Failure on his part to report for work within the period stated in the order shall be valid ground to drop him from the rolls.

In this connection, Section 63, Rule XVI, of the Omnibus Civil Service Rules and Regulations, as amended by Circular No. 14, s. 1999, provides:

> Section 63. *Effect of absences without approved leave*. – An official or employee who is continuously absent without approved leave for at least thirty (30) calendar days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. He shall,

however, be informed, at his address appearing on his 201 files, of his separation from the service, not later than five (5) days from its effectivity.

Every so often, it has been declared that any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the judiciary, shall not be countenanced.[12] Indeed, a public office is a public trust. Public officers must at all times be accountable to the people, serve them with the utmost degree of responsibility, integrity, loyalty, and efficiency.[13]

By going on AWOL, Cabrera grossly disregarded and neglected the duties of his office. He failed to adhere to the high standards of public accountability imposed on all those in government service.[14]

Specifically for court personnel, their conduct and behavior are circumscribed with the heavy burden of responsibility. This Court shall not tolerate any act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or tend to diminish the faith of the people in the judiciary.[15]

Under Section 2 (2.6), Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions, the dropping from the rolls as a mode of separation from service is "non-disciplinary in nature and shall not result in the forfeiture of any benefits on the part of the official or employee nor in disqualifying him from re-employment in the government."

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[12] *Re: Absence Without Official Leave (AWOL) of Antonio Macalintal, Process Server, Office of the Clerk of Court*, A.M. No. 99-11-06-SC, 384 Phil. 314 (2000).

[13] *Id.*, citing *Rangel-Roque v. Rivota*, 362 Phil. 136 (1999), citing *Gano v. Leonen*, A.M. No. P-82-756, 232 SCRA 98, May 3, 1994.

[14] *Re: Absence Without Official Leave of Ms. Fernandita B. Borja*, A.M. No. 06-1-10-MCTC, April 13, 2007.

[15] *Re: Absence Without Official Leave of Mr. Basri A. Abbas*, A.M. No. 06-2-96-RTC, 486 SCRA 32, March 31, 2006.

While there is jurisprudence[16] to the effect that a court employee's AWOL for a prolonged period of time warrants the penalty of dismissal from the service *and* the forfeiture of his benefits, the Court, given the circumstances of the case, is inclined to adhere to the evaluation and recommendation of the OCA, and refrain from imposing the administrative penalties of forfeiture of benefits and disqualification from re-employment.

WHEREFORE, Cornelio Reniette Cabrera, Utility Worker I of the Municipal Trial Court in Cities, Branch 1 of Lipa City, is hereby *DROPPED* from the rolls of service and his position is hereby declared *VACANT*.

Let a copy of this resolution be served upon Cornelio Reniette Cabrera at his address appearing on his 201 files pursuant to Section 63, Rule XVI of the Omnibus Civil Service Rules and Regulations, as amended.

SO ORDERED.

Carpio,[*] *Velasco, Jr., Abad,* and *Sereno,*[**] *JJ.*, concur.

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[16] *Re: Absence Without Official Leave (AWOL) of Mr. Jayson S. Tayros, Process Server, Regional Trial Court, Branch 31, Dumaguete City* A.M. No. 05-8-514-RTC, 505 Phil. 495 (2005); *Loyao, Jr., v. Manatad,* A.M. No. P-99-1308, 387 Phil. 337 (2000).

[*] Designated as additional member in lieu of Justice Diosdado M. Peralta per Special Order No. 1029 dated June 30, 2011.

[**] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

THIRD DIVISION

[A.M. No. RTJ-11-2284. July 13, 2011]
(Formerly A.M. OCA IPI No. 09-3304-RTJ)

SPOUSES SUR AND RITA VILLA and LETICIA GOREMBALEM VALENZUELA, *complainants, vs.* **PRESIDING JUDGE ROBERTO L. AYCO, OFFICER-IN-CHARGE/LEGAL RESEARCHER VIRGINIA M. BARTOLOME and SHERIFF IV CRISPIN S. CALSENIA, JR., All of the Regional Trial Court, Branch 26, Surallah, South Cotabato,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; BURDEN OF PROOF RESTS ON THE COMPLAINANT.— In administrative proceedings, the burden of proof that the respondent committed the act complained of rests on the complainant. The complainant must be able to show this by substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Otherwise, the complaint should be dismissed.

2. ID.; ID.; JUDGES; FAILURE TO RESOLVE MOTION WITHIN THE REGLEMENTARY PERIOD; PROPER PENALTY; MITIGATED TO ADMONITION IN CASE AT BAR.— The public's faith and confidence in the judicial system depends largely on the judicious and prompt disposition of cases and other matters pending before the courts. Failure to decide a case or resolve a motion within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring judge. Under Section 9, Rule 140 of the Revised Rules of Court, undue delay in rendering a decision or order is considered a less serious offense. Pursuant to Section 11 of the same rule, such offense is punishable by: 1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or 2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In *Judge Angeles v. Judge Sempio Diy*, however, the Court mitigated the penalty to admonition

considering that it was the respondent judge's first infraction of the rules and in the absence of bad faith or malice. Following the said ruling, the Court approves the recommendation of the OCA to admonish Judge Ayco and sternly warn him that a repetition of the same or similar offense will be dealt more severely.

3. ID.; ID.; SHERIFFS; FAILURE TO STRICTLY COMPLY WITH THE REQUIREMENT OF PRIOR NOTICE TO VACATE BEFORE DEMOLITION AS REQUIRED BY THE RULES IS TANTAMOUNT TO MISCONDUCT.— With respect to Sheriff Calsenia, the Court finds that he failed to strictly comply with the requirement of prior notice to vacate before demolition as required by the rules. Section 10(c) of Rule 39 of the 1997 Rules of Civil Procedure provides the procedure in the enforcement of the writ. x x x It is the duty of the sheriff to give notice of such writ and demand from the defendant (*in this case, the complainants*) to vacate the property within three days. Only after such period can the sheriff enforce the writ by the bodily removal of defendant and his personal belongings. This notice requirement is anchored on the fundamentals of justice and fair play. The law discourages any form of arbitrary and oppressive conduct in the execution of an otherwise legitimate act. Thus, a sheriff must strictly comply with the Rules of Court in executing a writ. Any act deviating from the procedure prescribed by the Rules of Court is tantamount to misconduct and necessitates disciplinary action.

4. ID.; ID.; ID.; VITAL ROLE IN THE ADMINISTRATION OF JUSTICE, EMPHASIZED.— The Court recognizes the fact that sheriffs play a vital role in the administration of justice. In view of their important position, their conduct should always be geared towards maintaining the prestige and integrity of the court. In *Escobar Vda. de Lopez v. Luna*, the Court explained that sheriffs have the obligation to perform the duties of their office honestly, faithfully and to the best of their abilities. They must always hold inviolate and revitalize the principle that a public office is a public trust. As court personnel, their conduct must be beyond reproach and free from any doubt that may infect the judiciary. They must be careful and proper in their behavior. They must use reasonable skill and diligence in performing their official duties, especially when the rights of individuals may be jeopardized by neglect. They are ranking

officers of the court entrusted with a fiduciary role. They perform an important piece in the administration of justice and they are required to discharge their duties with integrity, reasonable dispatch, due care, and circumspection. Anything below the standard is unacceptable. This is because in serving the court's writs and processes and in implementing the orders of the court, sheriffs cannot afford to err without affecting the efficiency of the process of the administration of justice. Sheriffs are at the grassroots of our judicial machinery and are indispensably in close contact with litigants, hence their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily echoed in the conduct, official or otherwise, of the people who work thereat, from the judge to the least and lowest of the ranks.

5. ID.; ID.; ID.; SIMPLE MISCONDUCT; PENALTIES; PROPER PENALTY IMPOSED FOR FIRST TIME OFFENDER.— Sheriff Calsenia was not able to faithfully do what was required and expected of him. Thus, the Court agrees with the OCA that Sheriff Calsenia is guilty of simple misconduct. Under Section 52, B(2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. Considering that it is the first offense of Sheriff Calsenia, the Court hereby imposes upon Sheriff Calsenia the penalty of three (3) months suspension with stern warning that a repetition of the same or similar offense shall be dealt more severely in the future.

D E C I S I O N

MENDOZA, *J.*:

The Court resolves the complaint filed by spouses Sur and Rita Villa and Leticia Gorembalem Valenzuela *(complainants)* against: (1) Presiding Judge Roberto L. Ayco *(Judge Ayco)* for undue delay in resolving motions, gross ignorance of the law, bias and abuse of authority; (2) Officer-in-Charge/Legal

[1] *Rollo*, pp. 24-31.

Researcher Virginia Bartolome *(OIC Bartolome)* for gross ignorance of the law and gross inefficiency; (3) Sheriff IV Crispin S. Calsenia, Jr. *(Sheriff Calsenia)* for grave abuse of authority and gross neglect of duty, all the Regional Trial Court, Branch 26, Surallah, South Cotabato *(RTC)*. The complaint stems from Civil Case No. 386-N entitled "*Spouses Sixto and Yolanda Fernandez v. Spouses Miguel and Marina Gorembalem; Estate of Miguel Gorembalem, represented by Crispina G. Artienda, et al.. Third Party Claimant*" filed before the RTC for Specific Performance with Damages.

Complainants allege that they are the legal heirs of Miguel Gorembalem, who was the named defendant in the civil case. In the RTC decision[2] dated October 2, 1992, Miguel Gorembalem was held liable to pay the plaintiffs. On January 25, 2006, the Court of Appeals *(CA)* dismissed Gorembalem's appeal. Thus, on March 19, 2006, the judgment against Gorembalem became final and executory. The case was remanded to the RTC for execution. On August 4, 2006, the RTC, presided by Judge Ayco, directed the issuance of a writ of execution on the said case.[3]

On August 25, 2006, Sheriff Calsenia issued a Notice of Levy on the property of Gorembalem and scheduled an execution sale since the defendants failed to settle the judgment obligation.

On September 26, 2006, complainants filed a Third Party Claim[4] on the said property, but it was denied by the RTC in its Order dated March 7, 2007. Complainants moved for a reconsideration on April 27, 2007[5] but Judge Ayco denied the same only on July 31, 2008 or "fifteen (15) months from filing and more than eight (8) months from the time such motion was submitted for resolution."[6] Complainants posit that the delay

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[2] Penned by Judge Cristeto O. Dinopol.

[3] *Rollo*, p. 35.

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

[5] *Id.* at 37-42.

[6] *Id.* at 25.

constitutes gross inefficiency that runs afoul to Rules 1.02 of Canon 1 and 3.05 of Canon 3 of the Code of Judicial Conduct as well as SC Administrative Circular No. 1-88.[7]

Thereafter, complainants filed their Notice of Appeal[8] which was likewise denied in the RTC Order[9] dated August 29, 2008 for late filing. Their Motion for Reconsideration[10] was likewise denied in an Order[11] dated January 16, 2009.

On March 10, 2009, the plaintiffs in the said Civil Case filed their Motion for Writ of Possession/Demolition/Break Open and set the hearing on March 13, 2009.[12] Complainants alleged that their counsel only received the copy of the said motion on March 18, 2009 or five days after the scheduled hearing.[13]

Despite complainants' Opposition[14] to the motion, on April 30, 2009, Judge Ayco ordered the issuance of the Writ of Possession and Demolition.[15]

On May 14, 2009, OIC Bartolome, issued the Writ of Possession and Demolition,[16] which according to complainants was premature.[17] Complainants also believe that OIC Bartolome displayed either bias or gross ignorance of the law and incompetence when she received the Motion for Writ of Possession/Demolition/Break Open, when it clearly violated the 3-day notice rule, making it a mere scrap of paper.

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[7] *Id.*

[8] *Id.* at 47-48.

[9] *Id.* at 49.

[10] *Id.* at 50-52.

[11] *Id.* at 53-55.

[12] *Id.* at 56-60.

[13] *Id.* at 26.

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

[15] *Id.* at 65-68.

[16] *Id.* at 78-79.

[17] *Id.* at 26.

Then, on July 25, 2009, Sheriff Calsenia implemented the writ of demolition without prior service of the notice to vacate on the complainants.[18] As a result of the demolition, the complainants suffered various damages and loss of expensive materials. They claim that the respondent sheriff failed to make a proper accounting and inventory of the materials taken from the property.[19]

After the demolition, the daughter of the spouses-complainant went to the RTC Office to ask for a copy of the records. OIC Bartolome, however, "in a loud voice and overbearing conduct,"[20] shouted at their daughter.

In his Comment dated January 18, 2010,[21] Judge Ayco admitted that the order denying the motion for reconsideration was indeed issued beyond the 90-day period, after it was deemed submitted for resolution. He, however, denied the complainants' allegation and argued that the said incident was isolated and should not be strictly held against him. Judge Ayco countered that their complaint should be dismissed for the following reasons: (1) the motion for reconsideration would have been dismissed anyway as it was filed late; (2) the filing of the motion was merely a ploy to obstruct and impede the conduct of the execution sale; (3) his branch was a single sala court catering to seven large municipalities and burdened with heavy caseload; and (4) this was the first time that he had been charged with delay in the resolution of a motion.

In her Comment dated January 20, 2010,[22] OIC Bartolome explained that it was her duty to receive the pleadings being filed with the court, such as plaintiffs' Motion for Issuance of Writ of Possession and/or Demolition, but it was not her duty to assess the propriety of the pleadings filed. Likewise, she

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[18] *Id.* at 28.

[19] *Id.* at 29.

[20] *Id.*

[21] *Id.* at 94-105.

[22] *Id.* at 173-182.

issued the Writ of Possession and/or Demolition because it was her ministerial duty to issue it in compliance with the April 30, 2009 Order of the court and as mandated by the 2002 Revised Manual for Clerks of Court. Finally, she denied the supposed display of animosity towards complainants' daughter when the latter asked for a copy of the records.

In his Comment dated January 21, 2010,[23] Sheriff Calsenia explained that he served the Writ of Possession and/or Demolition to the complainants as part of his duty as a sheriff. He insisted that the implementation of the writ, contrary to the claim of complainants, did not cause any undue damage because the piggery was already vacant when the demolition took place on July 29, 2009. In fact, Barangay Kagawad Nelson Da-as and Police Officer III Donato Anatado were present on the day of the demolition. In his Supplemental Comment,[24] Sheriff Calsenia denied that he mishandled complainants' belongings because the house was already empty at the time of the demolition. He also denied stealing building materials from the site and even advised complainants' representative, Johnmilgen Villa, to get the remaining materials but, apparently, he failed to take them. He claimed that he did not notice that plaintiffs took some of the old iron sheets and G.I. pipes because he was preoccupied with the supervision of the demolition. When he learned of it, he immediately advised the plaintiffs to return the materials but they refused, so he directed the recording and inventory of the items taken by them.

The Office of the Court Administrator *(OCA)*, in its Report dated May 10, 2011,[25] found OIC Bartolome to be innocent of the charges and recommended the dismissal of the administrative complaint against her. With respect to Judge Ayco, the OCA considered him liable for undue delay in resolving the complainants' motion for reconsideration in Civil Case No. 386-N. As to Sheriff Calsenia, the OCA found him to be administratively liable for

[23] *Id.* at 321-329.

[24] *Id.* at 330-332.

[25] *Id.* at 372-383.

his failure to serve a notice to vacate prior to the implementation of the writ of possession and demolition. Accordingly, the OCA recommended that Judge Ayco be admonished and warned that a repetition of the same or similar acts would merit a more severe penalty, and Sheriff Calsenia be penalized with two months suspension with a stern warning that a repetition of the same or equivalent acts in the future would warrant a stricter penalty.

After careful consideration of the case, the Court finds the recommendations of the OCA to be well-taken, except as to the penalty with respect to Sheriff Calsenia.

The Court agrees with the OCA's recommendation to dismiss the case against OIC Bartolome for lack of merit. Complainants claimed that OIC Bartolome should not have accepted the plaintiffs' Motion for Issuance of Writ of Possession and Demolition on account of the absence of the notice of hearing and failure to comply with the three-day notice rule on hearing of motions.

A scrutiny of the records reveals that the said motion enclosed a notice of hearing scheduled on March 13, 2009. At any rate, her issuance of the Writ of Possession and Demolition was pursuant to the April 30, 2009 Order of the RTC and to her ministerial duty to abide by such instruction. As to the allegation of discourteous conduct against OIC Bartolome, the complainants failed to substantiate it. In administrative proceedings, the burden of proof that the respondent committed the act complained of rests on the complainant. The complainant must be able to show this by substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Otherwise, the complaint should be dismissed.[26]

With respect to Judge Ayco, the Court stresses that the propriety or impropriety of the motion for reconsideration is judicial in nature and therefore, beyond the scope of this administrative proceedings. He however, cannot be excused for the delay in resolving complainants' motion for reconsideration. Records show that the motion was deemed submitted for resolution on

[26] *Adajar v. Develos*, 512 Phil. 9, 24-25 (2005).

November 16, 2007,[27] and Judge Ayco denied the motion only on July 31, 2008. As found out by the OCA, it took eight months for him to resolve the said motion which was in violation of Rule 37, Section 4[28] of the Rules of Court requiring said motions to be resolved within thirty (30) days from the time of submission.

The public's faith and confidence in the judicial system depends largely on the judicious and prompt disposition of cases and other matters pending before the courts.[29] Failure to decide a case or resolve a motion within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring judge.[30]

Under Section 9, Rule 140 of the Revised Rules of Court, undue delay in rendering a decision or order is considered a less serious offense. Pursuant to Section 11 of the same rule, such offense is punishable by:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or
2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

In *Judge Angeles v. Judge Sempio Diy*,[31] however, the Court mitigated the penalty to admonition considering that it was the respondent judge's first infraction of the rules and in the absence of bad faith or malice. Following the said ruling, the Court approves the recommendation of the OCA to admonish Judge Ayco and sternly warn him that a repetition of the same or similar offense will be dealt more severely.

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[27] *Rollo*, p. 46.

[28] *Section 4. Resolution of motion.*- A motion for new trial or reconsideration shall be resolved within thirty (30) days from the time it is submitted for resolution.

[29] *Gallego v. Acting Judge Doronila*, 389 Phil. 677, 681-682 (2000).

[30] *Id.* at 684.

[31] A.M. No. RTJ-10-2248, September 29, 2010.

With respect to Sheriff Calsenia, the Court finds that he failed to strictly comply with the requirement of prior notice to vacate before demolition as required by the rules. Section 10(c) of Rule 39 of the 1997 Rules of Civil Procedure provides the procedure in the enforcement of the writ. To quote:

> Sec. 10(c). *Delivery or restitution of real property*. – The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him **to peaceably vacate the property within three (3) working days**, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money. [Emphasis supplied]

It is the duty of the sheriff to give notice of such writ and demand from the defendant (*in this case, the complainants*) to vacate the property within three days. Only after such period can the sheriff enforce the writ by the bodily removal of defendant and his personal belongings.[32] This notice requirement is anchored on the fundamentals of justice and fair play. The law discourages any form of arbitrary and oppressive conduct in the execution of an otherwise legitimate act.[33] Thus, a sheriff must strictly comply with the Rules of Court in executing a writ. Any act deviating from the procedure prescribed by the Rules of Court is tantamount to misconduct and necessitates disciplinary action.[34]

The Court recognizes the fact that sheriffs play a vital role in the administration of justice. In view of their important position, their conduct should always be geared towards maintaining the prestige and integrity of the court. In *Escobar Vda. de Lopez v.*

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[32] *Lu v. Judge Siapno*, 390 Phil. 489, 498 (2000).

[33] *Raymundo v. Calaguas*, 490 Phil. 320, 325 (2005).

[34] *Tan v. Dael*, 390 Phil. 841, 845 (2000).

Luna,[35] the Court explained that sheriffs have the obligation to perform the duties of their office honestly, faithfully and to the best of their abilities.[36] They must always hold inviolate and revitalize the principle that a public office is a public trust.[37] As court personnel, their conduct must be beyond reproach and free from any doubt that may infect the judiciary.[38] They must be careful and proper in their behavior.[39] They must use reasonable skill and diligence in performing their official duties, especially when the rights of individuals may be jeopardized by neglect.[40] They are ranking officers of the court entrusted with a fiduciary role.[41] They perform an important piece in the administration of justice and they are required to discharge their duties with integrity, reasonable dispatch, due care, and circumspection. Anything below the standard is unacceptable.[42] This is because in serving the court's writs and processes and in implementing the orders of the court, sheriffs cannot afford to err without affecting the efficiency of the process of the administration of justice.[43] Sheriffs are at the grassroots of our judicial machinery and are indispensably in close contact with litigants, hence their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily echoed in the conduct, official or otherwise, of the people who work thereat, from the judge to the least and lowest of the ranks.[44]

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[35] A.M. No. P-04-1786 (Formerly OCA I.P.I. No. 02-1341-P), 13 February 2006, 482 SCRA 265, 275-276.

[36] *Pecson v. Sicat*, 358 Phil. 606, 615-616 (1998).

[37] *Ventura v. Concepcion*, 399 Phil. 566, 571 (2000).

[38] *Abanil v. Ramos, Jr.* 399 Phil. 572, 577 (2000).

[39] *Tiongco v. Molina*, 416 Phil. 676, 683 (2001).

[40] *Id.*

[41] *Lobregat v. Amoranto*, 467 Phil. 629, 633 (2004).

[42] *Trinidad v. Paclibar*, 456 Phil. 727, 731 (2003).

[43] *Abalde v. Roque, Jr.*, 448 Phil. 246, 256 (2003).

[44] *Villanueva-Fabella v. Judge Lee*, 464 Phil. 548, 569-570 (2004).

In this case, Sheriff Calsenia was not able to faithfully do what was required and expected of him. Thus, the Court agrees with the OCA that Sheriff Calsenia is guilty of simple misconduct. Under Section 52, B(2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. Considering that it is the first offense of Sheriff Calsenia, the Court hereby imposes upon Sheriff Calsenia the penalty of three (3) months suspension with stern warning that a repetition of the same or similar offense shall be dealt more severely in the future.

WHEREFORE, the complaint against respondent Officer-in-Charge/Legal Researcher Virginia M. Bartolome, Regional Trial Court, Branch 26, Surallah, South Cotabato, is *DISMISSED* for lack of merit; respondent Judge Roberto L. Ayco is hereby pronounced *GUILTY* for undue delay in resolving the motion for reconsideration of the third-party claimants in Civil Case No. 386-N and accordingly *ADMONISHED with a STERN WARNING* that a repetition of the same or equivalent acts shall be dealt more severely in the future; and respondent Sheriff IV Crispin S. Calsenia, Jr. is found *GUILTY* of simple misconduct and accordingly *SUSPENDED* from the service for three (3) months without pay and other fringe benefits with a *STERN WARNING* that a repetition of the same or similar acts in the future shall merit a more severe penalty.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Abad,* and *Sereno,*[**] *JJ.,* concur.

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[*] Designated as additional member in lieu of Associate Justice Diosadado M. Peralta per Special Order No. 1029 dated June 30, 2011.

[**] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

THIRD DIVISION

[G.R. No. 160088. July 13, 2011]

AGUSTIN P. DELA TORRE, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, CRISOSTOMO G. CONCEPCION, RAMON "BOY" LARRAZABAL, PHILIPPINE TRIGON SHIPYARD CORPORATION, and ROLAND G. DELA TORRE,** *respondents.*

[G.R. No. 160565. July 13, 2011]

PHILIPPINE TRIGON SHIPYARD CORPORATION and ROLAND G. DELA TORRE, *petitioners, vs.* **CRISOSTOMO G. CONCEPCION, AGUSTIN DELA TORRE and RAMON "BOY" LARRAZABAL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, RESPECTED.— As regards the issues requiring a review of the factual findings of the trial court, the Court finds no compelling reason to deviate from the rule that findings of fact of a trial judge, especially when affirmed by the appellate court, are binding before this Court.

2. COMMERCIAL LAW; CODE OF COMMERCE; LIMITED LIABILITY RULE; ELUCIDATED.— [T]he Limited Liability Rule under the Code of Commerce x x x has been explained to be that of the real and hypothecary doctrine in maritime law where the shipowner or ship agent's liability is held as merely co-extensive with his interest in the vessel such that a total loss thereof results in its extinction. In this jurisdiction, this rule is provided in three articles of the Code of Commerce. These are: **Art. 587**. The ship agent shall also be civilly liable for the indemnities in favor of third persons which may arise from the conduct of the captain in the care of the goods which he loaded on the vessel; but he may exempt himself therefrom by abandoning the vessel with all her equipment and the freight it may have earned during the voyage. **Art. 590.** The co-owners

of the vessel shall be civilly liable in the proportion of their interests in the common fund for the results of the acts of the captain referred to in Art. 587. Each co-owner may exempt himself from this liability by the abandonment, before a notary, of the part of the vessel belonging to him. **Art. 837.** The civil liability incurred by shipowners in the case prescribed in this section, shall be understood as limited to the value of the vessel with all its appurtenances and freightage served during the voyage. Article 837 specifically applies to cases involving collision which is a necessary consequence of the right to abandon the vessel given to the shipowner or ship agent under the first provision – Article 587. Similarly, Article 590 is a reiteration of Article 587, only this time the situation is that the vessel is co-owned by several persons. Obviously, the forerunner of the Limited Liability Rule under the Code of Commerce is Article 587. Now, the latter is quite clear on which indemnities may be confined or restricted to the value of the vessel pursuant to the said Rule, and these are the – "indemnities in favor of third persons which may arise from the conduct of the captain in the care of the goods which he loaded on the vessel." Thus, what is contemplated is the liability to third persons who may have dealt with the shipowner, the agent or even the charterer in case of demise or bareboat charter. The only person who could avail of this is the shipowner, Concepcion. He is the very person whom the Limited Liability Rule has been conceived to protect.

3. ID.; ID.; RIGHTS BETWEEN THE CHARTERER AND THE SHIPOWNER, DISTINGUISHED.— In distinguishing the rights between the charterer and the shipowner, the case of *Yueng Sheng Exchange and Reading Co. v. Urrutia & Co.* is most enlightening. In that case, no less than Chief Justice Arellano wrote: The whole ground of this assignment of errors rests on the proposition advanced by the appellant company that 'the charterer of a vessel, under the conditions stipulated in the charter party in question, is the owner *pro hac vice* of the ship and takes upon himself the responsibilities of the owner.' x x x If G. Urrutia & Co., by virtue of the above-mentioned contract, became the agents of the *Cebu*, then they must respond for the damages claimed, because the owner and the agent are civilly responsible for the acts of the captain. But G. Urrutia & Co. could not in any way exercise the powers

or rights of an agent. They could not represent the ownership of the vessel, nor could they, in their own name and in such capacity, take judicial or extrajudicial steps in all that relates to commerce; thus if the *Cebu* were attached, they would have no legal capacity to proceed to secure its release; speaking generally, not even the fines could or ought to be paid by them, unless such fines were occasioned by their orders. x x x. The contract executed by Smith, Bell & Co., as agents for the Cebu, and G. Urrutia & Co., as charterers of the vessel, did not put the latter in the place of the former, nor make them agents of the owner or owners of the vessel. With relation to those agents, they retained opposing rights derived from the charter party of the vessel, and at no time could they be regarded by the third parties, or by the authorities, or by the courts, as being in the place of the owners or the agents in matters relating to the responsibilities pertaining to the ownership and possession of the vessel. x x x In *Yueng Sheng*, it was further stressed that the charterer does not completely and absolutely step into the shoes of the shipowner or even the ship agent because there remains conflicting rights between the former and the real shipowner as derived from their charter agreement. The Court again quotes Chief Justice Arellano: Their (the charterer's) possession was, therefore, the uncertain title of lease, not a possession of the owner, such as is that of the agent, who is fully subrogated to the place of the owner in regard to the dominion, possession, free administration, and navigation of the vessel. Therefore, even if the contract is for a bareboat or demise charter where possession, free administration and even navigation are temporarily surrendered to the charterer, dominion over the vessel remains with the shipowner. Ergo, the charterer or the sub-charterer, whose rights cannot rise above that of the former, can never set up the Limited Liability Rule against the very owner of the vessel. Borrowing the words of Chief Justice Artemio V. Panganiban, "Indeed, where the reason for the rule ceases, the rule itself does not apply."

4. ID.; ID.; CHARTERED VESSEL NOT COMMERCIALLY OFFERED FOR PUBLIC USE, AGREEMENTS ARE THAT OF A PRIVATE CARRIAGE WITH RIGHTS GOVERNED BY THEIR CONTRACT.— In the present case, the charterer and the sub-charterer through their respective contracts of agreement/charter parties, obtained the use and service of the

entire *LCT-Josephine*. The vessel was likewise manned by the charterer and later by the sub-charterer's people. With the complete and exclusive relinquishment of possession, command and navigation of the vessel, the charterer and later the sub-charterer became the vessel's owner *pro hac vice.* Now, and in the absence of any showing that the vessel or any part thereof was commercially offered for use to the public, the above agreements/charter parties are that of a private carriage where the rights of the contracting parties are primarily defined and governed by the stipulations in their contract.

5. ID.; ID.; CHARTER PARTIES; WHERE RIGHTS AND OBLIGATIONS UNDER THE CODE OF COMMERCE NOT APPLICABLE TO THE PRESENT CASE, DEFICIENCY THEREOF SUPPLIED BY THE NEW CIVIL CODE.— Although certain statutory rights and obligations of charter parties are found in the Code of Commerce, these provisions are not applicable in the present case. Indeed, none of the provisions found in the Code of Commerce deals with the specific rights and obligations between the real shipowner and the charterer obtaining in this case. Necessarily, the Court looks to the New Civil Code to supply the deficiency.

APPEARANCES OF COUNSEL

Jarvis Y. Ortega for Agustin Y. Ortega.
Edgar G. Dela Torre for Phil. Trigon Shipyard Corp.
Ricardo B. Bermudo for Crisostomo Concepcion.

D E C I S I O N

MENDOZA, *J.*:

These consolidated petitions[1] for review on *certiorari* seek to reverse and set aside the September 30, 2002 Decision[2] and

[1] G.R. No. 160088 and G.R. No. 160565 consolidated as per Court Resolution dated May 17, 2004.

[2] *Rollo* (G.R. No. 160088), pp. 38-55. Penned by then Associate Justice Ruben T. Reyes (a retired member of this Court) with Associate Justices Andres B. Reyes (now Presiding Justice of the Court of Appeals) and Mariano C. Del Castillo (now an Associate Justice of this Court), concurring.

September 18, 2003 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. CV No. 36035, affirming *in toto* the July 10, 1991 Decision[4] of the Regional Trial Court, Branch 60, Angeles City *(RTC)*. The RTC Decision in Civil Case No. 4609, an action for Sum of Money and Damages, ordered the defendants, jointly and severally, to pay various damages to the plaintiff.

The Facts:

Respondent Crisostomo G. Concepcion *(Concepcion)* owned *LCT-Josephine*, a vessel registered with the Philippine Coast Guard. On February 1, 1984, Concepcion entered into a "Preliminary Agreement"[5] with Roland de la Torre *(Roland)* for the dry-docking and repairs of the said vessel as well as for its charter afterwards.[6] Under this agreement, Concepcion agreed that after the dry-docking and repair of *LCT-Josephine*, it "should" be chartered for ₱10,000.00 per month with the following conditions:

1. The CHARTERER will be the one to pay the insurance premium of the vessel
2. The vessel will be used once every three (3) months for a maximum period of two (2) weeks
3. The SECOND PARTY (referring to Concepcion) agreed that LCT-Josephine should be used by the FIRST PARTY (referring to Roland) for the maximum period of two (2) years
4. The FIRST PARTY (Roland) will take charge[x] of maintenance cost of the said vessel. [Underscoring Supplied]

On June 20, 1984, Concepcion and the Philippine Trigon Shipyard Corporation[7] *(PTSC)*, represented by Roland, entered

[3] *Id.* (G.R. No. 160505), p. 63.

[4] Records, pp. 85-100. Penned by Judge Antonio L. Descallar, RTC, Br. 60, Angeles City.

[5] Roland de la Torre is a petitioner in G.R. No. 160565 and one of the respondents in G.R. No. 160088.

[6] *Rollo* (G.R. No. 160088), p. 39.

[7] PTSC is also a petitioner in G.R. No. 160565 and the respondent corporation in G.R. No. 160088.

into a "Contract of Agreement,"[8] wherein the latter would charter *LCT-Josephine* retroactive to May 1, 1984, under the following conditions:

a. Chartered amount of the vessel – ₱20,000.00 per month effective May 1, 1984;

j. The owner (Concepcion) shall pay 50% downpayment for the dry-docking and repair of the vessel and the balance shall be paid every month in the amount of ₱10,000.00, to be deducted from the rental amount of the vessel;

k. In the event that a THIRD PARTY is interested to purchase the said vessel, the SECOND PARTY (PTSC/ Roland) has the option for first priority to purchase the vessel. If the SECOND PARTY (PTSC/Roland) refuses the offer of the FIRST PARTY (Concepcion), shall give the SECOND PARTY (PTSC/Roland) enough time to turn over the vessel so as not to disrupt previous commitments;

l. That the SECOND PARTY (PTSC/Roland) has the option to terminate the contract in the event of the SECOND PARTY (PTSC/Roland) decide to stop operating;

m. The SECOND PARTY (PTSC/Roland) shall give 90 days notice of such termination of contract;

n. Next x x x year of dry-docking and repair of vessel shall be shouldered by the SECOND PARTY (PTSC/Roland); [Underscoring Supplied]

On August 1, 1984, PTSC/Roland sub-chartered *LCT-Josephine* to Trigon Shipping Lines *(TSL)*, a single proprietorship owned by Roland's father, Agustin de la Torre *(Agustin)*.[9] The following are the terms and conditions of that "Contract of Agreement":[10]

a. Chartered amount of the vessel ₱30,000.00 per month effective August, 1984;

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[8] Exhibit "C", Folder of Exhibits, Vol. 1, p. 194.

[9] Agustin de la Torre is the Petitioner in G.R. No. 160088 and one of the respondents in G.R. No. 160565; *rollo* (G.R. No. 160088), p. 41.

[10] Exhibits "2"/"102", Folder of Exhibits, Vol. 3, p. 1.

b. Downpayment of the 50% upon signing of the contract and the balance every end of the month;

c. Any cost for the additional equipment to be installed on the vessel will be borne by the FIRST PARTY (PTSC/ Roland) and the cost of the equipment will be deductible from the monthly rental of the vessel;

d. In the event the vessel is grounded or other [*force majeure*] that will make the vessel non-opera[xx]ble, the rental of the vessel shall be suspended from the start until the vessel will be considered operational;

e. The cost for the dry-docking and/or repair of vessel shall not exceed ₱200,000.00, any excess shall be borne by the SECOND PARTY (TSL/Agustin);

f. The SECOND PARTY (TSL/Agustin) undertakes to shoulder the maintenance cost for the duration of the usage;

g. All cost for the necessary repair of the vessel shall be on the account of the SECOND PARTY (TSL/Agustin);

h. That the SECOND PARTY (TSL/Agustin) has the option to terminate the contract in the event the SECOND PARTY (TSL/Agustin) decides to stop operating;

j. The FIRST PARTY (PTSC/Roland) will terminate the services of all vessel's crew and the SECOND PARTY (TSL/Agustin) shall have the right to replace and rehire the crew of the vessel.

k. Insurance premium of the vessel will be divided equally between the FIRST PARTY (PTSC/Rolando) and the SECOND PARTY (TSL/ Agustin). [Underscoring supplied]

On November 22, 1984, TSL, this time represented by Roland per Agustin's Special Power of Attorney,[11] sub-chartered *LCT-Josephine* to Ramon Larrazabal *(Larrazabal)* for the transport of cargo consisting of sand and gravel to Leyte. The following were agreed upon in that contract,[12] to wit:

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[11] Exhibit "4"/"101", Folder of Exhibits, Vol. 3, p. 3.

[12] Exhibit "3"/"103"; Folder of Exhibits, Vol. 3, p. 2.

1. That the FIRST PARTY (TSL by Roland) agreed that LCT-Josephine shall be used by the SECOND PARTY (Larrazabal) for and in consideration on the sum of FIVE THOUSAND FIVE HUNDRED (₱5,500.00) PESOS, Philippine currency per day charter with the following terms and conditions.
2. That the CHARTERER should pay ₱2,000.00 as standby pay even that will made (sic) the vessel non-opera[xx]ble cause[d] by natur[al] circumstances.
3. That the CHARTERER will supply the consumed crude oil and lube oil per charter day.
4. That the SECOND PARTY (Larrazabal) is the one responsible to supervise in loading and unloading of cargo load on the vessel.
5. That the SECOND PARTY (Larrazabal) shall give one week notice for such termination of contract.
6. TERMS OF PAYMENTS that the SECOND PARTY (Larrazabal) agreed to pay 15 days in advance and the balance should be paid weekly. [Underscoring Supplied]

On November 23, 1984, the *LCT-Josephine* with its cargo of sand and gravel arrived at Philpos, Isabel, Leyte. The vessel was beached near the NDC Wharf. With the vessel's ramp already lowered, the unloading of the vessel's cargo began with the use of Larrazabal's payloader. While the payloader was on the deck of the *LCT-Josephine* scooping a load of the cargo, the vessel's ramp started to move downward, the vessel tilted and sea water rushed in. Shortly thereafter, *LCT-Josephine* sank.[13]

Concepcion demanded that PTSC/ Roland refloat *LCT-Josephine*. The latter assured Concepcion that negotiations were underway for the refloating of his vessel.[14] Unfortunately, this did not materialize.

For this reason, Concepcion was constrained to institute a complaint for "Sum of Money and Damages" against PTSC

[13] CA *rollo*, p. 153.

[14] Exhibit "D", Folder of Exhibits, Vol. 1, p. 196.

and Roland before the RTC. PTSC and Roland filed their answer together with a third-party complaint against Agustin. Agustin, in turn, filed his answer plus a fourth-party complaint against Larrazabal. The latter filed his answer and counterclaim but was subsequently declared in default by the RTC.[15] Eventually, the fourth-party complaint against Larrazabal was dismissed when the RTC rendered its decision in favor of Concepcion on July 10, 1991.[16] In said RTC decision, the following observations were written:

> The testimonies of Roland de la Torre and Hubart Sungayan quoted above, show: (1) that the payloader was used to unload the cargo of sand and gravel; (2) that the payloader had to go inside the vessel and scoop up a load; (3) that the ramp according to Roland de la Torre, "was not properly put into peak (sic) such that the front line will touch the bottom, particularly will touch the sea x x x"; (4) that "the tires (of the payloader) will be submerged to (sic) the sea"; (5) that according to Sungayan "the ramp of the vessel was moving down"; (6) that the payloader had to be maneuvered by its operator who dumped the load at the side of the vessel; (7) that the dumping of the load changed the stability of the vessel and tilted it to the starboard side; and (8) that the tilting caused the sliding of the cargo toward that side and opened the manhole through which seawater rushed in.[17]

Hubart Sungayan, who was the chiefmate of *LCT-Josephine* and under the employ of TSL/Agustin, also admitted at the trial that it was TSL/Agustin, through its crew, who was in-charge of *LCT-Josephine's* operations although the responsibility of loading and unloading the cargo was under Larrazabal. Thus, the RTC declared that the "efficient cause of the sinking of the *LCT-JOSEPHINE* was the improper lowering or positioning of the ramp," which was well within the charge or responsibility of the captain and crew of the vessel.[18] The *fallo* of the RTC Decision reads:

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[15] CA *rollo*, pp. 86-88.

[16] *Id.* at 100.

[17] *Id.* at 94.

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

WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:

1. The defendants, Philippine Trigon Shipping Corporation and Roland de la Torre, and the third-party defendant, Agustin de la Torre, shall pay the plaintiff, jointly and severally, the sum of EIGHT HUNDRED FORTY-ONE THOUSAND THREE HUNDRED EIGHTY SIX PESOS AND EIGHTY SIX CENTAVOS (₱841,386.86) as the value of the LCT JOSEPHINE with interest thereon at the legal rate of 6% per annum from the date of demand, that is from March 14, 1985, the date when counsel for the defendant Philippine Trigon Shipyard Corporation answered the demand of the plaintiff, until fully paid;

2. The defendants, Philippine Trigon Shipyard Corporation and Roland de la Torre, shall pay to the plaintiff the sum of NINETY THOUSAND PESOS (₱90,000.00) as unpaid rentals for the period from May 1, 1984, to November, 1984, and the sum of ONE HUNDRED SEVENTY THOUSAND PESOS (₱170,000.00) as lost rentals from December, 1984, to April 30, 1986, with interest on both amounts at the rate of 6% per annum also from demand on March 14, 1985, until fully paid;

3. The defendants and the third-party defendant shall likewise pay to the plaintiff jointly and severally the sum of TWENTY-FIVE THOUSAND PESOS (₱25,000.00) as professional fee of plaintiff's counsel plus FIVE HUNDRED PESOS (₱500.00) per appearance of said counsel in connection with actual trial of this case, the number of such appearances to be determined from the records of this case;

4. The defendants' counterclaim for the unpaid balance of plaintiff's obligation for the dry-docking and repair of the vessel LCT JOSEPHINE in the amount of TWENTY-FOUR THOUSAND THREE HUNDRED FOUR PESOS AND THIRTY-FIVE CENTAVOS (₱24,304.35), being valid, shall be deducted from the unpaid rentals, with interest on the said unpaid balance at the rate of 6% per annum from the date of the filing of the counter-claim on March 31, 1986;

5. The counter-claim of the defendants in all other respects, for lack of merit, is hereby DISMISSED;

6. The fourth-party complaint against the fourth-party defendant, Ramon Larrazabal, being without basis, is likewise DISMISSED; and

7. The defendants and third-party defendant shall pay the costs.

SO ORDERED.[19]

Agustin, PTSC and Roland went to the CA on appeal. The appellate court, in agreement with the findings of the RTC, affirmed its decision *in toto*.

Still not in conformity with the CA findings against them, Agustin, PTSC and Roland came to this Court through these petitions for review. In G.R. No. 160088, petitioner Agustin raises the following issues:

AGUSTIN'S STATEMENT OF THE ISSUES

I

THE COURT OF APPEALS ERRED IN HOLDING THAT THE PROXIMATE CAUSE OF THE SINKING OF LCT JOSEPHINE IS THE NEGLIGENCE OF THE PETITIONER (Agustin) AND THE RESPONDENTS TRIGON (PTSC) AND DE LA TORRE (Roland).

II

THE COURT OF APPEALS ERRED IN NOT HOLDING RESPONDENT RAMON LARRAZABAL AS SOLELY LIABLE FOR THE LOSS AND SINKING OF LCT JOSEPHINE.

III

THE TRIAL COURT AND THE COURT OF APPEALS GRAVELY ERRED IN TAKING JUDICIAL NOTICE OF THE CHARACTERISTICS OF THE LCT JOSEPHINE AND PAYLOADER WITHOUT INFORMING THE PARTIES OF THEIR INTENTION.

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[19] *Id.* at 99-100.

IV

THE COURT OF APPEALS ERRED IN HOLDING PETITIONER DIRECTLY AND SOLIDARILY LIABLE WITH THE RESPONDENTS TRIGON AND DE LA TORRE DESPITE THE FACT THAT SUCH KIND OF LIABILITY IS NOT DULY ALLEGED IN THE COMPLAINT OF RESPONDENT CONCEPCION AND NOT ONE OF THE ISSUES TRIED BY THE PARTIES.

V

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER IS LIABLE BASED ON CULPA CONTRACTUAL.

VI

THE COURT OF APPEALS ERRED IN NOT EXCULPATING PETITIONER FROM LIABILITY BASED ON THE LIMITED LIABILITY RULE.

VII

THE COURT OF APPEALS ERRED IN NOT APPLYING THE PROVISIONS OF THE CODE OF COMMERCE ON THE LIABILITY OF THE SHIP CAPTAIN.[20]

On the other hand, in G.R. No. 160565, PTSC and Roland submit the following issues:

PTSC and ROLAND'S STATEMENT OF THE ISSUES

I.

DID THE HONORABLE COURT OF APPEALS ERRxx IN APPLYING THE PROVISIONS OF THE CIVIL CODE OF THE PHILIPPINES PARTICULARLY ON CONTRACTS, LEASE, QUASI-DELICT AND DAMAGES INSTEAD OF THE PROVISIONS OF THE CODE OF COMMERCE ON MARITIME COMMERCE IN ADJUDGING PETITIONERS LIABLE TO PRIVATE RESPONDENT CONCEPCION.

II.

DID THE HONORABLE COURT OF APPEALS ERRxx IN UPHOLDING THE FINDINGS OF FACT OF THE TRIAL COURT.

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[20] *Rollo* (G.R. No. 160088), pp. 146-147.

III.

DID THE HONORABLE COURT OF APPEALS COMMITxx GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION IN APPRECIATING THE FACTS OF THE CASE.

IV.

DID THE HONORABLE COURT OF APPEALS, IN ADJUDGING PETITIONERS JOINTLY AND SEVERALLY LIABLE WITH RESPONDENT AGUSTIN DE LA TORRE, ERRxx WHEN IT MADE FINDINGS OF FACT AND CONCLUSIONS OF LAW WHICH ARE BEYOND THE ISSUES SET FORTH AND CONTEMPLATED IN THE ORIGINAL PLEADINGS OF THE PARTIES.[21]

From the foregoing, the issues raised in the two petitions can be categorized as: (1) those referring to the factual milieu of the case; (2) those concerning the applicability of the Code of Commerce, more specifically, the Limited Liability Rule; and (3) the question on the solidary liability of the petitioners.

As regards the issues requiring a review of the factual findings of the trial court, the Court finds no compelling reason to deviate from the rule that findings of fact of a trial judge, especially when affirmed by the appellate court, are binding before this Court.[22] The CA, in reviewing the findings of the RTC, made these observations:

> We are not persuaded that the trial Court finding should be set aside. The Court *a quo* sifted through the records and arrived at the fact that clearly, there was improper lowering or positioning of the ramp, which was not at "peak," according to de la Torre and "moving down" according to Sungayan when the payloader entered and scooped up a load of sand and gravel. Because of this, the payloader was in danger of being lost ('submerged') and caused Larrazabal to order the operator to go back into the vessel, according to de la Torre's version, or back off to the shore, per Sungayan. Whichever it was,

[21] *Rollo* (G.R. No. 160565), pp. 200-201.

[22] *Bormaheco, Inc. v. Malayan Insurance Co. Inc.*, G.R. No. 156599, July 26, 2010, 625 SCRA 309, 318-319.

the fact remains that the ramp was unsteady (moving) and compelled action to save the payloader from submerging, especially because of the conformation of the sea and the shore. x x x.

xxx xxx xxx

The contract executed on June 20, 1984, between plaintiff-appellee and defendants-appellants showed that the services of the crew of the owner of the vessel were terminated. This allowed the charterer, defendants-appellants, to employ their own. The sub-charter contract between defendants-appellants Philippine Trigon Shipyard Corp. and third-party defendant-appellant Trigon Shipping Lines showed similar provision where the crew of Philippine Trigon had to be terminated or rehired by Trigon Shipping Lines. As to the agreement with fourth-party Larrazabal, it is silent on who would hire the crew of the vessel. Clearly, the crew manning the vessel when it sunk belonged to third-party defendant-appellant. Hubart Sungayan, the acting Chief Mate, testified that he was hired by Agustin de la Torre, who in turn admitted to hiring the crew. The actions of fourth-party defendant, Larrazabal and his payloader operator did not include the operation of docking where the problem arose.[23] [Underscoring supplied]

Similarly, the Court has examined the records at hand and completely agree with the CA that the factual findings of the RTC are in order.

With respect to petitioners' position that the Limited Liability Rule under the Code of Commerce should be applied to them, the argument is misplaced. The said rule has been explained to be that of the real and hypothecary doctrine in maritime law where the shipowner or ship agent's liability is held as merely co-extensive with his interest in the vessel such that a total loss thereof results in its extinction.[24] In this jurisdiction, this rule is provided in three articles of the Code of Commerce. These are:

Art. 587. The ship agent shall also be civilly liable for the indemnities in favor of third persons which may arise from the conduct of the captain in the care of the goods which he loaded on the vessel;

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[23] *Rollo* (G.R. No. 160088), p. 50.

[24] *Aboitiz Shipping Corporation v. CA*, G.R. Nos. 121833, 130752, 137801, October 17, 2008, 569 SCRA 294, 307.

but he may exempt himself therefrom by abandoning the vessel with all her equipment and the freight it may have earned during the voyage.

Art. 590. The co-owners of the vessel shall be civilly liable in the proportion of their interests in the common fund for the results of the acts of the captain referred to in Art. 587.

Each co-owner may exempt himself from this liability by the abandonment, before a notary, of the part of the vessel belonging to him.

Art. 837. The civil liability incurred by shipowners in the case prescribed in this section, shall be understood as limited to the value of the vessel with all its appurtenances and freightage served during the voyage.

Article 837 specifically applies to cases involving collision which is a necessary consequence of the right to abandon the vessel given to the shipowner or ship agent under the first provision-Article 587. Similarly, Article 590 is a reiteration of Article 587, only this time the situation is that the vessel is co-owned by several persons.[25] Obviously, the forerunner of the Limited Liability Rule under the Code of Commerce is Article 587. Now, the latter is quite clear on which indemnities may be confined or restricted to the value of the vessel pursuant to the said Rule, and these are the – "indemnities in favor of third persons which may arise from the conduct of the captain in the care of the goods which he loaded on the vessel." Thus, what is contemplated is the liability to third persons who may have dealt with the shipowner, the agent or even the charterer in case of demise or bareboat charter.

The only person who could avail of this is the shipowner, Concepcion. He is the very person whom the Limited Liability Rule has been conceived to protect. The petitioners cannot invoke this as a defense. In *Yangco v. Laserna*,[26] this Court, through Justice Moran, wrote:

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[25] *Yangco v. Laserna*, 73 Phil. 330, 333 (1941).

[26] *Id*.

The policy which the rule is designed to promote is the encouragement of shipbuilding and investment in maritime commerce.

xxx xxx xxx.

'Grotius, in his law of War and Peace, says that men would be deterred from investing in ships if they thereby incurred the apprehension of being rendered liable to an indefinite amount by the acts of the master, x x x.'[27]

Later, in the case of *Monarch Insurance Co., Inc. v. CA*,[28] this Court, this time through Justice Sabino R. De Leon, Jr., again explained:

'No vessel, no liability,' expresses in a nutshell the limited liability rule. The shipowner's or agent's liability is merely coextensive with his interest in the vessel such that a total loss thereof results in its extinction. The total destruction of the vessel extinguishes maritime liens because there is no longer any *res* to which it can attach. This doctrine is based on the real and hypothecary nature of maritime law which has its origin in the prevailing conditions of the maritime trade and sea voyages during the medieval ages, attended by innumerable hazards and perils. To offset against these adverse conditions and to encourage shipbuilding and maritime commerce, it was deemed necessary to confine the liability of the owner or agent arising from the operation of a ship to the vessel, equipment, and freight, or insurance, if any.[29]

In view of the foregoing, Concepcion as the real shipowner is the one who is supposed to be supported and encouraged to pursue maritime commerce. Thus, it would be absurd to apply the Limited Liability Rule against him who, in the first place, should be the one benefitting from the said rule. In distinguishing the rights between the charterer and the shipowner, the case of *Yueng Sheng Exchange and Trading Co. v. Urrutia & Co.*[30] is most enlightening. In that case, no less than Chief Justice Arellano wrote:

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[27] *Id.* at 339.

[28] 338 Phil. 725 (2000).

[29] *Id.* at 751.

[30] 12 Phil. 747 (1909).

The whole ground of this assignment of errors rests on the proposition advanced by the appellant company that 'the charterer of a vessel, under the conditions stipulated in the charter party in question, is the owner *pro hac vice* of the ship and takes upon himself the responsibilities of the owner.'

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If G. Urrutia & Co., by virtue of the above-mentioned contract, became the agents of the *Cebu*, then they must respond for the damages claimed, because the owner and the agent are civilly responsible for the acts of the captain.

But G. Urrutia & Co. could not in any way exercise the powers or rights of an agent. They could not represent the ownership of the vessel, nor could they, in their own name and in such capacity, take judicial or extrajudicial steps in all that relates to commerce; thus if the *Cebu* were attached, they would have no legal capacity to proceed to secure its release; speaking generally, not even the fines could or ought to be paid by them, unless such fines were occasioned by their orders. x x x.

The contract executed by Smith, Bell & Co., as agents for the Cebu, and G. Urrutia & Co., as charterers of the vessel, did not put the latter in the place of the former, nor make them agents of the owner or owners of the vessel. With relation to those agents, they retained opposing rights derived from the charter party of the vessel, and at no time could they be regarded by the third parties, or by the authorities, or by the courts, as being in the place of the owners or the agents in matters relating to the responsibilities pertaining to the ownership and possession of the vessel. x x x.[31]

In *Yueng Sheng*, it was further stressed that the charterer does not completely and absolutely step into the shoes of the shipowner or even the ship agent because there remains conflicting rights between the former and the real shipowner as derived from their charter agreement. The Court again quotes Chief Justice Arellano:

Their (the charterer's) possession was, therefore, the uncertain title of lease, not a possession of the owner, such as is that of the agent, who is fully subrogated to the place of the owner in regard

[31] *Id.* at 751-752.

to the dominion, possession, free administration, and navigation of the vessel.[32]

Therefore, even if the contract is for a bareboat or demise charter where possession, free administration and even navigation are temporarily surrendered to the charterer, dominion over the vessel remains with the shipowner. Ergo, the charterer or the sub-charterer, whose rights cannot rise above that of the former, can never set up the Limited Liability Rule against the very owner of the vessel. Borrowing the words of Chief Justice Artemio V. Panganiban, "Indeed, where the reason for the rule ceases, the rule itself does not apply."[33]

The Court now comes to the issue of the liability of the charterer and the sub-charterer.

In the present case, the charterer and the sub-charterer through their respective contracts of agreement/charter parties, obtained the use and service of the entire *LCT-Josephine*. The vessel was likewise manned by the charterer and later by the sub-charterer's people. With the complete and exclusive relinquishment of possession, command and navigation of the vessel, the charterer and later the sub-charterer became the vessel's owner *pro hac vice*. Now, and in the absence of any showing that the vessel or any part thereof was commercially offered for use to the public, the above agreements/charter parties are that of a private carriage where the rights of the contracting parties are primarily defined and governed by the stipulations in their contract.[34]

Although certain statutory rights and obligations of charter parties are found in the Code of Commerce, these provisions as correctly pointed out by the RTC, are not applicable in the present case. Indeed, none of the provisions found in the Code

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[32] *Id.* at 747, 753.

[33] *Valenzuela Hardwood and Industrial Supply, Inc. v. CA*, G.R. No. 102316, June 30, 1997, 274 SCRA 642, 654.

[34] *National Steel Corporation v. CA*, 347 Phil. 345, 362 (1997); *Lea Mer Industries, Inc. v. Malayan Insurance Co., Inc.*, 508 Phil. 656, 663 (2005).

of Commerce deals with the specific rights and obligations between the real shipowner and the charterer obtaining in this case. Necessarily, the Court looks to the New Civil Code to supply the deficiency.[35] Thus, the RTC and the CA were both correct in applying the statutory provisions of the New Civil Code in order to define the respective rights and obligations of the opposing parties.

Thus, Roland, who, in his personal capacity, entered into the Preliminary Agreement with Concepcion for the dry-docking and repair of *LCT-Josephine*, is liable under Article 1189[36] of the New Civil Code. There is no denying that the vessel was not returned to Concepcion after the repairs because of the provision in the Preliminary Agreement that the same "should" be used by Roland for the first two years. Before the vessel could be returned, it was lost due to the negligence of Agustin to whom Roland chose to sub-charter or sublet the vessel.

PTSC is liable to Concepcion under Articles 1665[37] and 1667[38] of the New Civil Code. As the charterer or lessee under the

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[35] Article 18 of the New Civil Code:

> **Art. 18.** In matters which are governed by the Code of Commerce and Special Laws, their deficiency shall be supplied by the provisions of this Code.

[36] Article 1189 of the New Civil Code:

> **Art. 1189.** When the conditions have been imposed with the intention of suspending the efficacy of an obligation to give, the following rules shall be observed in case of the improvement, loss or deterioration of the thing during the pendency of the condition:
>
> (1) x x x
>
> (2) If the things is lost through the fault of the debtor, he shall be obliged to pay damages; it is understood that the thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or cannot be recovered.
>
> xxx xxx xxx.

[37] Article 1665 of the New Civil Code:

> **Art. 1665.** The lessee shall return the thing leased, upon the termination of the lease, just as he received it, save what has been lost or impaired

Contract of Agreement dated June 20, 1984, PTSC was contract-bound to return the thing leased and it was liable for the deterioration or loss of the same.

Agustin, on the other hand, who was the sub-charterer or sub-lessee of *LCT-Josephine*, is liable under Article 1651 of the New Civil Code.[39] Although he was never privy to the contract between PTSC and Concepcion, he remained bound to preserve the chartered vessel for the latter. Despite his non-inclusion in the complaint of Concepcion, it was deemed amended so as to include him because, despite or in the absence of that formality of amending the complaint to include him, he still had his day in court[40] as he was in fact impleaded as a third-party defendant by his own son, Roland – the very same person who represented him in the Contract of Agreement with Larrazabal.

> (S)ince the purpose of formally impleading a party is to assure him a day in court, once the protective mantle of due process of law has in fact been accorded a litigant, whatever the imperfection in form, the real litigant may be held liable as a party.[41]

In any case, all three petitioners are liable under Article 1170 of the New Civil Code.[42] The necessity of insuring the *LCT-*

> by the lapse of time, or by ordinary wear and tear, or from an inevitable cause.

[38] Article 1667 of the New Civil Code:

> **Art. 1667.** The lessee is responsible for the deterioration or loss of the thing leased, unless he proves that it took place with his fault. This burden of proof on the lessee does not apply when the destruction is due to earthquake, flood, storm or other natural calamity.

[39] Article 1651 of the New Civil Code:

> **Art.1651.** Without prejudice to his obligation toward the sublessor, the sublessee is bound to the lessor for all acts which refer to the use and preservation of the thing leased in the manner stipulated between the lessor and the lessee.

[40] HERRERA, *Remedial Law*, Vol. I, 2000 Edition, p. 354.

[41] *Balquidra v. CFI of Capiz, Branch II,* L-40490, October 28, 1977, 80 SCRA 123, 133.

[42] Article 1170 of the New Civil Code:

Josephine, regardless of who will share in the payment of the premium, is very clear under the Preliminary Agreement and the subsequent Contracts of Agreement dated June 20, 1984 and August 1, 1984, respectively. The August 17, 1984 letter of Concepcion's representative, Rogelio L. Martinez, addressed to Roland in his capacity as the president of PTSC inquiring about the insurance of the *LCT-Josephine* as well as reiterating the importance of insuring the said vessel is quite telling.

August 17, 1984

Mr. Roland de la Torre
President
Phil. Trigon Shipyard Corp.
Cebu City

Dear Sir:

In connection with your chartering of LCT JOSEPHINE effect[ive] May 1, 1984, I wish to inquire regarding the insurance of said vessel to wit:

1. Name of Insurance Company
2. Policy No.
3. Amount of Premiums
4. Duration of coverage already paid

Please send a Xerox copy of policy to the undersigned as soon as possible.

In no case shall LCT JOSEPHINE sail without any insurance coverage.

Hoping for your (prompt) action on this regard.

Truly yours,

(sgd.) ROGELIO L. MARTINEZ
Owner's representative[43]

Art.1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

[43] Exhibit "G", Folder of Exhibits, Vol.1, p. 203.

Clearly, the petitioners, to whom the possession of *LCT Josephine* had been entrusted as early as the time when it was dry-docked for repairs, were obliged to insure the same. Unfortunately, they failed to do so in clear contravention of their respective agreements. Certainly, they should now all answer for the loss of the vessel.

WHEREFORE, the petitions are *DENIED*.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Abad,* and *Sereno,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 160138. July 13, 2011]

AUTOMOTIVE ENGINE REBUILDERS, INC. (AER), ANTONIO T. INDUCIL, LOURDES T. INDUCIL, JOCELYN T. INDUCIL and MA. CONCEPCION I. DONATO, *petitioners, vs.* **PROGRESIBONG UNYON NG MGA MANGGAGAWA SA AER, ARNOLD VILLOTA, FELINO E. AGUSTIN, RUPERTO M. MARIANO II, EDUARDO S. BRIZUELA, ARNOLD S. RODRIGUEZ, RODOLFO MAINIT, JR., FROILAN B. MADAMBA, DANILO D. QUIBOY, CHRISTOPHER R. NOLASCO, ROGER V. BELATCHA, CLEOFAS B. DELA BUENA, JR., HERMINIO P. PAPA, WILLIAM A. RITUAL, ROBERTO CALDEO,**

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[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 1029 dated June 30, 2011.

[**] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

RAFAEL GACAD, JAMES C. CAAMPUED, ESPERIDION V. LOPEZ, JR., FRISCO M. LORENZO, JR., CRISANTO LUMBAO, JR., and RENATO SARABUNO, *respondents.*

[G.R. No. 160192. July 13, 2011]

PROGRESIBONG UNYON NG MGA MANGGAGAWA SA AER, ARNOLD VILLOTA, FELINO E. AGUSTIN, RUPERTO M. MARIANO II, EDUARDO S. BRIZUELA, ARNOLD S. RODRIGUEZ, RODOLFO MAINIT, JR., FROILAN B. MADAMBA, DANILO D. QUIBOY, CHRISTOPHER R. NOLASCO, ROGER V. BELATCHA, CLEOFAS B. DELA BUENA, JR., HERMINIO P. PAPA, WILLIAM A. RITUAL, ROBERTO CALDEO, RAFAEL GACAD, JAMES C. CAAMPUED, ESPERIDION V. LOPEZ, JR., FRISCO M. LORENZO, JR., CRISANTO LUMBAO, JR., and RENATO SARABUNO, *petitioners, vs.* **AUTOMOTIVE ENGINE REBUILDERS, INC., and ANTONIO T. INDUCIL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; PERMISSIVE JOINDER OF PARTIES; APPLICATION IN CASE AT BAR.— The Court agrees with the ruling of the CA that there were 32 complaining employees who filed and signed their complaint dated February 18, 1999 for unfair labor practice, illegal dismissal and illegal suspension. Out of the 32, six (6) undeniably resigned and signed waivers and quitclaims, leaving 26 remaining complainant employees. Thus, the Court adopts and affirms the following CA ruling on this matter: The number of parties to a complaint corresponds to the number of signatories thereto and not necessarily to the names commonly appearing or identified in the position paper. All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist whether jointly, severally, or in the alternative, may, except as otherwise provided in these

Rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; REINSTATEMENT OF ERRING EMPLOYEES APPRECIATED IN CASE AT BAR WHERE EMPLOYER AND EMPLOYEE FOUND *IN PARI DELICTO*.— This Court affirms the ruling of the CA favoring the reinstatement of all the complaining employees including those who tested positive for illegal drugs, without backwages. The Court is in accord with the ruling of the LA and the CA that neither party came to court with clean hands. Both were *in pari delicto*. It cannot be disputed that both parties filed charges against each other, blaming the other party for violating labor laws. AER filed a complaint against Unyon and its 18 members for illegal concerted activities. It likewise suspended 7 union members who tested positive for illegal drugs. On the other hand, Unyon filed a countercharge accusing AER of unfair labor practice, illegal suspension and illegal dismissal. In other words, AER claims that Unyon was guilty of staging an illegal strike while Unyon claims that AER committed an illegal lockout. x x x [S]ince both AER and the union are at fault or *in pari delicto*, they should be restored to their respective positions prior to the illegal strike and illegal lockout. Nonetheless, if reinstatement is no longer feasible, the concerned employees should be given separation pay up to the date set for the return of the complaining employees in lieu of reinstatement.

3. ID.; ID.; ABANDONMENT OF WORK; NOT APPRECIATED ABSENT CONVINCING PROOF AND ABANDONMENT IS INCONSISTENT WITH THE IMMEDIATE FILING OF COMPLAINT FOR ILLEGAL DISMISSAL.— Regarding AER's contention that the affected workers abandoned their jobs, the Court has thoroughly reviewed the records and found no convincing proof that they deliberately abandoned their jobs. Besides, this Court has consistently declared in a myriad of labor cases that abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal.

4. ID.; ID.; STRIKE; DISMISSAL FOR ONE DAY WALKOUT THAT IS NOT EVEN VIOLENT IS TOO SEVERE A PENALTY.— [T]he penalty of dismissal imposed by AER against the striking employees, who, by the way, only staged a one day walkout, was too severe. x x x It must also be noted that there were no injuries during the brief walkout. Neither was there proof that the striking workers inflicted harm or violence upon the other employees. In fact, the Police Memorandum dated January 29, 1999 reported no violent incidents and stated that all parties involved in the January 28, 1999 incident were allowed to go home and the employees involved were just given a stern warning. To the Court's mind, the complaining workers temporarily walked out of their jobs because they strongly believed that management was committing an unfair labor practice. They had no intention of hurting anybody or steal company property. Contrary to AER's assertion, the striking workers did not intend to steal the line boring machine which they tried to cart away from the AER-PSC compound; they just wanted to return it to the main AER building.

APPEARANCES OF COUNSEL

Acaban & Associates for AER.

Remigio D. Saladero, Jr. for Progresibong Unyon ng mga Manggagawa sa AER, *et al.*

D E C I S I O N

MENDOZA, *J.*:

Challenged in these consolidated petitions for review is the October 1, 2003 Amended Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 73161, which modified the Resolution[2] of the National Labor Relations Commission *(NLRC)*, by ordering the immediate reinstatement of all the suspended employees of Automotive Engine Rebuilders, Inc. (AER) without backwages.

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[1] *Rollo* (G.R. No. 160138), pp. 49-50. Penned by Associate Justice Eliezer R. De Los Santos with Associate Justice Romeo A. Brawner and Associate Justice Regalado E. Maambong, concurring.

[2] *Id.* at 103-108.

Records show that AER is a company engaged in the automotive engine repair and rebuilding business and other precision and engineering works for more than 35 years. Progresibong Unyon Ng Mga Manggagawa sa AER *(Unyon)* is the legitimate labor union of the rank and file employees of AER which was formed in the year 1998.

Due to a dispute between the parties, both filed a complaint against each other before the NLRC. AER accused the Unyon of illegal concerted activities (illegal strike, illegal walkout, illegal stoppage, and unfair labor practice) while Unyon accused AER of unfair labor practice, illegal suspension and illegal dismissal.

AER's Management's Version

On January 28, 1999, eighteen (18) employees of AER, acting collectively and in concert, suddenly and without reason staged a walkout and assembled illegally in the company premises.

Despite management's plea for them to go back to work, the concerned employees refused and, instead, walked out of the company premises and proceeded to the office of the AER Performance and Service Center *(AER-PSC)* located on another street. Upon arrival, they collectively tried to cart away one (1) line boring machine owned by AER out of the AER-PSC premises. They threatened and forced the company guards and some company officers and personnel to open the gate of the AER-PSC compound. They also urged the AER-PSC employees to likewise stop working.

The concerned employees occupied the AER-PSC premises for several hours, thus, disrupting the work of the other employees and AER's services to its clients. They refused to stop their unlawful acts despite the intervention of the *barangay* officers. They left the AER-PSC premises only when the police intervened and negotiated with them.

Subsequently, management issued a memorandum requiring the employees who joined the illegal walkout to explain in writing why they should not be disciplined administratively and dismissed for their unjustified and illegal acts.

The concerned employees submitted their written explanation which contained their admissions regarding their unjustified acts. Finding their explanation unsatisfactory, AER terminated the services of the concerned employees.

On February 22, 1999, the concerned employees started a wildcat strike, barricaded company premises, and prevented the free ingress and egress of the other employees, officers, clients, and visitors and the transportation of company equipments. They also tried to use force and inflict violence against the other employees. Their wildcat strike stopped after the NLRC issued and served a temporary restraining order *(TRO)*.

Meantime, six (6) of the concerned employees, namely: Oscar Macaranas, Bernardino Acosta, Ferdinand Flores, Benson Pingol, Otillo Rabino, and Jonathan Taborda resigned from the company and signed quitclaims.

Unyon's Version

On December 22, 1998, Unyon filed a petition for certification election before the Department of Labor and Employment *(DOLE)* after organizing their employees union within AER. Resenting what they did, AER forced all of its employees to submit their urine samples for drug testing. Those who refused were threatened with dismissal.

On January 8, 1999, the results of the drug test came out and the following employees were found positive for illegal drugs: Froilan Madamba, Arnold Rodriguez, Roberto Caldeo, Roger Bilatcha, Ruperto Mariano, Edwin Fabian, and Nazario Madala.

On January 12, 1999, AER issued a memorandum suspending these employees from work for violation of Article D, Item 2 of the Employee's handbook which reads as follows:

> Coming to work under the influence of intoxicating liquor or any drug or drinking any alcoholic beverages on the premises on company time.

Out of the seven (7) suspended employees, only Edwin Fabian and Nazario Madala were allowed by AER to report back to

work. The other five (5) suspended employees were not admitted by AER without first submitting the required medical certificate attesting to their fitness to work.

While they were in the process of securing their respective medical certificates, however, they were shocked to receive a letter from AER charging them with insubordination and absence without leave and directing them to explain their acts in writing. Despite their written explanation, AER refused to reinstate them.

Meanwhile, Unyon found out that AER was moving out machines from the main building to the AER-PSC compound located on another street. Sensing that management was going to engage in a runaway shop, Unyon tried to prevent the transfer of the machines which prompted AER to issue a memorandum accusing those involved of gross insubordination, work stoppage and other offenses.

On February 2, 1999, the affected workers were denied entry into the AER premises by order of management. Because of this, the affected workers staged a picket in front of company premises hoping that management would accept them back to work. When their picket proved futile, they filed a complaint for unfair labor practice, illegal suspension and illegal dismissal.

Ruling of the Labor Arbiter

On August 9, 2001, the Labor Arbiter (*LA*) rendered a decision[3] in favor of Unyon by directing AER to reinstate the concerned employees but without backwages effective October 16, 2001.

The LA ruled, among others, that the concerned employees were suspended from work without a valid cause and without due process. In finding that there was illegal suspension, the LA held as follows:

> There is no doubt that the hostile attitude of the management to its workers and vice versa started when the workers began organizing themselves into a union. As soon as the management learned and received summons regarding the petition for certification election filed by the employees, they retaliated by causing the employees to

[3] *Id.* (G.R. No. 160192), pp. 69-73.

submit themselves to drug test. And out of the seven who were found positive, five were placed on a 12 day suspension namely: (1) Froilan Madamba; (2) Arnold Rodriguez; (3) Roberto Caldeo; (4) Roger Belatcha; and (5) Ruperto Mariano.

This is illegal suspension plain and simple. Even if they were found positive for drugs, they should have been caused to explain why they were found so. It could have been that they have taken drugs as cure for ailment under a physician's prescription and supervision. Doubts should be in favor of the working class in the absence of evidence that they are drug addicts or they took prohibited or regulated drugs without any justifiable reason at all. In fact, there is not even a showing by the company that the performance of these employees was already adversely affected by their use of drugs.

Lest be misunderstood that we are considering use of prohibited drug or regulated drugs, what we abhor is suspension without valid cause and without due process.[4]

The LA further held that AER was guilty of illegal dismissal for refusing to reinstate the five (5) employees unless they submit a medical certificate that they were fit to work. Thus:

x x x Firstly, the employer has not even established that the five employees are sick of ailments which are not curable within six months, a burden which rests upon the employers and granting that they were sick or drug addicts, the remedy is not dismissal but to allow them to be on sick leave and be treated of their illness and if not cured within 6 months, that is the time that they may be separated from employment but after payment of ½ month's salary for every year of service by way of separation pay.[5]

Finally, the LA held that the concerned employees were not totally without fault. The concerted slowdown of work that they conducted in protesting their illegal suspension was generally illegal and unjustifiable. The LA, thus, ruled that both parties were *in pari delicto* and, therefore, must suffer the consequences of the wrong they committed.

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[4] *Id.* at 71-72.

[5] *Id.* at 72-73.

NLRC Ruling

Both parties filed their respective appeals with the NLRC. The concerned employees argued that the LA erred in 1) not awarding backwages to them during the period of their suspension; 2) not holding that AER is guilty of unfair labor practice; and 3) not holding that they were illegally dismissed from their jobs.[6] AER, on the other hand, claimed that the LA erred in finding that there was illegal dismissal and in ordering the reinstatement of the concerned employees without backwages.[7]

On March 5, 2002, the NLRC issued a Resolution[8] modifying the LA decision by setting aside the order of reinstatement as it found no illegal dismissal.

The NLRC, however, considered only three (3) out of the eighteen concerned employees, (18) namely: Froilan Madamba, Ruperto Mariano, and Roberto Caldeo because their names were commonly identified in the LA decision and in the concerned employees' position paper as those employees who were allegedly illegally suspended.

It wrote that these three (3) employees were validly suspended because they were found positive for illegal drugs in the drug test conducted by AER. Management was just exercising its management prerogative in requiring them to submit a medical fit-to-work certificate before they could be admitted back to work. The drug test was found to be not discriminatory because all employees of AER were required to undergo the drug test. Neither was the drug test related to any union activity.

Finally, the NLRC ruled that the concerned employees had no valid basis in conducting a strike. Considering that the concerted activity was illegal, AER had the right to immediately dismiss them.

Unyon and the concerned employees filed a petition before the CA advancing the following

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[6] *Id.* at 74-79.

[7] *Id.* at 80-92.

[8] *Id.* at 93-100.

ARGUMENTS

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION IN HOLDING THAT THERE ARE ONLY THREE (3) REMAINING COMPLAINANTS IN THE CASE FILED BY THE PETITIONERS.

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE SUSPENSION OF SEVERAL PETITIONERS WAS VALID DESPITE THE ABSENCE OF DUE PROCESS.

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION IN SUSTAINING THE VALIDITY OF THE DISMISSAL OF EMPLOYEES WHO TESTED POSITIVE DURING THE DRUG TEST.

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION IN ABSOLVING PRIVATE RESPONDENTS OF THE OFFENSE OF UNFAIR LABOR PRACTICE.

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION IN DISMISSING PETITIONERS' COMPLAINT FOR ILLEGAL DISMISSAL.

The CA Ruling

On June 27, 2003, the CA rendered a decision,[9] the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the petition is GRANTED. Respondents are hereby directed to reinstate the petitioners effective immediately but without backwages, except those who were tested positive for illegal drugs and have failed to submit their respective medical certificates.
>
> SO ORDERED.[10]

The CA explained that there still remained 26 complaining employees and not just three (3) as claimed by the NLRC, because 32 members of Unyon signed and filed the complaint, and from the 32 complaining members, only six (6) voluntarily

[9] *Id.* at 24-32.

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

signed quitclaims in favor of AER. It reasoned out that the number of parties to a complaint would correspond to the number of signatories thereto and not necessarily to the names commonly appearing or identified in the position paper and the LA decision. Citing Section 6 of the Rules of Court, the CA held that all persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may join as plaintiffs or be joined as defendants in one complaint.

The CA, however, agreed with the NLRC on the legality and validity of the suspension. The CA wrote:

> The petitioners themselves have admitted that all of them were ordered to give their urine samples for the drug test; that the drug test was applicable to all the employees lends credence that such test was not related to any union activity. The union members were not singled out for said drug testing.
>
> The complainants who tested positive for illegal drugs were validly suspended under the company rules. The Employee's Handbook of Company Rules and Regulations prohibit employees from reporting for work under the influence of intoxicating liquor and drugs.
>
> With the finding that the petitioners tested positive for illegal drugs, AER merely exercised their management prerogative to require a medical certificate that said employees were already fit to work before they can be admitted back to work.
>
> Due to the failure of the affected petitioners to submit a medical certificate that they are already fit to work, they were dismissed. Petitioners' act of not reporting for duty upon presentation of the medical certificate that they are fit to work as per agreement with the DOLE NCMB on January 25, 1999 had the marks of willful disobedience giving AER the right to terminate employment.[11]

The CA further ruled that both parties were guilty of unfair labor practice. It stated that the hostile attitude of AER towards its workers and vice-versa started when the workers began organizing themselves into a union. AER tried to have a runaway shop when it transferred some of its machinery from the main

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

building to the AER-PSC office located on another street on the pretext that the main building was undergoing renovation. AER also prevented its employees, even those who were excluded from its complaint, from going back to work for allegedly staging an illegal strike. On the other hand, the concerted work slowdown staged by the concerned employees as a result of their alleged illegal suspension was unjustified. Hence, both parties were found by the CA to be *in pari delicto* and must bear the consequences of their own wrongdoing.

On October 1, 2003, upon the motion for partial reconsideration filed by Unyon praying for the payment of full backwages and the reinstatement of all suspended employees, the CA rendered the assailed Amended Decision, the dispositive portion of which reads, as follows:

> WHEREFORE, the partial motion for reconsideration is GRANTED insofar as the reinstatement of the suspended employees is concerned. This Court's decision dated June 27, 2003 is hereby MODIFIED. Private respondents are hereby directed to reinstate all the petitioners immediately without backwages.
>
> SO ORDERED.[12]

Unsatisfied, both parties filed the present consolidated petitions on the following

GROUNDS

FOR UNYON:

THE COURT OF APPEALS LEGALLY ERRED IN NOT AWARDING BACKWAGES TO INDIVIDUAL PETITIONERS NOTWITHSTANDING HAVING ORDERED THEIR REINSTATEMENT TO THEIR PREVIOUS POSITIONS.

FOR AER:

THE HONORABLE COURT OF APPEALS ERRED GRIEVOUSLY WHEN IT GAVE SO MUCH WEIGHT ON THE PRIVATE RESPONDENTS' PARTIAL MOTION FOR RECONSIDERATION BY AMENDING ITS DECISION IN

[12] *Id.* at 34.

ORDERING THEIR IMMEDIATE REINSTATEMENT INCLUDING THOSE WHO HAVE TESTED POSITIVE FOR ILLEGAL DRUGS (DRUG ADDICTS) AND HAVE FAILED TO SUBMIT ANY MEDICAL CERTIFICATE.

G.R. No. 160138

AER's Position

AER questions the findings of the CA that there were 32 complaining employees, which number was reduced to only 26 because six (6) resigned and signed waivers and quitclaims. It argues that the CA should have respected the findings of the LA and the NLRC that there were only 18 complaining employees, which was reduced to 12 due to the resignations and signing of the corresponding Release and Quitclaims by six (6) of them. The figure was further reduced to 8, and finally to just 3 complaining employees.

AER argues that the reinstatement of those employees who tested positive for drugs and refused to submit their respective medical certificate certifying that they were fit to work, violated AER's rules and regulations, and the law in general because it would allow the sheltering of drug addicts in company premises.

AER likewise insists that the drug test that it conducted was not related to any union activity because the test covered all employees. The drug test was part of company rules and guidelines designed to instill discipline and good behavior among its employees as contained in its Employees Manual Company Rules and Regulations. AER also claims that it simply exercised its employer's prerogative in requiring a medical certificate from the affected employees.

Finally, AER avers that the complaining employees, who did not report back to work despite their medical certificate attesting that they were fit to work, committed willful disobedience. AER claims that the complaining employees violated their agreement with the DOLE-National Conciliation and Mediation Board *(NCMB)* dated January 25, 1999. AER likewise contends that the complaining employees are deemed to have lost their

employment status when they engaged in unlawful activities such as abandonment of work, stoppage of work and the commission of attempted theft involving its boring machine. Hence, the termination of their employment was valid.

Unyon's Position

Unyon argues that the complaint it filed indicated that there were 32 complainants who signed the complaint. Out of the 32, six (6) executed waivers and quitclaims leaving 26 complainants, not 3 as claimed by AER.

Unyon likewise avers that the dismissal of the affected employees was unlawful for lack of valid ground and prior notice. Although it admits that some of the complainant employees tested positive for drugs, it posits that AER should have, at least, required those affected employees to explain why they tested positive for drugs because it could be possible that the drug taken was a regulated drug for an ailment and prescribed by a doctor. Therefore, prior notice or due process was still necessary.

Unyon further asserts that the penalty for testing positive for illegal drugs was only a 15-day suspension, which was already served by the affected employees. It also points out that AER never imposed the policy of drug examination on its employees before the union was organized. Clearly, AER adopted a hostile attitude towards the workers when they organized themselves into a union.

Moreover, of the 32 complaining employees in the illegal dismissal case against AER, only 18 were charged by AER with illegal strike. Unyon argues that AER should have admitted back to work those employees who were not included in the charge. There was no allegation either that those excluded were involved in the January 28, 1999 incident.

Lastly, Unyon claims that the penalty of outright dismissal against the eighteen (18) employees charged with illegal strike was grossly disproportionate to their offense.

G.R. NO. 160192

Unyon's Position

Unyon basically argues that there was enough proof that AER acted in bad faith and it was guilty of illegal lock-out for preventing the affected employees from going back to work. Hence, the complaining employees are entitled to backwages.

AER's Position

AER counters that there are only three (3) remaining complaining employees who were validly suspended, namely: Froilan Madamba, Ruperto Mariano and Roberto Caldeo. AER claims that these employees are not entitled to backwages or even reinstatement because their separation from work was valid due to their unlawful activities and willful disobedience. AER further states that Unyon failed to properly file a verified position paper. Hence, the complaining employees who failed to file a verified position paper should be excluded from the petition.

In sum, the main issue to be resolved in these consolidated cases is whether or not the CA erred in ruling for the reinstatement of the complaining employees but without grant of backwages.

The Court's Ruling

The Court agrees with the ruling of the CA that there were 32 complaining employees who filed and signed their complaint dated February 18, 1999 for unfair labor practice, illegal dismissal and illegal suspension.[13] Out of the 32, six (6) undeniably resigned and signed waivers and quitclaims, leaving 26 remaining complainant employees. Thus, the Court adopts and affirms the following CA ruling on this matter:

> The number of parties to a complaint corresponds to the number of signatories thereto and not necessarily to the names commonly appearing or identified in the position paper. All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist whether jointly, severally, or in the alternative, may, except as

[13] *Id.* at 115-120.

otherwise provided in these Rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest.[14]

This Court likewise affirms the ruling of the CA favoring the reinstatement of all the complaining employees including those who tested positive for illegal drugs, without backwages. The Court is in accord with the ruling of the LA and the CA that neither party came to court with clean hands. Both were *in pari delicto*.

It cannot be disputed that both parties filed charges against each other, blaming the other party for violating labor laws. AER filed a complaint against Unyon and its 18 members for illegal concerted activities. It likewise suspended 7 union members who tested positive for illegal drugs. On the other hand, Unyon filed a countercharge accusing AER of unfair labor practice, illegal suspension and illegal dismissal. In other words, AER claims that Unyon was guilty of staging an illegal strike while Unyon claims that AER committed an illegal lockout.

AER's fault is obvious from the fact that a day after the union filed a petition for certification election before the DOLE, it hit back by requiring all its employees to undergo a compulsory drug test. Although AER argues that the drug test was applied to all its employees, it was silent as to whether the drug test was a regular company policy and practice in their 35 years in the automotive engine repair and rebuilding business. As the Court sees it, it was AER's first ever drug test of its employees immediately implemented after the workers manifested their desire to organize themselves into a union. Indeed, the timing of the drug test was suspicious.

Moreover, AER failed to show proof that the drug test conducted on its employees was performed by an authorized drug testing center. It did not mention how the tests were conducted

[14] Section 6, Rule 3, Revised Rules of Court.

and whether the proper procedure was employed. The case of *Nacague v. Sulpicio Lines*,[15] is instructive:

> Contrary to Sulpicio Lines' allegation, Nacague was already questioning the credibility of S.M. Lazo Clinic as early as the proceedings before the Labor Arbiter. In fact, the Labor Arbiter declared that the S.M. Lazo Clinic drug test result was doubtful since it is not under the supervision of the Dangerous Drug Board.
>
> The NLRC and the Court of Appeals ruled that Sulpicio Lines validly terminated Nacague's employment because he was found guilty of using illegal drugs which constitutes serious misconduct and loss of trust and confidence. However, we find that Sulpicio Lines failed to clearly show that Nacague was guilty of using illegal drugs. We agree with the Labor Arbiter that the lack of accreditation of S.M. Lazo Clinic made its drug test results doubtful.
>
> **Section 36 of R.A. No. 9165 provides that drug tests shall be performed only by authorized drug testing centers. Moreover, Section 36 also prescribes that drug testing shall consist of both the screening test and the confirmatory test**. Section 36 of R.A. No. 9165 reads:
>
> SEC. 36. *Authorized Drug Testing.* **Authorized drug testing shall be done by any government forensic laboratories or by any of the drug testing laboratories accredited and monitored by the DOH to safeguard the quality of test results.** The DOH shall take steps in setting the price of the drug test with DOH accredited drug testing centers to further reduce the cost of such drug test. **The drug testing shall employ, among others, two (2) testing methods, the screening test which will determine the positive result as well as the type of drug used and the confirmatory test which will confirm a positive screening test**. x x x (Emphases supplied)
>
> Department Order No. 53-03 further provides:
>
> Drug Testing Program for Officers and Employees
>
> Drug testing shall conform with the procedures as prescribed by the Department of Health (DOH) (www.doh.gov.ph). **Only drug testing centers accredited by the DOH shall be utilized**. A list

[15] G.R. No. 172589, August 8, 2010, 627 SCRA 254.

of accredited centers may be accessed through the OSHC website (www.oshc.dole.gov.ph).

Drug testing shall consist of both the screening test and the confirmatory test; the latter to be carried out should the screening test turn positive. The employee concerned must be informed of the test results whether positive or negative.

In *Social Justice Society v. Dangerous Drugs Board*, we explained:

As to the mechanics of the test, the law specifies that the procedure shall employ two testing methods, *i.e.*, **the screening test and the confirmatory test**, **doubtless to ensure as much as possible the trustworthiness of the results**. But the more important consideration lies in the fact that the tests shall be conducted by trained professionals in access-controlled laboratories monitored by the Department of Health (DOH) to safeguard against results tampering and to ensure an accurate chain of custody.

The law is clear that drug tests shall be performed only by authorized drug testing centers. In this case, Sulpicio Lines failed to prove that S.M. Lazo Clinic is an accredited drug testing center. Sulpicio Lines did not even deny Nacague's allegation that S.M. Lazo Clinic was not accredited. Also, only a screening test was conducted to determine if Nacague was guilty of using illegal drugs. Sulpicio Lines did not confirm the positive result of the screening test with a confirmatory test. Sulpicio Lines failed to indubitably prove that Nacague was guilty of using illegal drugs amounting to serious misconduct and loss of trust and confidence. Sulpicio Lines failed to clearly show that it had a valid and legal cause for terminating Nacague's employment. When the alleged valid cause for the termination of employment is not clearly proven, as in this case, the law considers the matter a case of illegal dismissal. (Emphases supplied)

Furthermore, AER engaged in a runaway shop when it began pulling out machines from the main AER building to the AER-PSC compound located on another street on the pretext that the main building was undergoing renovation. Certainly, the striking workers would have no reason to run and enter the AER-PSC premises and to cause the return of the machines to the AER building if they were not alarmed that AER was engaging in a runaway shop.

AER committed another infraction when it refused to admit back those employees who were not included in its complaint against the union. Thirty-two (32) employees filed a complaint for illegal dismissal, illegal suspension and unfair labor practice against AER. AER charged 18 employees with illegal strike. AER should have reinstated the 14 employees excluded from its complaint.

Regarding AER's contention that the affected workers abandoned their jobs, the Court has thoroughly reviewed the records and found no convincing proof that they deliberately abandoned their jobs. Besides, this Court has consistently declared in a myriad of labor cases that abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal.

In any event, the penalty of dismissal imposed by AER against the striking employees, who, by the way, only staged a one day walkout, was too severe. The pronouncement in the case of *Tupas Local Chapter No. 979 v. NLRC*[16] is worth reiterating:

> Neither respondent commission's decision nor the labor arbiter's decision as affirmed with modification by it cites any substantial facts or evidence to warrant the terribly harsh imposition of the capital penalty of dismissal and forfeiture of employment on twenty-two of forty-four workers for having staged the so-called **one-day (more accurately, a one-morning) "sitdown strike"** on August 19, 1980 to inform respondent employer of their having formed their own union and to present their just requests for allowances, overtime pay and service incentive leave pay. Prescinding from respondent commission's misappreciation of the facts and evidence and accepting for the nonce its factual conclusion that the petitioners staged a one-morning sit-down strike instead of making a mass representation for the employer to recognize their newly formed union and negotiate their demands, respondent commission's decision is not in consonance with the constitutional injunction that the Court has invariably invoked and applied to afford protection to labor and assure the workers' rights to self-organization, collective bargaining, security of tenure and just and humane conditions of work. The said decision likewise is not in accordance with settled and authoritative doctrine and legal principles that **a mere finding of the illegality of a strike does**

[16] 224 Phil. 26 (1985).

not automatically warrant a wholesale dismissal of the strikers from their employment and that a premature or improvident strike should not be visited with a consequence so severe as dismissal where a penalty less punitive would suffice. Numerous precedents to this effect have been cited and reaffirmed x x x.

xxx xxx xxx.

In the analogous case of *PBM Employees Organization vs. PBM Co., Inc.*,[17][10]/ the Court, in setting aside the questioned industrial court's orders held that "**the dismissal or termination of the employment of the petitioning eight (8) leaders of the union is harsh for a one-day absence from work**." They had been ordered dismissed for having carried out a mass demonstration at Malacañang on March 4, 1969 in protest against alleged abuses of the Pasig police department, upon two days' prior notice to respondent employer company, as against the latter's insistence that the first shift should not participate but instead report for work, under pain of dismissal. The Court held that they were merely exercising their basic human rights and fighting for their very survival "in seeking sanctuary behind their freedom of expression as well as their right of assembly and of petition against alleged persecution of local officialdom." We ruled that "(T)he appropriate penalty - if it deserves any penalty at all - should have been simply to charge said one-day absence against their vacation or sick leave. But to dismiss the eight (8) leaders of the petitioner Union is a most cruel penalty, since as aforestated the Union leaders depend on their wages for their daily sustenance as well as that of their respective families aside from the fact that it is a lethal blow to unionism, while at the same time strengthening the oppressive hand of the petty tyrants in the localities." [Emphases supplied]

It must also be noted that there were no injuries during the brief walkout. Neither was there proof that the striking workers inflicted harm or violence upon the other employees. In fact, the Police Memorandum[18] dated January 29, 1999 reported no violent incidents and stated that all parties involved in the January 28, 1999 incident were allowed to go home and the employees involved were just given a stern warning.

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

[18] *Rollo* (G.R. No. 160138), pp. 51-52.

To the Court's mind, the complaining workers temporarily walked out of their jobs because they strongly believed that management was committing an unfair labor practice. They had no intention of hurting anybody or steal company property. Contrary to AER's assertion, the striking workers did not intend to steal the line boring machine which they tried to cart away from the AER-PSC compound; they just wanted to return it to the main AER building.

Like management, the union and the affected workers were also at fault for resorting to a concerted work slowdown and walking out of their jobs of protest for their illegal suspension. It was also wrong for them to have forced their way to the AER-PSC premises to try to bring out the boring machine. The photos[19] shown by AER are enough proof that the picketing employees prevented the entry and exit of non-participating employees and possibly AER's clients. Although the union's sudden work stoppage lasted a day, it surely caused serious disturbance and tension within AER's premises and could have adversely affected AER's clients and business in general.

The *in pari delicto* doctrine in labor cases is not novel to us. It has been applied in the case of *Philippines Inter-Fashion, Inc. v. NLRC*,[20] where the Court held:

> The Solicitor General has correctly stated in his comment that "from these facts are derived the following conclusions which are likewise undisputed: that petitioner engaged in an **illegal lockout** while the NAFLU engaged in an **illegal strike**; that the unconditional offer of the 150 striking employees to return to work and to withdraw their complaint of illegal lockout against petitioner constitutes condonation of the illegal lock-out; and that the unqualified acceptance of the offer of the 150 striking employees by petitioner likewise constitutes condonation of the illegal strike insofar as the reinstated employees are concerned."

The issues at bar arise, however, from respondent commission's approval of its commissioner's conclusions that (1) petitioner must

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

[20] 203 Phil. 23 (1982).

be deemed to have waived its right to pursue the case of illegal strike against the 114 employees who were not reinstated and who pursued their illegal lockout claim against petitioner; and (2) the said 114 employees are entitled to reinstatement with three months' backwages.

The Court approves the stand taken by the Solicitor General that there was no clear and unequivocal waiver on the part of petitioner and on the contrary the record shows that it tenaciously pursued its application for their dismissal, but nevertheless in view of the undisputed findings of illegal strike on the part of the 114 employees and illegal lockout on petitioner's part, **both parties are *in pari delicto* and such situation warrants the restoration of the status quo ante and bringing the parties back to the respective positions before the illegal strike and illegal lockout** through the reinstatement of the said 114 employees, as follows:

> The Bisaya case (102 Phil. 438) is inapplicable to the present case, because in the former, there were only two strikers involved who were both reinstated by their employer upon their request to return to work. However, in the present case, there were more than 200 strikers involved, of which 150 who desired to return to work were reinstated. The rest were not reinstated because they did not signify their intention to return to work. Thus, the ruling cited in the Bisaya case that the employer waives his defense of illegality of the strike upon reinstatement of strikers is applicable only to strikers who signified their intention to return to work and were accepted back ...
>
> Truly, it is more logical and reasonable for condonation to apply only to strikers who signified their intention to return and did return to work. The reason is obvious. These strikers took the initiative in normalizing relations with their employer and thus helped promote industrial peace. However, as regards the strikers who decided to pursue with the case, as in the case of the 114 strikers herein, the employer could not be deemed to have condoned their strike, because they had not shown any willingness to normalize relations with it. So, if petitioner really had any intention to pardon the 114 strikers, it would have included them in its motion to withdraw on November 17, 1980. The fact that it did not, but instead continued to pursue the case to the end, simply means that it did not pardon the 114 strikers.

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> The finding of illegal strike was not disputed. Therefore, the 114 strikers employees who participated therein are liable for termination (*Liberal Labor Union v. Phil. Can Co.*, 91 Phil. 72; *Insurefco Employees Union v. Insurefco*, 95 Phil. 761). On the other hand, the finding of illegal lockout was likewise not disputed. Therefore, the 114 employees affected by the lockout are also subject to reinstatement. Petitioner, however, contends that the application for readmission to work by the 150 strikers constitutes condonation of the lockout which should likewise bind the 114 remaining strikers. Suffice it to say that the 150 strikers acted for themselves, not on behalf of the 114 remaining strikers, and therefore the latter could not be deemed to have condoned petitioner's lockout.
>
> The findings show that both petitioner and the 114 strikers are *in pari delicto*, a situation which warrants the maintenance of the status quo. **This means that the contending parties must be brought back to their respective positions before the controversy; that is, before the strike. Therefore, the order reinstating the 114 employees is proper.**

With such restoration of the status quo ante it necessarily follows, as likewise submitted by the Solicitor General, that the petition must be granted insofar as it seeks the setting aside of the award of three months' backwages to the 114 employees ordered reinstated on the basis of the general rule that strikers are not entitled to backwages (with some exceptions not herein applicable, such as where the employer is guilty of oppression and union-busting activities and strikers ordered reinstated are denied such reinstatement and therefore are declared entitled to backwages from the date of such denial). More so, is the principle of "no work, no pay" applicable to the case at bar, in view of the undisputed finding of illegality of the strike.

Likewise, the *in pari delicto doctrine* was applied in the case of *First City Interlink Transportation Co. Inc. v. The Honorable Secretary*,[21] thus:

3) Petitioner substantially complied with the Return to Work Order. The medical examination, NBI, Police and Barangay Clearances as

[21] 338 Phil. 635 (1997).

well as the driver's and conductor's/conductress licenses and photographs required as conditions for reinstatement were reasonable management prerogatives. However, the other requirements imposed as condition for reinstatement were unreasonable considering that the employees were not being hired for the first time, although the imposition of such requirements did not amount to refusal on the part of the employer to comply with the Return to Work Order or constitute illegal lockout so as to warrant payment of backwages to the strikers. If at all, it is the employees' refusal to return to work that may be deemed a refusal to comply with the Return to Work Order resulting in loss of their employment status. **As both the employer and the employees were, in a sense, at fault or *in pari delicto,*** the nonreturning employees, provided they did not participate in illegal acts; should be considered **entitled to reinstatement**. But **since reinstatement is no longer feasible, they should be given separation pay computed up to March 8, 1988 (the date set for the return of the employees) in lieu of reinstatement.** [Emphases and underscoring supplied]

In the case at bar, since both AER and the union are at fault or *in pari delicto*, they should be restored to their respective positions prior to the illegal strike and illegal lockout. Nonetheless, if reinstatement is no longer feasible, the concerned employees should be given separation pay up to the date set for the return of the complaining employees in lieu of reinstatement.

WHEREFORE, the petitions are *DENIED*. Accordingly, the complaining employees should be reinstated without backwages. If reinstatement is no longer feasible, the concerned employees should be given separation pay up to the date set for their return in lieu of reinstatement.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Abad,* and *Sereno,*[**] *JJ.,* concur.

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[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 1029 dated June 30, 2011.

[**] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

SECOND DIVISION

[G.R. No. 165487. July 13, 2011]

COUNTRY BANKERS INSURANCE CORPORATION, *petitioner, vs.* **ANTONIO LAGMAN,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; INSURANCE CODE; SURETY BOND; CONTINUOUS EFFECTIVITY THEREOF DOES NOT DEPEND ON THE PAYMENT OF LATER PREMIUMS; CASE AT BAR.— The official receipts in question serve as proof of payment of the premium for one year on each surety bond. It does not, however, automatically mean that the surety bond is effective for only one (1) year. In fact, the effectivity of the bond is not wholly dependent on the payment of premium. Section 177 of the Insurance Code expresses: Sec. 177. The surety is entitled to payment of the premium as soon as the contract of suretyship or bond is perfected and delivered to the obligor. No contract of suretyship or bonding shall be valid and binding unless and until the premium therefor has been paid, **except where the obligee has accepted the bond, in which case the bond becomes valid and enforceable irrespective of whether or not the premium has been paid by the obligor to the surety**: The 1989 Bonds have identical provisions and they state in very clear terms the effectivity of these bonds, *viz*: x x x **This bond shall remain in force until cancelled by the Administrator of National Food Authority**. This provision in the bonds is but in compliance with the second paragraph of Section 177 of the Insurance Code, which specifies that a continuing bond, as in this case where there is no fixed expiration date, may be cancelled only by the obligee, which is the NFA, by the Insurance Commissioner, and by the court. Thus: In case of a continuing bond, the obligor shall pay the subsequent annual premium as it falls due until the contract of suretyship is cancelled by the obligee or by the Commissioner or by a court of competent jurisdiction, as the case may be.

2. REMEDIAL LAW; EVIDENCE; BEST EVIDENCE RULE; ORIGINAL DOCUMENT MUST BE PRODUCED WHERE

ITS CONTENTS ARE THE SUBJECT OF INQUIRY.— Under the best evidence rule, the original document must be produced whenever its contents are the subject of inquiry. The rule is encapsulated in Section 3, Rule 130 of the Rules of Court, as follow: Sec. 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a documents, no evidence shall be admissible other than the original document itself, except in the following cases: (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror; (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice; (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

3. **ID.; ID.; ID.; ID.; PHOTOCOPY AS SECONDARY EVIDENCE IS NOT ADMISSIBLE UNLESS IT IS SHOWN THAT THE ORIGINAL IS UNAVAILABLE; REQUISITES.—** A photocopy, being a mere secondary evidence, is not admissible unless it is shown that the original is unavailable. Section 5, Rule 130 of the Rules of Court states: SEC.5 *When original document is unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: existence, execution, loss, and contents.

4. **ID.; ID.; ID.; ID.; ID.; WHERE THERE ARE MORE THAN ONE ORIGINAL COPY, ALL MUST BE ACCOUNTED FOR BEFORE A PHOTOCOPY IS ALLOWED.—** A party must

first present to the court proof of loss or other satisfactory explanation for the non-production of the original instrument. When more than one original copy exists, it must appear that all of them have been lost, destroyed, or cannot be produced in court before secondary evidence can be given of any one. A photocopy may not be used without accounting for the other originals.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; REQUISITES; THERE IS NO NOVATION IN THE ABSENCE OF A VALID NEW CONTRACT AGREED UPON.— Fueling further suspicion regarding the existence of the 1990 Bond is the absence of an Indemnity Agreement. While Lagman argued that a 1990 Bond novates the 1989 Bonds, he raises the defense of "non-existence of an indemnity agreement" which would conveniently exempt him from liability. x x x Having discounted the existence and/or validity of the 1990 Bond, there can be no novation to speak of. Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor. For novation to take place, the following requisites must concur: 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; and 4) There must be a valid new contract. In this case, only the first element of novation exists. Indeed, there is a previous valid obligation, *i.e.*, the 1989 Bonds. There is however neither a valid new contract nor a clear agreement between the parties to a new contract since the very existence of the 1990 Bond has been rendered dubious. Without the new contract, the old contract is not extinguished. Implied novation necessitates a new obligation with which the old is in total incompatibility such that the old obligation is completely superseded by the new one. Quite obviously, neither can there be implied novation. In this case, there is no new obligation.

APPEARANCES OF COUNSEL

Velasquez and Associates for petitioner.
Leonides S. Respicio for respondent.

D E C I S I O N

PEREZ, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the Decision[1] and Resolution[2] of the Court of Appeals dated 21 June 2004 and 24 September 2004, respectively.

These are the undisputed facts.

Nelson Santos (Santos) applied for a license with the National Food Authority (NFA) to engage in the business of storing not more than 30,000 sacks of *palay* valued at ₱5,250,000.00 in his warehouse at *Barangay* Malacampa, Camiling, Tarlac. Under Act No. 3893 or the General Bonded Warehouse Act, as amended,[3] the approval for said license was conditioned upon posting of a cash bond, a bond secured by real estate, or a bond signed by a duly authorized bonding company, the amount of which shall be fixed by the NFA Administrator at not less than thirty-three and one third percent (33 1/3%) of the market value of the maximum quantity of rice to be received.

Accordingly, Country Bankers Insurance Corporation (Country Bankers) issued Warehouse Bond No. 03304[4] for ₱1,749,825.00 on 5 November 1989 and Warehouse Bond No. 02355[5] for ₱749,925.00 on 13 December 1989 (1989 Bonds) through its agent, Antonio Lagman (Lagman). Santos was the bond principal, Lagman was the surety and the Republic of the Philippines, through the NFA was the obligee. In consideration of these

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[1] Penned by Associate Justice Magdangal M. De Leon with Associate Justices Roberto A. Barrios and Mariano C. Del Castillo (now Supreme Court Associate Justice) concurring. *Rollo*, pp. 29-36.

[2] *Id.* at 37(a)-38.

[3] As amended by Republic Act No. 247 (An Act to Amend Act No. 3893), Presidential Decree No. 4 (Creating the National Grain Authority) and Presidential Decree No. 1770 (Creating the National Food Authority).

[4] Records, p. 6.

[5] *Id.* at 7.

issuances, corresponding Indemnity Agreements[6] were executed by Santos, as bond principal, together with Ban Lee Lim Santos (Ban Lee Lim), Rhosemelita Reguine (Reguine) and Lagman, as co-signors. The latter bound themselves jointly and severally liable to Country Bankers for any damages, prejudice, losses, costs, payments, advances and expenses of whatever kind and nature, including attorney's fees and legal costs, which it may sustain as a consequence of the said bond; to reimburse Country Bankers of whatever amount it may pay or cause to be paid or become liable to pay thereunder; and to pay interest at the rate of 12% per annum computed and compounded monthly, as well as to pay attorney's fees of 20% of the amount due it.[7]

Santos then secured a loan using his warehouse receipts as collateral.[8] When the loan matured, Santos defaulted in his payment. The sacks of *palay* covered by the warehouse receipts were no longer found in the bonded warehouse.[9] By virtue of the surety bonds, Country Bankers was compelled to pay ₱1,166,750.37.[10]

Consequently, Country Bankers filed a complaint for a sum of money docketed as Civil Case No. 95-73048 before the Regional Trial Court (RTC) of Manila. In his Answer, Lagman alleged that the 1989 Bonds were valid only for 1 year from the date of their issuance, as evidenced by receipts; that the bonds

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[6] *Id.* at 8-11.

[7] *Rollo*, p. 57.

[8] Santos obtained a loan from Far East Bank and Trust Co. and which was guaranteed by Quedan Rural Credit Guarantee Corporation (Quedancor). He obtained a ₱4 Million loan, as evidenced by two (2) Promissory Notes under the Quedan Financing For Grain Stocks program which matures on 29 January 1991. Santos executed a Pledge Agreement using his Quedan Warehouse Receipts covering the sacks of *palay* to guarantee payment of said loans. Quedancor then issued a Certificate of Guarantee Coverage upon request of FEBTC. Records, pp. 214-219 and 225.

[9] *Id.* at 223.

[10] The NFA, acting in behalf of Quedancor, proceeded against the surety bonds issued by Country Bankers which, in turn, partially paid ₱1,166,750.37 to Quedancor and left a balance of ₱1,233,749.50. *Id.* at 233-234.

were never renewed and revived by payment of premiums; that on 5 November 1990, Country Bankers issued Warehouse Bond No. 03515 (1990 Bond) which was also valid for one year and that no Indemnity Agreement was executed for the purpose; and that the 1990 Bond supersedes, cancels, and renders no force and effect the 1989 Bonds.[11]

The bond principals, Santos and Ban Lee Lim, were not served with summons because they could no longer be found.[12] The case was eventually dismissed against them without prejudice.[13] The other co-signor, Reguine, was declared in default for failure to file her answer.[14]

On 21 September 1998, the trial court rendered judgment declaring Reguine and Lagman jointly and severally liable to pay Country Bankers the amount of ₱2,400,499.87.[15] The dispositive portion of the RTC Decision[16] reads:

> WHEREFORE, premises considered, judgment is hereby rendered, ordering defendants Rhomesita [sic] Reguine and Antonio Lagman, jointly and severally liable to pay plaintiff, Country Bankers Assurance Corporation, the amount of ₱2,400,499.87, with 12% interest from the date the complaint was filed until fully satisfied plus 20% of the amount due plaintiff as and for attorney's fees and to pay the costs.
>
> As the Court did not acquire jurisdiction over the persons of defendants Nelson Santos and Ban Lee Lim Santos, let the case against them be DISMISSED. Defendant Antonio Lagman's counterclaim is likewise DISMISSED, for lack of merit.[17]

In holding Lagman and Reguine solidarily liable to Country Bankers, the trial court relied on the express terms of the

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[11] Answer with Affirmative and Special Defenses and Counterclaim. *Rollo,* pp. 61-63.

[12] Records, p. 22.

[13] Order dated 18 September 1995. *Id.* at 51.

[14] *Id.* at 47.

[15] See note 10.

[16] Presided by Judge Zenaida R. Daguna. *Rollo,* pp. 81-86.

[17] *Id.* at 86.

Indemnity Agreement that they jointly and severally bound themselves to indemnify and make good to Country Bankers any liability which the latter may incur on account of or arising from the execution of the bonds.[18]

The trial court rationalized that the bonds remain in force unless cancelled by the Administrator of the NFA and cannot be unilaterally cancelled by Lagman. The trial court emphasized that for the failure of Lagman to comply with his obligation under the Indemnity Agreements, he is likewise liable for damages as a consequence of the breach.

Lagman filed an appeal to the Court of Appeals, docketed as CA G.R. CV No. 61797. He insisted that the lifetime of the 1989 Bonds, as well as the corresponding Indemnity Agreements was only 12 months. According to Lagman, the 1990 Bond was not pleaded in the complaint because it was not covered by an Indemnity Agreement and it superseded the two prior bonds.[19]

On 21 June 2004, the Court of Appeals rendered the assailed Decision reversing and setting aside the Decision of the RTC and ordering the dismissal of the complaint filed against Lagman.[20]

The appellate court held that the 1990 Bond superseded the 1989 Bonds. The appellate court observed that the 1990 Bond covers 33.3% of the market value of the *palay*, thereby manifesting the intention of the parties to make the latter bond more comprehensive. Lagman was also exonerated by the appellate court from liability because he was not a signatory to the alleged Indemnity Agreement of 5 November 1990 covering the 1990 Bond. The appellate court rejected the argument of Country Bankers that the 1989 bonds were continuing, finding, as reason therefor, that the receipts issued for the bonds indicate that they were effective for only one-year.

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[18] *Id.* at 84.

[19] Brief for Antonio Lagman. CA *rollo*, pp. 21-24.

[20] *Rollo*, pp. 29-36.

Country Bankers sought reconsideration which was denied in a Resolution dated 24 September 2004.[21]

Expectedly, Country Bankers filed the instant petition attributing two (2) errors to the Court of Appeals, to wit:

A.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DISREGARDING THE EXPRESS PROVISIONS OF SECTION 177 OF THE INSURANCE CODE WHEN IT HELD THAT THE SUBJECT SURETY BONDS WERE SUPERSEDED BY A SUBSEQUENT BOND NOTWITHSTANDING THE NON-CANCELLATION THEREOF BY THE BOND OBLIGEE.

B.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT RECEIPTS FOR THE PAYMENT OF PREMIUMS PREVAIL OVER THE EXPRESS PROVISION OF THE SURETY BOND THAT FIXES THE TERM THEREOF.[22]

Country Bankers maintains that by the express terms of the 1989 Bonds, they shall remain in full force until cancelled by the Administrator of the NFA. As continuing bonds, Country Bankers avers that Section 177 of the Insurance Code applies, in that the bond may only be cancelled by the obligee, by the Insurance Commissioner or by a competent court.

Country Bankers questions the existence of a third bond, the 1990 Bond, which allegedly cancelled the 1989 Bonds on the following grounds: First, Lagman failed to produce the original of the 1990 Bond and no basis has been laid for the presentation of secondary evidence; Second, the issuance of the 1990 Bond was not approved and processed by Country Bankers; Third, the NFA as bond obligee was not in possession of the 1990 Bond. Country Bankers stresses that the cancellation of the 1989 Bonds requires the participation of the bond obligee. *Ergo*, the bonds remain subsisting until cancelled by the bond obligee. Country Bankers further assert that Lagman also failed to prove

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[21] *Id.* at 37(a)-38.

[22] *Id.* at 14.

that the NFA accepted the 1990 Bond in replacement of the 1989 Bonds.

Country Bankers notes that the receipts issued for the 1989 Bonds are mere evidence of premium payments and should not be relied on to determine the period of effectivity of the bonds. Country Bankers explains that the receipts only represent the transactions between the bond principal and the surety, and does not involve the NFA as bond obligee.

Country Bankers calls this Court's attention to the incontestability clause contained in the Indemnity Agreements which prohibits Lagman from questioning his liability therein.

In his Comment, Lagman raises the issue of novation by asserting that the 1989 Bonds were superseded by the 1990 Bond, which did not include Lagman as party. Therefore, Lagman argues, Country Bankers has no cause of action against him. Lagman also reiterates that because of novation, the 1989 bonds are neither perpetual nor continuing.

Lagman anchors his defense on two (2) arguments: 1) the 1989 Bonds have expired and 2) the 1990 Bond novates the 1989 Bonds.

The Court of Appeals held that the 1989 bonds were effective only for one (1) year, as evidenced by the receipts on the payment of premiums.

We do not agree.

The official receipts in question serve as proof of payment of the premium for one year on each surety bond. It does not, however, automatically mean that the surety bond is effective for only one (1) year. In fact, the effectivity of the bond is not wholly dependent on the payment of premium. Section 177 of the Insurance Code expresses:

> Sec. 177. The surety is entitled to payment of the premium as soon as the contract of suretyship or bond is perfected and delivered to the obligor. No contract of suretyship or bonding shall be valid and binding unless and until the premium therefor has been paid, **except where the obligee has accepted the bond, in which case**

the bond becomes valid and enforceable irrespective of whether or not the premium has been paid by the obligor to the surety: *Provided*, That if the contract of suretyship or bond is not accepted by, or filed with the obligee, the surety shall collect only reasonable amount, not exceeding fifty per centum of the premium due thereon as service fee plus the cost of stamps or other taxes imposed for the issuance of the contract or bond: *Provided, however*, That if the non-acceptance of the bond be due to the fault or negligence of the surety, no such service fee, stamps or taxes shall be collected. (Emphasis supplied)

The 1989 Bonds have identical provisions and they state in very clear terms the effectivity of these bonds, *viz*:

NOW, THEREFORE, if the above-bounded Principal shall well and truly deliver to the depositors PALAY received by him for STORAGE at any time that demand therefore is made, or shall pay the market value therefore in case he is unable to return the same, then this obligation shall be null and void; otherwise it shall remain in full force and effect and may be enforced in the manner provided by said Act No. 3893 as amended by Republic Act No. 247 and P.D. No. 4. **This bond shall remain in force until cancelled by the Administrator of National Food Authority**.[23]

This provision in the bonds is but in compliance with the second paragraph of Section 177 of the Insurance Code, which specifies that a continuing bond, as in this case where there is no fixed expiration date, may be cancelled only by the obligee, which is the NFA, by the Insurance Commissioner, and by the court. Thus:

In case of a continuing bond, the obligor shall pay the subsequent annual premium as it falls due until the contract of suretyship is cancelled by the obligee or by the Commissioner or by a court of competent jurisdiction, as the case may be.

By law and by the specific contract involved in this case, the effectivity of the bond required for the obtention of a license to engage in the business of receiving rice for storage is determined not alone by the payment of premiums but principally by the

[23] Records, p. 174.

Administrator of the NFA. From beginning to end, the Administrator's brief is the enabling or disabling document.

The clear import of these provisions is that the surety bonds in question cannot be unilaterally cancelled by Lagman. The same conclusion was reached by the trial court and we quote:

> As there appears no record of cancellation of the Warehouse Bonds No. 03304 and No. 02355 either by the administrator of the NFA or by the Insurance Commissioner or by the Court, the Warehouse Bonds are valid and binding and cannot be unilaterally cancelled by defendant Lagman as general agent of the plaintiff.[24]

While the trial court did not directly rule on the existence and validity of the 1990 Bond, it upheld the 1989 Bonds as valid and binding, which could not be unilaterally cancelled by Lagman. The Court of Appeals, on the other hand, acknowledged the 1990 Bond as having cancelled the two previous bonds by novation. Both courts however failed to discuss their basis for rejecting or admitting the 1990 Bond, which, as we indicated, is bone to pick in this case.

Lagman's insistence on novation depends on the validity, nay, existence of the allegedly novating 1990 Bond. Country Bankers understandably impugns both. We see the point. Lagman presented a mere photocopy of the 1990 Bond. We rule as inadmissible such copy.

Under the best evidence rule, the original document must be produced whenever its contents are the subject of inquiry.[25] The rule is encapsulated in Section 3, Rule 130 of the Rules of Court, as follow:

> Sec. 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

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[24] *Id.* at 281.

[25] Herrera, *REMEDIAL LAW*, Vol. V (1999 ed.), p. 166.

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.[26]

A photocopy, being a mere secondary evidence, is not admissible unless it is shown that the original is unavailable.[27] Section 5, Rule 130 of the Rules of Court states:

SEC.5 *When original document is unavailable*. — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: existence, execution, loss, and contents.[28]

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[26] See *Consolidated Bank and Trust Corporation (SOLIDBANK) v. Del Monte Motor Works, Inc.*, G.R. No. 143338, 29 July 2005, 465 SCRA 117, 130-131.

[27] *Lee v. Tambago*, A.C. No. 5281, 12 February 2008, 544 SCRA 393, 404.

[28] *Citibank, N.A. Mastercard v. Teodoro*, 458 Phil. 480, 489 (2003) citing *De Vera v. Aguilar*, G.R. No. 83377, 9 February 1993, 218 SCRA 602, 606.

In the case at bar, Lagman mentioned during the direct examination that there are actually four (4) duplicate originals of the 1990 Bond: the first is kept by the NFA, the second is with the Loan Officer of the NFA in Tarlac, the third is with Country Bankers and the fourth was in his possession.[29] A party must first present to the court proof of loss or other satisfactory explanation for the non-production of the original instrument.[30] When more than one original copy exists, it must appear that all of them have been lost, destroyed, or cannot be produced in court before secondary evidence can be given of any one. A photocopy may not be used without accounting for the other originals.[31]

Despite knowledge of the existence and whereabouts of these duplicate originals, Lagman merely presented a photocopy. He admitted that he kept a copy of the 1990 Bond but he could no longer produce it because he had already severed his ties with Country Bankers. However, he did not explain why severance of ties is by itself reason enough for the non-availability of his copy of the bond considering that, as it appears from the 1989 Bonds, Lagman himself is a bondsman. Neither did Lagman explain why he failed to secure the original from any of the three other custodians he mentioned in his testimony. While he apparently was able to find the original with the NFA Loan Officer, he was merely contented with producing its photocopy. Clearly, Lagman failed to exert diligent efforts to produce the original.

Fueling further suspicion regarding the existence of the 1990 Bond is the absence of an Indemnity Agreement. While Lagman argued that a 1990 Bond novates the 1989 Bonds, he raises the defense of "non-existence of an indemnity agreement" which

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[29] Testimony of Antonio Lagman. TSN, 29 April 1997, pp. 12-13.

[30] *Heirs of Teofilo Gabatan v. Court of Appeals*, G.R. No. 150206, 13 March 2009, 581 SCRA 70, 87-88 citing *Department of Education, Culture and Sports v. Del Rosario,* 490 Phil. 193, 204 (2005).

[31] *Citibank, N.A. Mastercard v. Teodoro*, *supra* note 27 at 490 citing Herrera, *REMEDIAL LAW*, Vol. V (1999 ed.), p. 178 citing further 5 Moran 88 (1980 ed.) and *Peaks v. Cobb*, 192 77 N.E. 881.

would conveniently exempt him from liability. The trial court deemed this defense as *indicia* of bad faith, thus:

> To the observation of the Court, defendant Lagman contended that being a general agent (which requires a much higher qualification than an ordinary agent), he is expected to have attended seminars and workshops on general insurance wherein he is supposed to have acquired sufficient knowledge of the general principles of insurance which he had fully practised or implemented from experience. It somehow appears to the Court's assessment of his reneging liability of the bonds in question, that he is still short of having really understood the principle of suretyship with reference to the transaction of indemnity in which he is a signatory. If, as he alleged, that he is well-versed in insurance, the Court finds no excuse for him to stand firm in denying his liability over the claim against the bonds with indemnity provision. If he insists in not recognizing that liability, the more that this Court is convinced that his knowledge that insurance operates under the principle of good faith is inadequate. He missed the exception provided by Section 177 of the Insurance Code, as amended, wherein non-payment of premium would not have the same essence in his mind that the agreements entered into would not have full force or effect. It could be glimpsed, therefore, that **the mere fact of cancelling bonds with indemnity agreements and replacing them (absence of the same) to escape liability clearly manifests bad faith on his part.**[32] (Emphasis supplied.)

Having discounted the existence and/or validity of the 1990 Bond, there can be no novation to speak of. Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor. For novation to take place, the following requisites must concur: 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; and 4) There must be a valid new contract.[33]

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[32] *Rollo*, p. 43.

[33] *Adriatico Consortium, Inc. v. LandBank of the Philippines*, G.R. No. 187838, 23 December 2009, 609 SCRA 403, 421 citing *Valenzuela v.*

In this case, only the first element of novation exists. Indeed, there is a previous valid obligation, *i.e.*, the 1989 Bonds. There is however neither a valid new contract nor a clear agreement between the parties to a new contract since the very existence of the 1990 Bond has been rendered dubious. Without the new contract, the old contract is not extinguished.

Implied novation necessitates a new obligation with which the old is in total incompatibility such that the old obligation is completely superseded by the new one.[34] Quite obviously, neither can there be implied novation. In this case, there is no new obligation.

The liability of Lagman is expressed in Indemnity Agreements executed in consideration of the 1989 Bonds which we have considered as continuing contracts. Under both Indemnity Agreements, Lagman, as co-signor, together with Santos, Ban Lee Lim and Reguine, bound themselves jointly and severally to Country Bankers to indemnify it for any damage or loss sustained on the account of the execution of the bond, among others. The pertinent identical stipulations of the Indemnity Agreements state:

INDEMNITY:— To indemnify and make good to the COMPANY jointly and severally, any damages, prejudice, loss, costs, payments advances and expenses of whatever kind and nature, including attorney's fees and legal costs, which the COMPANY may, at any time, sustain or incur, as well as to reimburse to said COMPANY all sums and amounts of money which the COMPANY or its representatives shall or may pay or cause to be paid or become liable to pay, on account of or arising from the execution of the above-

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Kalayaan Development & Industrial Corporation, G.R. No. 163244, 22 June 2009, 590 SCRA 380, 390-391; *Security Bank and Trust Company, Inc. v. Cuenca*, 396 Phil. 108, 122 (2000); *Reyes v. Court of Appeals*, G.R. No. 120817, 4 November 1996, 264 SCRA 35, 43.

[34] *Salazar v. J.Y. Brothers Marketing Corporation*, G.R. No. 171998, 20 October 2010; *Foundation Specialists, Inc. v. Betonval Ready Concrete, Inc.*, G.R. No. 170674, 24 August 2009, 596 SCRA 697, 707 citing *Iloilo Traders Finance, Inc. v. Heirs of Sps. Soriano, Jr.*, 452 Phil. 82, 89-90 (2003); *Aquintey v. Tibong*, G.R. No. 166704, 20 December 2006, 511 SCRA 414, 435-436.

mentioned BOND or any extension, renewal, alteration or substitution thereof made at the instance of the undersigned or anyone of them.[35]

Moreover, the Indemnity Agreements also contained identical Incontestability Clauses which provide:

INCONTESTABILITY OF PAYMENTS MADE BY THE COMPANY:— Any payment or disbursement made by the COMPANY on account of the above-mentioned Bond, its renewals, extensions, alterations or substitutions either in the belief that the COMPANY was obligated to make such payment or in the belief that said payment was necessary or expedient in order to avoid greater losses or obligations for which the COMPANY might be liable by virtue of the terms of the above-mentioned Bond, its renewals, extensions, alterations, or substitutions, shall be final and shall not be disputed by the undersigned, who hereby jointly and severally bind themselves to indemnify [Country Bankers] of any and all such payments, as stated in the preceding clauses.

In case the COMPANY shall have paid[,] settled or compromised any liability, loss, costs, damages, attorney's fees, expenses, claims[,] demands, suits, or judgments as above-stated, arising out of or in connection with said bond, an itemized statement thereof, signed by an officer of the COMPANY and other evidence to show said payment, settlement or compromise, shall be *prima facie* evidence of said payment, settlement or compromise, as well as the liability of the undersigned in any and all suits and claims against the undersigned arising out of said bond or this bond application.[36]

Lagman is bound by these Indemnity Agreements. Payments made by Country Bankers by virtue of the 1989 Bonds gave rise to Lagman's obligation to reimburse it under the Indemnity Agreements. Lagman, being a solidary debtor, is liable for the entire obligation.

WHEREFORE, the petition is *GRANTED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 61797 are *SET ASIDE* and the Decision dated 21 September 1998 of the RTC is hereby *REINSTATED*.

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[35] Records, pp. 175-177.

[36] *Id*.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Villarama, Jr.,*[**] and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 175091. July 13, 2011]

P/CHIEF INSPECTOR FERNANDO BILLEDO, SPO3 RODRIGO DOMINGO, PO3 JORGE LOPEZ, FERDINAND CRUZ, and MARIANO CRUZ, *petitioners, vs.* **WILHELMINA WAGAN, Presiding Judge of the Regional Trial Court of Branch III, Pasay City, public** *respondent.* **ALBERTO MINA, NILO JAY MINA and FERDINAND CAASI,** *private respondents.*

SYLLABUS

1. POLITICAL LAW; SANDIGANBAYAN; JURISDICTION UNDER RA 8249; SECTION 4 WHICH CONTEMPLATES TRANSFER OF A PENDING CIVIL ACTION RELATIVE TO A CRIMINAL ACTION INSTITUTED IN THE SANDIGANBAYAN, NOT APPLICABLE WHERE NO SUCH CRIMINAL ACTION WAS INSTITUTED.— [T]he subject civil case does not fall within the purview of Section 4 of R.A. No. 8249 as the latter part of this provision contemplates only two *(2)* situations. These were correctly pointed out by the public respondent as follows: *First*, a criminal action has been instituted before the Sandiganbayan or the appropriate courts after the requisite preliminary investigation, and the corresponding civil liability must be simultaneously instituted

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[*] Per Special Order No. 1006.

[**] Per Special Order No. 1043.

with it; and *Second*, the civil case, filed ahead of the criminal case, is still pending upon the filing of the criminal action, in which case, the civil case should be transferred to the court trying the criminal case for consolidation and joint determination. Section 4 of R.A. No. 8249 finds no application in this case. **No** criminal action has been filed before the Sandiganbayan or any appropriate court. Thus, there is **no** appropriate court to which the subject civil case can be transferred or consolidated as mandated by the said provision.

2. ID.; ID.; ID.; CIVIL CASE CONSIDERED ABANDONED ONLY IF THERE IS A PENDING CRIMINAL CASE AND THE CIVIL CASE WAS NOT TRANSFERRED TO THE COURT TRYING THE CRIMINAL CASE FOR JOINT DETERMINATION.— It is also illogical to consider the civil case as abandoned simply because the criminal cases against petitioners were dismissed at the preliminary stage. A reading of the latter part of Section 4 of R.A. No. 8294 suggests that the civil case will only be considered abandoned if there is a *pending* criminal case and the civil case was not transferred to the court trying the criminal case for joint determination. The criminal charges against petitioners might have been dismissed at the preliminary stage for lack of probable cause, but it does not mean that the civil case instituted prior to the filing of the criminal complaints is already baseless as the complainants can prove their cause of action in the civil case by mere preponderance of evidence.

3. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; WHERE THERE IS DENIAL THEREOF, THE PROPER PROCEDURE IS TO CONTINUE WITH THE CASE AND APPEAL ADVERSE JUDGMENT AFTER TRIAL.— The petitioners should have proceeded with the trial of the civil case pending before the public respondent instead of filing this petition [for *certiorari*]. The rule is that an order denying a motion to dismiss is merely interlocutory and, therefore, not appealable, "even on pure questions of law." Neither can it be subject of a petition for review on *certiorari*. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing

party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal.

APPEARANCES OF COUNSEL

Francisco Resurrecion for petitioners.

D E C I S I O N

MENDOZA, *J.*:

At bench is a petition for *certiorari* under Rule 65 as petitioners Police Chief Inspector *(PCI)* Fernando Billedo, Senior Police Officer 3 *(SPO3)* Rodrigo Domingo, Police Officer 3 *(PO3)* Jorge Lopez, Ferdinand Cruz, and Mariano Cruz *(petitioners)*, allege grave abuse of discretion on the part of the Judge Wilhelmina Wagan *(public respondent)* of the Regional Trial Court, Branch 111, Pasay City *(RTC)*, in issuing the Orders dated: ***(1)*** May 8, 2006;[1] ***(2)*** July 12, 2006,[2] and ***(3)*** August 26, 2006,[3] in Civil Case No. 00-0089, entitled "*Nilo Jay Mina, et al. v. Mariano Cruz, et al.*" for damages. The assailed orders denied the Motion to Dismiss filed by one of the petitioners, Ferdinand Cruz.

The Facts:

The case stemmed from the arrest of complainants Alberto Mina, Nilo Jay Mina and Ferdinand Caasi on February 27, 2000 along an alley, Interior 332, Edang Street, Pasay City, by petitioners-police officers. They were reported to have been caught *in flagrante delicto* drinking liquor in a public place. The complainants alleged that their arrest was unlawful and was only upon the inducement and unjustifiable accusation of Ferdinand Cruz and Mariano Cruz *(the Cruzes)*.[4] Thereafter, they were charged before the Metropolitan Trial Court of Pasay City *(MeTC)* with a violation of City Ordinance No. 265 (Drinking Liquor in Public Places), which was docketed as Criminal Case No. 00-621.

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[1] *Rollo*, pp. 33-37.

[2] *Id.* at 59-62.

[3] *Id.* at 69.

[4] *Id.* at 24.

On March 20, 2000, after the said incident, the complainants filed Civil Case No. 00-0089 against the petitioners for damages.

Subsequently, criminal complaints were also filed against the petitioners before the City Prosecution Office *(CPO)* and the Office of the Ombudsman *(Ombudsman)* for Unlawful Arrest and Violation of R.A. No. 7438 (Act Defining Rights of Person Under Custodial Investigation). The CPO *dismissed* the case for lack of merit while the Ombudsman, in its Joint Resolution dated October 13, 2000,[5] *dismissed* both complaints for lack of probable cause, but recommended the filing of 3 corresponding criminal informations for Violation of Section 3(e), R.A. No. 3019. Thus:

> WHEREFORE, premises considered, it is hereby recommended that an Information of **VIOLATION OF R.A. 3019, SEC. 3 (e)**, for three (3) counts be **FILED** in court against **SPO3 RODRIGO DOMINGO**, **PO3 JORGE LOPEZ**, **MARIANO CRUZ** and **FERDINAND CRUZ**. While the other respondents, **P/CINSP. FERNANDO BILLEDO** and **SPOI DANIEL OCAMPO** be **ABSOLVED** from any criminal liability for lack of sufficient evidence. Further, there being an administrative case filed before the PLEB-Pasay City against police respondents, let the said forum continue its proceedings, and that the same be considered **CLOSED** and **TERMINATED**, insofar as this Office is concerned.
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> SO RESOLVED.

After the criminal informations for Violation of R.A. No. 3019 were filed, the cases were remanded to the CPO for the conduct of the new preliminary investigation on motion of the accused.

On July 27, 2001, the CPO recommended the *dismissal* of the cases for lack of merit.[6] Pertinently, 2nd Assistant City Prosecutor Joselito Vibandor explained that there was no fault on the part of the Cruzes when they reported a group of individuals drinking along an alley which prompted the police officers to respond to a call of duty. The facts and circumstances surrounding

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[5] *Id.* at 20-23.

[6] *Id.* at 24-27.

their arrest were clearly spelled out in the Affidavit of Arrest of the police officers. While it may be argued that the Cruzes may have been biased, there appeared to be a semblance of truth to their report when private respondents were arrested by the police officers. Besides, the subsequent filing of the corresponding information after the inquest investigation for a violation of a city ordinance, is *per se* an imprimatur of the legality of their arrest.

On August 29, 2001, the Ombudsman recommended the approval of the CPO Resolution. Specifically, the Review and Recommendation[7] of the Ombudsman reads:

> After giving a careful look at the records of the case and the facts and incidents that transpired, the undersigned Ombudsman Prosecutor agrees with prosecutor Vibandor that there is doubtful merit of the offenses filed for Violation of Section 3 (e), RA 3019 against the accused. It appears that the arresting policemen have in fact filed a case for Violation of Ordinance against the three (3) complainants which was indorsed for Inquest Investigation and later filed in court. This shows that there was substantial basis, of their performance of official duty, for otherwise, it would not have passed the inquest. Hence, the presence of manifest partiality or evident bad faith is gravely questionable to warrant filing of Violation of Section 3(e), RA 3019.
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> PREMISES CONSIDERED, undersigned respectfully recommends for the APPROVAL of the instant Resolution of Atty. Vibandor and the RECALL of the Informations filed with the Pasay City Regional Trial Court.

Meanwhile, the complainants were found guilty by the MeTC for Violation of City Ordinance No. 265.[8] Their conviction was affirmed by the RTC, Branch 114, Pasay City.[9] Complainants' Motion for Reconsideration was denied.[10]

Civil Case No. 00-0089, on the other hand, proceeded with the trial with the complainants presenting their first witness.

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

[8] *Id.* at 4.

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

[10] *Id.* at 17.

Before cross-examination, Ferdinand A. Cruz, one of the petitioners, filed his Motion to Dismiss,[11] alleging therein that it is the Sandiganbayan which has jurisdiction over the civil case and not the RTC; and that conformably to Section 4 of R.A. No. 8249,[12] the complainants are barred from filing a separate and independent civil action.

Public respondent denied the motion to dismiss in her assailed May 8, 2006 Order stating, among others, that under Article 269 of the Revised Penal Code, the crime of "unlawful arrest" is punishable by *arresto mayor* and a fine not exceeding 500 pesos which, under R.A. No. 7691, falls within the jurisdiction of appropriate Metropolitan Trial Court or Municipal Trial Court, as the case may be, contrary to the movant's claim that it was the Sandiganbayan which has jurisdiction over the ancillary action for damages.

Public respondent further explained that had there been a criminal case for unlawful arrest filed before the MeTC, the civil case for damages should have been transferred to it, but, there was none. She also stated that the movant failed to attach certified copies of resolutions/orders dismissing the complaint for unlawful arrest. Thus, she could not simply rely on bare assertions or conjectures but must resolve the issues raised based on competent proof.

Petitioner Ferdinand Cruz then filed a motion for reconsideration[13] but it was denied in the assailed July 12, 2006 Order.[14] Public respondent wrote that the situation was not within the purview of Section 4 of R.A. No. 8249. The provision suggests of two (2) situations. *First*, a criminal action has been instituted before the Sandiganbayan or the appropriate courts

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[11] *Id.* at 30-32.

[12] An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes.

[13] *Rollo*, pp. 38-42.

[14] *Id.* at 59-62.

after the requisite preliminary investigation, and the corresponding civil liability must be simultaneously instituted with it. *Second*, the civil case, filed ahead of the criminal case, is still pending upon the filing of the criminal action, in which case, the civil case should be transferred to the court trying the criminal case for consolidation and joint determination.

Considering the circumstances surrounding the case, the public respondent opined that the case did not fall in any of the two cited situations. Thus, she wrote:

> By reason of the dismissal of the criminal complaint for unlawful arrest during the preliminary investigation stage, there was no criminal action for unlawful arrest, from which the instant civil case was based, that was ultimately filed with the Metropolitan Trial Court of Pasay City, the appropriate court to hear and try such offense under R.A. 8249. Consequently, there is no appropriate court to which the instant case should be transferred as mandated under Section 4 of R.A. 8294. There should not have been any problem had the criminal case for unlawful arrest prospered or reached the appropriate court as ratiocinated by this Court in its Order dated May 8, 2006. But there was none.
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> xxx xxx xxx
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> Well-settled in our jurisprudence is the rule that a cause of action for damages arising from the acts or omission complained of as an offense is different and distinct from the prosecution of the offense itself. Extinction of the penal action does not carry with it the extinction of the civil action, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil liability might arise did not exist. Besides, it is elementary that an accused may be civilly liable even if acquitted of the crime charged.[15]

A Second Motion for Reconsideration[16] was filed but it was also denied by public respondent in her questioned August 26, 2006 Order.[17]

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[15] *Id.* at 61-62.

[16] *Id.* at 63-68.

[17] *Id.* at 69.

Aggrieved, petitioners come before this Court. While they admit that they are aware of the principle of the hierarchy of the courts, they opted to directly appeal before this Court considering that the issue to be resolved entails an interpretation of Section 4, R.A. No. 8249, otherwise known as the "Sandiganbayan Act," which provides:

Section 4. Section 4 of the same decree is hereby further amended to read as follows:

xxx xxx xxx

In case private individuals are charged as co-principal, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise jurisdiction over them.

Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized: Provided, however, that where the civil action had heretofore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court, as the case may be, for consolidation and joint determination with the criminal action, otherwise, **the separate civil action shall be deemed abandoned.** [Emphasis Supplied]

In this petition, the petitioners presented this lone

ISSUE

WHETHER OR NOT THE REGIONAL TRIAL COURT OR ANY OTHER COURTS HAS THE JURISDICTION TO TRY CIVIL CASE NO. 00-0089 GIVEN THE MANDATORY SIMULTANEOUS INSTITUTION AND JOINT DETERMINATION OF A CIVIL

LIABILITY WITH THE CRIMINAL ACTION AND THE EXPRESS PROHIBITION TO FILE THE SAID CIVIL ACTION SEPARATELY FROM THE CRIMINAL ACTION AS PROVIDED FOR UNDER SECTION 4 OF REPUBLIC ACT 8249?[18]

After a careful review of the records, the Court finds no commission of a grave abuse of discretion which can be attributed to the public respondent in issuing the challenged Orders dated May 8, 2006, July 12, 2006 and August 26, 2006.

As correctly pointed out by the public respondent, the subject civil case does not fall within the purview of Section 4 of R.A. No. 8249 as the latter part of this provision contemplates only two *(2)* situations. These were correctly pointed out by the public respondent as follows: *First*, a criminal action has been instituted before the Sandiganbayan or the appropriate courts after the requisite preliminary investigation, and the corresponding civil liability must be simultaneously instituted with it; and *Second*, the civil case, filed ahead of the criminal case, is still pending upon the filing of the criminal action, in which case, the civil case should be transferred to the court trying the criminal case for consolidation and joint determination.

Evidently, Section 4 of R.A. No. 8249 finds no application in this case. **No** criminal action has been filed before the Sandiganbayan or any appropriate court. Thus, there is **no** appropriate court to which the subject civil case can be transferred or consolidated as mandated by the said provision.

It is also illogical to consider the civil case as abandoned simply because the criminal cases against petitioners were dismissed at the preliminary stage. A reading of the latter part of Section 4 of R.A. No. 8294 suggests that the civil case will only be considered abandoned if there is a *pending* criminal case and the civil case was not transferred to the court trying the criminal case for joint determination.

The criminal charges against petitioners might have been dismissed at the preliminary stage for lack of probable cause,

[18] *Id.* at 6.

but it does not mean that the civil case instituted prior to the filing of the criminal complaints is already baseless as the complainants can prove their cause of action in the civil case by mere preponderance of evidence.

While the dismissal of the criminal cases against them for Violation of R.A. No. 7438 (Acts Defining Rights of Persons Under Custodial Investigation) and unlawful arrest and the conviction of the complainants for Violation of City Ordinance No. 265 (Drinking Liquor in Public Place),[19] might be factors that can be considered in their favor, the petitioners should have proceeded with the trial of the civil case pending before the public respondent instead of filing this petition.

The rule is that an order denying a motion to dismiss is merely interlocutory and, therefore, not appealable,[20] "even on pure questions of law."[21] Neither can it be subject of a petition for review on *certiorari*. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal.[22]

All told, the Court finds that the public respondent committed no grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed orders.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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[19] *Id.* at 4.

[20] *United Overseas Bank (formerly Westmont Bank) v. Hon. Judge Ros*, G.R. No. 171532, August 7, 2007, 529 SCRA 334, 343.

[21] *Atty. Sarsaba v. Fe*, G.R. No. 175910, July 30, 2009, 594 SCRA 410, 423.

[22] *United Overseas Bank v. Hon. Judge Ros*, *supra* note 20, citing *Rudecon Mananagement Corporation v. Singson*, G.R. No. 150798, March 31, 2005, 454 SCRA 612, 629.

Carpio,[*] *Velasco, Jr. (Chairperson), Abad,* and *Sereno,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 185440. July 13, 2011]

VICELET LALICON and VICELEN LALICON, *petitioners, vs.* **NATIONAL HOUSING AUTHORITY,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATION AND CONTRACTS; CONTRACTS; THE PARTY'S VIOLATION OF THE FIVE-YEAR RESTRICTION AGAINST RESALE OF THE PROPERTY ENTITLES THE NATIONAL HOUSING AUTHORITY TO RESCIND THE CONTRACT.— The contract between the NHA and the Alfaros forbade the latter from selling the land within five years from the date of the release of the mortgage in their favor. But the Alfaros sold the property to Victor on November 30, 1990 even before the NHA could release the mortgage in their favor on March 21, 1991. Clearly, the Alfaros violated the five-year restriction, thus entitling the NHA to rescind the contract.

2. ID.; ID.; ID.; ID.; THE RESTRICTION CLAUSE IS A CONDITION ON THE SALE OF THE PROPERTY RATHER THAN A CONDITION ON THE MORTGAGE CONSTITUTED ON IT.— The Lalicons contend, however, that the Alfaros did not violate the five-year restriction against

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[*] Designated as additional member in lieu of Justice Diosdado M. Peralta per Special Order No. 1029 dated June 30, 2011.

[**] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

resale since what the contract between the parties barred was a transfer of the property within five years from the release of the mortgage, not a transfer of the same prior to such release. But the Lalicons are trying to be clever. The restriction clause is more of a condition on the sale of the property to the Alfaros rather than a condition on the mortgage constituted on it. Indeed, the prohibition against resale remained even after the land had been released from the mortgage. The five-year restriction against resale, counted from the release of the property from the NHA mortgage, measures out the desired hold that the government felt it needed to ensure that its objective of providing cheap housing for the homeless is not defeated by wily entrepreneurs.

3. ID.; ID.; ID.; ID.; THE RESALE OF THE PROPERTY WITHOUT THE CONSENT OF THE NATIONAL HOUSING AUTHORITY IS A SUBSTANTIAL BREACH OF THE CONTRACT WARRANTING ITS RESCISSION.— The NHA had no obligation to grant the Lalicons' request for exemption from the five-year restriction as to warrant their proceeding with the sale when such consent was not immediately forthcoming. And the resale without the NHA's consent is a substantial breach. The essence of the government's socialized housing program is to preserve the beneficiary's ownerships for a reasonable length of time, here at least within five years from the time he acquired it free from any encumbrance.

4. ID.; ID.; ID.; RESCISSION OF CONTRACT UNDER ARTICLE 1191 AND ARTICLE 1381 OF THE CIVIL CODE, DISTINGUISHED; RESCISSION UNDER ARTICLE 1191, APPLICABLE; TEN-YEAR PRESCRIPTIVE PERIOD, APPLIED.— Invoking the RTC ruling, the Lalicons claim that under Article 1389 of the Civil Code the "action to claim rescission must be commenced within four years" from the time of the commission of the cause for it. But an action for rescission can proceed from either Article 1191 or Article 1381. It has been held that Article 1191 speaks of rescission in reciprocal obligations within the context of Article 1124 of the Old Civil Code which uses the term "resolution." Resolution applies only to reciprocal obligations such that a breach on the part of one party constitutes an implied resolutory condition which entitles the other party to rescission. Resolution grants the injured party the option to pursue, as

principal actions, either a rescission or specific performance of the obligation, with payment of damages in either case. Rescission under Article 1381, on the other hand, was taken from Article 1291 of the Old Civil Code, which is a subsidiary action, not based on a party's breach of obligation. The four-year prescriptive period provided in Article 1389 applies to rescissions under Article 1381. Here, the NHA sought annulment of the Alfaros' sale to Victor because they violated the five-year restriction against such sale provided in their contract. Thus, the CA correctly ruled that such violation comes under Article 1191 where the applicable prescriptive period is that provided in Article 1144 which is 10 years from the time the right of action accrues. The NHA's right of action accrued on February 18, 1992 when it learned of the Alfaros' forbidden sale of the property to Victor. Since the NHA filed its action for annulment of sale on April 10, 1998, it did so well within the 10-year prescriptive period.

5. ID.; ID.; ID.; SUBSEQUENT BUYERS OF THE SUBJECT PROPERTY NOT CONSIDERED BUYERS IN GOOD FAITH.— The Court also agrees with the CA that the Lalicons and Chua were not buyers in good faith. Since the five-year prohibition against alienation without the NHA's written consent was annotated on the property's title, the Lalicons very well knew that the Alfaros' sale of the property to their father, Victor, even before the release of the mortgage violated that prohibition. As regards Chua, she and a few others with her took the property by way of mortgage from Victor in 1995, well within the prohibited period. Chua knew, therefore, based on the annotated restriction on the property, that Victor had no right to mortgage the property to her group considering that the Alfaros could not yet sell the same to him without the NHA's consent. Consequently, although Victor later sold the property to Chua after the five-year restriction had lapsed, Chua cannot claim lack of awareness of the illegality of Victor's acquisition of the property from the Alfaros.

6. ID.; ID.; ID.; MUTUAL RESTITUTION IS REQUIRED IN CASES INVOLVING RESCISSION UNDER ARTICLE 1191 OF THE CIVIL CODE; RETURN OF THE FULL AMOUNT OF THE AMORTIZATIONS PAID ON THE PROPERTY PLUS THE VALUE OF THE IMPROVEMENTS INTRODUCED THEREON WITH 6% INTEREST *PER*

***ANNUM*, WARRANTED.—** [S]ince mutual restitution is required in cases involving rescission under Article 1191, the NHA must return the full amount of the amortizations it received for the property, plus the value of the improvements introduced on the same, with 6% interest *per annum* from the time of the finality of this judgment.

APPEARANCES OF COUNSEL

Quiason Makalintal Barot Torres Ibarra & Sison for petitioners.

Mary Joy D. De Guzman-Baybay and *Glenn Paul D. Armamento* for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about (a) the right of the National Housing Authority to seek annulment of sales made by housing beneficiaries of lands they bought from it within the prohibited period and (b) the distinction between actions for rescission instituted under Article 1191 of the Civil Code and those instituted under Article 1381 of the same code.

The Facts and the Case

On November 25, 1980 the National Housing Authority (NHA) executed a Deed of Sale with Mortgage over a Quezon City lot[1] in favor of the spouses Isidro and Flaviana Alfaro (the Alfaros). In due time, the Quezon City Registry of Deeds issued Transfer Certificate of Title (TCT) 277321 in the name of the Alfaros. The deed of sale provided, among others, that the Alfaros could sell the land within five years from the date of its release from mortgage without NHA's prior written consent. Thus:

x x x. 5. Except by hereditary succession, the lot herein sold and conveyed, or any part thereof, cannot be alienated, transferred or encumbered within five (5) years **from the date of release of**

[1] Lot 3, Block 2 of consolidation and subdivision plan Pcs-04-000033.

herein mortgage without the prior written consent and authority from the VENDOR-MORTGAGEE (NHA). x x x.[2] (Emphasis supplied)

The mortgage and the restriction on sale were annotated on the Alfaros' title on April 14, 1981.

About nine years later or on November 30, 1990, while the mortgage on the land subsisted, the Alfaros sold the same to their son, Victor Alfaro, who had taken in a common-law wife, Cecilia, with whom he had two daughters, petitioners Vicelet and Vicelen Lalicon (the Lalicons). Cecilia, who had the means, had a house built on the property and paid for the amortizations. After full payment of the loan or on March 21, 1991 the NHA released the mortgage. Six days later or on March 27 Victor transferred ownership of the land to his illegitimate daughters.

About four and a half years after the release of the mortgage or on October 4, 1995, Victor registered the November 30, 1990 sale of the land in his favor, resulting in the cancellation of his parents' title. The register of deeds issued TCT 140646 in Victor's name. On December 14, 1995 Victor mortgaged the land to Marcela Lao Chua, Rosa Sy, Amparo Ong, and Ida See. Subsequently, on February 14, 1997 Victor sold the property to Chua, one of the mortgagees, resulting in the cancellation of his TCT 140646 and the issuance of TCT N-172342 in Chua's name.

A year later or on April 10, 1998 the NHA instituted a case before the Quezon City Regional Trial Court (RTC) for the annulment of the NHA's 1980 sale of the land to the Alfaros, the latter's 1990 sale of the land to their son Victor, and the subsequent sale of the same to Chua, made in violation of NHA rules and regulations.

On February 12, 2004 the RTC rendered a decision in the case. It ruled that, although the Alfaros clearly violated the five-year prohibition, the NHA could no longer rescind its sale to them since its right to do so had already prescribed, applying Article 1389 of the New Civil Code. The NHA and the Lalicons,

[2] *Rollo*, p. 73.

who intervened, filed their respective appeals to the Court of Appeals (CA).

On August 1, 2008 the CA reversed the RTC decision and found the NHA entitled to rescission. The CA declared TCT 277321 in the name of the Alfaros and all subsequent titles and deeds of sale null and void. It ordered Chua to reconvey the subject land to the NHA but the latter must pay the Lalicons the full amount of their amortization, plus interest, and the value of the improvements they constructed on the property.

The Issues Presented

The issues in this case are:

1. Whether or not the CA erred in holding that the Alfaros violated their contract with the NHA;

2. Whether or not the NHA's right to rescind has prescribed; and

3. Whether or not the subsequent buyers of the land acted in good faith and their rights, therefore, cannot be affected by the rescission.

The Rulings of the Court

First. The contract between the NHA and the Alfaros forbade the latter from selling the land within five years from the date of the release of the mortgage in their favor.[3] But the Alfaros sold the property to Victor on November 30, 1990 even before the NHA could release the mortgage in their favor on March 21, 1991. Clearly, the Alfaros violated the five-year restriction, thus entitling the NHA to rescind the contract.

The Lalicons contend, however, that the Alfaros did not violate the five-year restriction against resale since what the contract between the parties barred was a transfer of the property within five years from the release of the mortgage, not a transfer of the same prior to such release.

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[3] *Id*.

But the Lalicons are trying to be clever. The restriction clause is more of a condition on the sale of the property to the Alfaros rather than a condition on the mortgage constituted on it. Indeed, the prohibition against resale remained even after the land had been released from the mortgage. The five-year restriction against resale, counted from the release of the property from the NHA mortgage, measures out the desired hold that the government felt it needed to ensure that its objective of providing cheap housing for the homeless is not defeated by wily entrepreneurs.

The Lalicons claim that the NHA unreasonably ignored their letters that asked for consent to the resale of the subject property. They also claim that their failure to get NHA's prior written consent was not such a substantial breach that warranted rescission.

But the NHA had no obligation to grant the Lalicons' request for exemption from the five-year restriction as to warrant their proceeding with the sale when such consent was not immediately forthcoming. And the resale without the NHA's consent is a substantial breach. The essence of the government's socialized housing program is to preserve the beneficiary's ownerships for a reasonable length of time, here at least within five years from the time he acquired it free from any encumbrance.

Second. Invoking the RTC ruling, the Lalicons claim that under Article 1389 of the Civil Code the "action to claim rescission must be commenced within four years" from the time of the commission of the cause for it.

But an action for rescission can proceed from either Article 1191 or Article 1381. It has been held that Article 1191 speaks of rescission in reciprocal obligations within the context of Article 1124 of the Old Civil Code which uses the term "resolution." Resolution applies only to reciprocal obligations such that a breach on the part of one party constitutes an implied resolutory condition which entitles the other party to rescission. Resolution grants the injured party the option to pursue, as principal actions, either a rescission or specific performance of the obligation, with payment of damages in either case.

Rescission under Article 1381, on the other hand, was taken from Article 1291 of the Old Civil Code, which is a subsidiary action, not based on a party's breach of obligation.[4] The four-year prescriptive period provided in Article 1389 applies to rescissions under Article 1381.

Here, the NHA sought annulment of the Alfaros' sale to Victor because they violated the five-year restriction against such sale provided in their contract. Thus, the CA correctly ruled that such violation comes under Article 1191 where the applicable prescriptive period is that provided in Article 1144 which is 10 years from the time the right of action accrues. The NHA's right of action accrued on February 18, 1992 when it learned of the Alfaros' forbidden sale of the property to Victor. Since the NHA filed its action for annulment of sale on April 10, 1998, it did so well within the 10-year prescriptive period.

Third. The Court also agrees with the CA that the Lalicons and Chua were not buyers in good faith. Since the five-year prohibition against alienation without the NHA's written consent was annotated on the property's title, the Lalicons very well knew that the Alfaros' sale of the property to their father, Victor, even before the release of the mortgage violated that prohibition.

As regards Chua, she and a few others with her took the property by way of mortgage from Victor in 1995, well within the prohibited period. Chua knew, therefore, based on the annotated restriction on the property, that Victor had no right to mortgage the property to her group considering that the Alfaros could not yet sell the same to him without the NHA's consent. Consequently, although Victor later sold the property to Chua after the five-year restriction had lapsed, Chua cannot claim lack of awareness of the illegality of Victor's acquisition of the property from the Alfaros.

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[4] *Congregation of the Religious of the Virgin Mary v. Orola*, G.R. No. 169790, April 30, 2008, 553 SCRA 578, 585.

Lastly, since mutual restitution is required in cases involving rescission under Article 1191,[5] the NHA must return the full amount of the amortizations it received for the property, plus the value of the improvements introduced on the same, with 6% interest *per annum* from the time of the finality of this judgment. The Court will no longer dwell on the matter as to who has a better right to receive the amount from the NHA: the Lalicons, who paid the amortizations and occupied the property, or Chua, who bought the subject lot from Victor and obtained for herself a title to the same, as this matter was not raised as one of the issues in this case. Chua's appeal to the Court in a separate case[6] having been denied due course and NHA failing to file its own petition for review, the CA decision ordering the restitution in favor of the Lalicons has now become final and binding against them.

WHEREFORE, the Court *AFFIRMS* the Decision of the Court of Appeals in CA-G.R. CV 82298 dated August 1, 2008.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Mendoza,* and *Sereno,*[**] *JJ.,* concur.

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[5] *Laperal v. Solid Homes, Inc.*, 499 Phil. 367, 378 (2005).

[6] *Chua v. National Housing Authority*, G.R. No. 183989, October 22, 2008.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order 1029 dated June 30, 2011.

[**] Designated as additional member, per Special Order 1028 dated June 21, 2011.

THIRD DIVISION

[G.R. No. 186467. July 13, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAIME GATLABAYAN *Y* BATARA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL IN CRIMINAL CASES THROWS THE WHOLE CASE OPEN FOR REVIEW AND IT IS THE DUTY OF THE APPELLATE COURT TO CORRECT, CITE AND APPRECIATE ERRORS IN THE APPEALED JUDGMENT WHETHER THEY ARE ASSIGNED OR UNASSIGNED.— Let it be underscored that appeal in criminal cases throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned. Considering that what is at stake here is no less than the liberty of the accused, this Court has meticulously and thoroughly reviewed and examined the records of the case, and finds that there is merit in the appeal.

2. ID.; APPEALS; THE TRIAL COURT'S FINDINGS OF FACT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ENTITLED TO GREAT WEIGHT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTIONS; PRESENT.— As a general rule, the trial court's findings of fact, especially when affirmed by the CA, are entitled to great weight and will not be disturbed on appeal. The rule, however, admits of exceptions and does not apply where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misplaced. The case at bench falls under the above exception and, hence, a departure from the general rule is warranted.

3. CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; ESSENTIAL ELEMENTS.— Jurisprudence has firmly entrenched that in prosecution of illegal sale of dangerous drugs, the following essential elements must be established: (1) the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) the buyer

and seller were identified. Implicit in all these is the need for proof that the transaction or sale actually took place, coupled with the presentation in court of the confiscated prohibited or regulated drug as evidence.

4. ID.; ID.; ID.; THE IDENTITY OF THE DANGEROUS DRUG MUST BE ESTABLISHED BEYOND REASONABLE DOUBT.— The narcotic substance itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction. It is therefore of prime importance that the identity of the dangerous drug be likewise established beyond reasonable doubt. Otherwise stated, it must be proven with exactitude that the substance bought during the buy-bust operation is the same substance offered in evidence before the court. Thus, every fact necessary to constitute the offense must be established. The chain of custody requirement ensures that unnecessary doubts concerning the identity of the evidence are removed.

5. ID.; ID.; CHAIN OF CUSTODY; ESSENTIAL LINKS IN THE CHAIN OF CUSTODY IN A BUY BUST OPERATION; NOT ESTABLISHED.— In *People v. Kamad*, the Court enumerated the links that the prosecution must establish in the chain of custody in a buy-bust situation to be as follows: *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 by the forensic chemist to the court. An examination of the case records show that while the identities of the seller and the buyer and the consummation of the transaction involving the sale of illegal drug on September 10, 2002 have been proven by the prosecution through the testimony of PO1 Antonio as corroborated by the testimony of PO1 Jiro III, the Court, nonetheless, finds the prosecution evidence to be deficient for failure to adequately show the essential links in the chain of custody.

6. ID.; ID.; ID.; MARKING OF THE CONFISCATED ITEMS, HOW DONE; NOT COMPLIED WITH.— The prosecution evidence also failed to identify the person who marked the

sachet, how the same was done, and who witnessed the marking. In *People v. Martinez*, the Court ruled that the "marking" of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator, and (2) immediately upon confiscation – in order to protect innocent persons from dubious and concocted searches, and the apprehending officers as well from harassment suits based on planting of evidence and on allegations of robbery or theft. Indeed, the records of the case are bereft of any detail relating to the marking of the confiscated sachet.

7. ID.; ID.; ID.; AN UNBROKEN CHAIN IS INDISPENSABLE AND ESSENTIAL IN THE PROSECUTION OF DRUG CASES DUE TO SUSCEPTIBILITY OF THE SEIZED DRUG TO ALTERATION, TAMPERING, CONTAMINATION AND SUBSTITUTION AND EXCHANGE.— While a perfect chain of custody is almost always impossible to achieve, an unbroken chain becomes indispensable and essential in the prosecution of drug cases owing to susceptibility of the seized drug to alteration, tampering, contamination and even substitution and exchange. Hence, each and every link in the custody must be established beginning from the seizure of the *shabu* from the accused during the entrapment operation until its submission by the forensic chemist to the RTC. Indeed, the Court cannot entirely discount the likelihood or at least the possibility that there could have been alteration, tampering or substitution of substance in the chain of custody of the subject *shabu*, inadvertently or otherwise, from another case with a similar narcotic substance seized or subjected for chemical analysis.

8. ID.; ID.; ID.; THE FAILURE TO PRESENT THE SEIZED DRUGS AS EVIDENCE AND MARKED AS AN EXHIBIT DURING THE PRE-TRIAL OR TRIAL PROPER AND THE FAILURE OF THE ARRESTING OFFICERS TO PROPERLY IDENTIFY THE SEIZED DRUG AND TO TESTIFY AS TO ITS CONDITION WHILE IT WAS IN THEIR POSSESSION AND CONTROL DO NOT ONLY CAST DOUBT ON THE IDENTITY OF THE *CORPUS DELICTI* BUT ALSO TENDS TO DISCREDIT THE CLAIM OF REGULARITY IN THE CONDUCT OF OFFICIAL POLICE OPERATION.— Moreover, it must be pointed out that the subject 0.03 gram of *shabu* was never presented as

evidence and marked as an exhibit during the pre-trial or even in the course of the trial proper. Neither PO1 Antonio nor PO1 Jiro III was confronted with it at the witness stand for proper identification and observation of the uniqueness of the subject narcotic substance. They were not able to testify as to the condition of the item while it was in their possession and control. Said flaw militates against the prosecution's cause for it does not only cast doubt on the identity of the *corpus delicti* but it also tends to discredit, if not negate, the claim of regularity in the conduct of official police operation. Oddly, the plastic sachet containing the subject *shabu* was formally offered by the prosecution as Exhibit "H" and admitted by the RTC per its Order dated August 31, 2004. The defense was clearly sleeping on its feet when it did not pose any objection to the prosecution's offer of evidence. x x x. As this Court held in *Catuiran v. People*, the failure of the prosecution to offer the testimony of key witnesses to establish a sufficiently complete chain of custody of a specimen of *shabu*, and the irregularity which characterized the handling of the evidence before the same was finally offered in court, fatally conflicts with every proposition relative to the culpability of the accused.

9. ID.; ID.; FAILURE TO PROVE THE ELEMENTS THEREOF CREATES A REASONABLE DOUBT ON THE ACCUSED'S CRIMINAL LIABILITY.— In view of the foregoing loopholes in the evidence adduced against the accused as well as the gaps in the chain of custody, it can be reasonably concluded that the prosecution failed to convincingly establish the identity and integrity of the dangerous drug. Accordingly, there could be no assurance that the specimen of *shabu* offered in court as evidence against the accused was the same one seized from him, brought to the police station and afterwards, submitted for laboratory testing – especially considering that since the inception of this case, he has consistently denied that the supposed plastic sachet of *shabu* was not recovered from his possession when he was arrested at the "peryahan" on September 10, 2002 at 8:00 o'clock in the evening. In effect, the prosecution failed to fully prove the elements of the crime charged creating reasonable doubt on his criminal liability.

10. ID.; ID.; THE FLAGRANT PROCEDURAL LAPSES THE POLICE OFFICERS COMMITTED IN HANDLING THE CONFISCATED *SHABU* IN VIOLATION OF THE CHAIN

OF CUSTODY REQUIREMENT EFFECTIVELY NEGATE THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES.— In sustaining the conviction, the courts *a quo* relied on the evidentiary presumption that official duties have been regularly performed. Admittedly, the defense did not adduce evidence showing that PO1 Antonio and PO1 Jiro III had any ill motive to falsify their testimony. Nonetheless, the flagrant procedural lapses the police officers committed in handling the allegedly confiscated *shabu* in violation of the chain of custody requirement effectively negate the presumption of regularity in the performance of duties. Any taint of irregularity affects the whole performance and should make the presumption unavailable. It must be emphasized that the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt.

11. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; COURTS CANNOT MAGNIFY THE WEAKNESS OF THE DEFENSE AND OVERLOOK THE PROSECUTION'S FAILURE TO DISCHARGE THE *ONUS PROBANDI*.— The weakness of the defense of the accused, mere denial and frame-up, cannot justify his conviction. The burden is always on the prosecution to prove his guilt beyond reasonable doubt, and not on him to prove his innocence. The merit of his defense is not the issue here. It is safely entrenched in our jurisprudence that the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense. A finding of guilt must solely rest on the prosecution's own evidence, not on the weakness or even absence of that for the defense. Courts cannot magnify the weakness of the defense and overlook the prosecution's failure to discharge the *onus probandi*.

12. ID.; ID.; ID.; PROOF BEYOND REASONABLE DOUBT THAT THE CRIME WAS COMMITTED AND THAT THE ACCUSED COMMITTED THE CRIME ARE REQUIRED TO OVERCOME THE PRESUMPTION OF INNOCENCE OF THE ACCUSED.— In our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. In order to convict an accused, the circumstances of the case must exclude all and every hypothesis

consistent with his innocence. In the case at bench, the evidence adduced by the prosecution failed to overcome the constitutional presumption of innocence of the accused. What is required is that there be proof beyond reasonable doubt that the crime was committed and that the accused committed the crime. It is only when the conscience is satisfied that the crime has indeed been committed by the person on trial that the judgment will be for conviction. The Court is not unaware of the drug menace that beset our country and the direct link of certain crimes to drug abuse. The unrelenting drive of our law enforcers against trafficking and use of illegal drugs and other substance is indeed commendable. Those who engage in the illicit trade of dangerous drugs and prey on the misguided members of the society, especially the susceptible youth, must be caught and properly prosecuted. Although the courts are committed to assist the government in its campaign against illegal drugs, a conviction under the Comprehensive Dangerous Drugs Act of 2002 can only be obtained after the prosecution discharges its constitutional burden to prove guilt beyond reasonable doubt. Otherwise, this Court is duty-bound to uphold the constitutional presumption of innocence.

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 July 29, 2008 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 02221, which affirmed the May 10, 2005 Decision[2] of the Regional Trial Court of San Mateo, Rizal, Branch 77 *(RTC)*, in Criminal Case No. 6384, finding accused Jaime Gatlabayan *y* Batara *(Gatlabayan)* guilty beyond reasonable doubt of violation of Section 5 (1), Article II of

[1] *Rollo* pp. 2-12.

[2] Records, pp. 154-163.

Republic Act *(R.A.)* No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Information[3] reads:

> That on or about the 10th day of September, 2002 in the Municipality of Rodriguez, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to another person one (1) heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance which gave positive result to the test for Methamphetamine Hydrochloride, a dangerous drug, and which substance produces a physiological action similar to amphetamine or other compound thereof producing similar physiological effects.
>
> CONTRARY TO LAW.

During the trial, the parties agreed to stipulate on the testimonies of prosecution witnesses, Police Officer 1 (PO1) Reynaldo Albarico and Police Inspector (P/Insp.) Joseph Perdido, the forensic chemist. The prosecution, thereafter, presented PO1 Fortunato Jiro III *(PIO Jiro III)* and PO1 Jose Gordon Antonio *(PO1 Antonio)* at the witness stand. The defense, on the other hand, presented Gatlabayan, the accused himself.

The Version of the Prosecution

The People's version of the incident has been summarized by the Office of the Solicitor General *(OSG)* in its Brief[4] as follows:

> On September 10, 2002, at around 8:30 in the evening, while PO1 Jose Gordon Antonio, a member of PNP Intelligence Operative Division of Rodriguez, Rizal, together with his colleagues, PO1 Fortunato Jiro and PO1 Albarico, were inside their station, they received an information from an "asset" that appellant Jaime Gatlabayan *alias* "Pungay" was rampantly selling illegal drugs at Carlton Village, Brgy. Manggahan, Rodriguez, Rizal. On the basis of said information, the police officers immediately decided to form

[3] *Id* at 1-2.

[4] CA *rollo*, pp. 72-102.

a composite team for the conduct of a buy-bust operation against appellant. Consequently, PO1 Antonio was tasked as the poseur-buyer equipped with a 100.00 bill buy-bust money where his initials "JGA" was written thereon, while PO1 Jiro and PO1 Albarico acted as members. Thereupon, the composite team recorded in their police blotter the planned buy-bust operation. Thereafter, the three (3) police officers with their "asset" proceeded to the target area on board an owner type jeep.

Arriving thereat, the civilian asset pointed appellant to the buy-bust team. Appellant was then standing under a Sampaloc tree at Carlton Village, Brgy. Manggahan, Rodriguez, Rizal. Afterwards, poseur-buyer PO1 Antonio, from a distance of 10 meters away from appellant alighted from the car while the rest of the composite team and the informer remained in the vehicle. Meanwhile, poseur-buyer PO1 Antonio walked towards appellant. Upon seeing PO1 Antonio, appellant asked if he wants "to score," (which in local parlance means, if he wants to buy "*shabu*") to which PO1 Antonio readily answered yes, and simultaneously handed to appellant the ₱100 marked money. In turn, appellant gave him a small plastic sachet containing white crystalline substance suspected of "*shabu*." Upon consummation of the sale, PO1 Antonio gave the pre-arranged signal of waiving his hand. Seeing this, police officers Jiro and Albarico rushed to the *locus criminis* and simultaneously introduced themselves as police officers. Then, PO1 Jiro directed appellant to empty his pocket and the ₱100.00 marked money fell on the ground. Thereafter, appellant was arrested and was apprised of his constitutional rights and was likewise informed of the crime he committed.

Appellant was brought to the nearby police station of Rodriguez, Rizal for investigation. Subsequently, the plastic sachet sold by appellant to poseur-buyer PO1 Antonio was subjected to a laboratory examination and forensic chemist Police Inspector Joseph M. Perdido of the PNP Crime Laboratory in his Chemistry Report No. D-1784-02E found that the subject crystalline substance is positive for methamphetamine hydrochloride or "*shabu*." Consequently, appellant was charged for violation of Section 5, Paragraph 1, Article II of R.A. 9165 or for "Illegal Sale of Dangerous Drugs."[5]

[5] *Id.* at 76-79.

The Version of the Defense

In his Brief,[6] Gatlabayan denied that he was caught, *in flagrante*, selling *shabu* and claimed that he was just a victim of police frame-up. The accused presents the following version of what transpired:

> JAIME GATLABAYAN was at the "*peryahan*" with a companion on September 10, 2002, at 8:00 o'clock in the evening. While the accused was singing, PO1 Antonio along with PO1 Jiro arrived and suddenly handcuffed him. The accused asked "Sir, *anong kasalanan ko*?" PO1 Antonio just replied "*basta sumama ka na lang*." He was brought to the police station and was incarcerated. The accused was not frisked when he was arrested. He denied the offense charged against him.[7]

On May 10, 2005, the RTC rendered its judgment rejecting the defense of frame-up proffered by the accused and declared that the same fell flat in the face of the affirmative testimony of prosecution witnesses, PO1 Antonio and PO1 Jiro III, who categorically and forthrightly testified that he was caught *in flagrante delicto* selling *shabu*. The trial court ruled that the presumption of regularity in the performance of duties in favor of the police operatives had not been overturned in the absence of clear showing that they had been impelled by any ill motive to falsely testify against him for such serious crime. It added that the alleged inconsistencies in the testimonies of the police officers pertained to inconsequential or collateral matters which did not impair their credibility. The dispositive portion of the RTC decision reads:

> WHEREFORE, the guilt of the accused having been proven beyond reasonable doubt as charged in the information, without any aggravating or qualifying circumstance, accused JAIME GATLABAYAN *Y* BATARA is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay the fine of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS.

[6] *Id.* at 37-54.

[7] *Id.* at 42.

SO ORDERED.[8]

On appeal, the CA affirmed the conviction of the accused on the basis of the testimony of PO1 Antonio and PO1 Jiro, III which it found credible and sufficient to sustain a conviction. The CA was of the view that the presumption of regularity in the performance of official duty was not sufficiently controverted by him. It ruled that the prosecution was able to satisfactorily establish the elements of the crime of illegal sale of dangerous drugs as well as the identity of the accused. Lastly, the CA debunked his defense that he was a victim of frame-up and that he was not arrested pursuant to a valid buy-bust operation, for failure to substantiate the same. The dispositive portion of its Decision reads:

WHEREFORE, the assailed *Decision* dated 10 May 2005 of the Regional Trial Court, Fourth Judicial Region, San Mateo, Rizal, Branch 77, is hereby AFFIRMED.

SO ORDERED.[9]

On August 20, 2008, Gatlabayan filed a Notice of Appeal,[10] which was given due course by CA in its Minute Resolution[11] dated September 23, 2008.

On April 26, 2010, this Court issued a resolution notifying the parties that they may file their respective supplemental briefs, if they so desire, within thirty days from notice. The OSG filed a manifestation dated May 29, 2009 informing the Court that it would no longer file a supplemental brief. On June 23, 2009, the accused filed his supplemental brief.[12]

THE ISSUES

Maintaining his innocence, Gatlabayan imputes to the trial court the following errors:

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[8] Records, p. 163.

[9] CA *rollo*, p. 121.

[10] *Id.* at 124-125.

[11] *Id.* at 127.

[12] *Rollo*, pp. 25-32.

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF VIOLATION OF SECTION 5, ARTICLE II, R.A. 9165 DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE OFFENSE CHARGED BEYOND REASONABLE DOUBT.

II

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCONSISTENT AND CONTRADICTING TESTIMONIES OF THE PROSECUTION WITNESSES.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 5, ARTICLE II, R.A. 9165 DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE CHAIN OF CUSTODY OF THE ILLEGAL DRUG.

In his Supplemental Brief, Gatlabayan presents the following additional assignment of error:

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THE CHAIN OF CUSTODY OF THE ALLEGED SEIZED ILLEGAL DRUGS, IN VIOLATION OF SECTIONS 21 AND 86 OF R.A. NO. 9165.

The accused is of the stance that the prosecution failed to prove his guilt beyond reasonable doubt. He avers that both the RTC and the CA were mistaken in upholding the presumption of regularity in the performance of official functions in favor of the police officers and giving undue credence to their testimonies which, he claims, were laced with inconsistencies that cast serious doubt on their credibility and the validity of the alleged buy-bust operation. He posits that the prosecution failed to establish the material details of said entrapment operation and that his arrest was invalid. He argues that the failure of the apprehending team to observe the procedure outlined by Section 21 of R.A.

No. 9165 impaired the prosecution's case. Finally, he assails the prosecution evidence for its failure to establish the proper chain of custody of the *shabu* allegedly seized from him.

The OSG, on the other hand, maintains that the testimonies of PO1 Antonio and PO1 Jiro III were credible and sufficient to convict. It insists that the culpability of the accused for the crime of illegal sale of *shabu* was proven beyond reasonable doubt.

The Court's Ruling:

The core issue in this case is whether or not sufficient evidence exists to support the conviction of the accused for violation of Section 5, Article II of R.A. No. 9165.

Let it be underscored that appeal in criminal cases throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned.[13] Considering that what is at stake here is no less than the liberty of the accused, this Court has meticulously and thoroughly reviewed and examined the records of the case, and finds that there is merit in the appeal.

As a general rule, the trial court's findings of fact, especially when affirmed by the CA, are entitled to great weight and will not be disturbed on appeal. The rule, however, admits of exceptions and does not apply where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misplaced.[14] The case at bench falls under the above exception and, hence, a departure from the general rule is warranted.

Jurisprudence has firmly entrenched that in prosecution of illegal sale of dangerous drugs, the following essential elements must be established: (1) the transaction or sale took place; (2)

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[13] *People v. Balagat*, G.R. No. 177163, April 24, 2009, 586 SCRA 640, 644-645.

[14] *People v. Robles*, G.R. No. 177220, April 24, 2009, 586 SCRA 647, 654.

the *corpus delicti* or the illicit drug was presented as evidence; and (3) the buyer and seller were identified.[15] Implicit in all these is the need for proof that the transaction or sale actually took place, coupled with the presentation in court of the confiscated prohibited or regulated drug as evidence.

The narcotic substance itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction. It is therefore of prime importance that the identity of the dangerous drug be likewise established beyond reasonable doubt.[16] Otherwise stated, it must be proven with exactitude that the substance bought during the buy-bust operation is the same substance offered in evidence before the court. Thus, every fact necessary to constitute the offense must be established. The chain of custody requirement ensures that unnecessary doubts concerning the identity of the evidence are removed.[17]

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165 defines "Chain of Custody" as follows:

> "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody 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.

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[15] *People v. De la Cruz*, G.R. No. 177222, October 29, 2008, 570 SCRA 273, 283.

[16] *People v. Frondozo*, G.R. No. 177164, June 30, 2009, 591 SCRA 407, 417.

[17] *People v. De Leon*, G.R. No. 186471, January 25, 2010, 611 SCRA 118, 132.

Particularly instructive is the case of *Malillin v. People*[18] where the Court explained how the chain of custody or movement of the seized evidence should be maintained and why this must be shown by evidence, *viz*:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

In *People v. Kamad*,[19] the Court enumerated the links that the prosecution must establish in the chain of custody in a buy-bust situation to be as follows: *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 by the forensic chemist to the court.

An examination of the case records show that while the identities of the seller and the buyer and the consummation of the transaction involving the sale of illegal drug on September 10, 2002 have been proven by the prosecution through the testimony of PO1 Antonio as corroborated by the testimony of PO1 Jiro III, the Court, nonetheless, finds the prosecution evidence to be deficient for failure to adequately show the essential links in the chain of custody. This glaring deficiency can be readily

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[18] G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

[19] G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

seen from the testimony of the *poseur* buyer PO1 Antonio which glossed over said required details, thus:

> Fiscal Rolando T. Majomot
> (On Direct Examination)
>
> Q: Now when this civilian informer pointed to that person whom you called as *alias* Pungay, what did you do?
> A: I was still ten (10) meters away from *alias* Pungay when I alighted from the vehicle and I approached him, sir.
>
> Q: What happened next when you approached *alias* Pungay?
> A: When *alias* Pungay saw me and when he noticed that I was looking for somebody he offered me and asked me if I want to "*iskor*", sir.
>
> Q: Were there any other persons in that vicinity, Mr. witness?
> A: I did not see any other person in that place, sir.
>
> Q: When *alias* Pungay offered to you, what did you do?
> A: I gave him the marked money, sir, and he also handed to me a small plastic sachet containing suspected *shabu* and after that I wa[i]ved to my companions, sir.
>
> Q: After wa[i]ving to your companions, what happened next, if any, Mr. witness?
> A: I heard that PO1 Jiro directed *alias* Pungay to invert his pocket, sir, and from it the One Hundred Peso (₱100.00) bill which I used in buying *shabu* from him fell on the ground and at that moment my co-police officers arrested him, sir.
>
> Q: Who picked up the One Hundred Peso (₱100.00) bill (*sic*) fell on the ground?
> A: PO1 Albarico, sir.
>
> Q: What happened next after that?
> A: We arrested him and informed him of his constitutional rights and we also informed him of the law which he violated and I also introduced myself to him as a policeman, sir.
>
> Q: This person whom you arrested was only known as *alias* Pungay. When did the first time you know the true name of this person?
> A: After he was brought to the police station, sir, we asked him of his true name and after that we turned over to the

police investigator the evidence which we confiscated from him, sir.

Q: What is the true name of the accused?
A: Jaime Gatlabayan *y* Batara, sir.[20]

xxx xxx xxx

Q: After that Mr. witness, what did you do?
A: We forwarded to the PNP Crime Laboratory the evidence which we confiscated for examination, sir.

Q: I am showing to you a letter request Mr. witness, is this the request you are referring to?
A: Yes, sir.

Q: Who signed this request?
A: It was signed by our Deputy Chief of Police, sir.[21]

PO1 Jiro, III, on the other hand, has no knowledge or any participation in the chain of custody as revealed by his testimony, *viz*:

Q: Now, what happened next, Mr. Witness, when you arrested the accused after you picked up the money?
A: We informed him of his constitutional rights and thereafter, we brought him to the police station, sir.

Q: By the way, who arrested the accused?
A: Me and PO1 Albarico, sir.

Q: Where is now the accused?
A: There sir.
(Witness pointing to a certain man inside the Courtroom who when asked answered to the name of Jaime Gatlabayan).

Q: Do you know also or have knowledge about the one handed to Gordon from the accused, how many sachet in that buy-bust operation?
A: As far as I know, only one (1) sachet, sir.

Q: Was it shown to you by Gordon?

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[20] TSN dated April 21, 2004, pp. 5-6.

[21] *Id.* at 7.

A: I did not see it, sir.[22] (Underscoring Ours)

It is significant to note that the foregoing testimonies of the prosecution witnesses hardly touched on the chain of custody of the seized evidence. The testimony of PO1 Antonio clearly lacked specifics on how the confiscated *shabu* was handled immediately after the arrest of the accused. Although PO1 Antonio testified that he seized the small plastic sachet containing the shabu from the accused, he never disclosed the identity of the person/s who had control and possession of the *shabu* after its seizure and at the time of its transportation to the police station. Neither did he testify that he retained possession of the seized item from the place of the arrest to the police station. In the absence of clear evidence, the Court cannot presume that PO1 Antonio, as the *poseur* buyer, handled the seized sachet — to the exclusion of others — during its transfer from the place of arrest and confiscation to the police station.

The prosecution evidence also failed to identify the person who marked the sachet, how the same was done, and who witnessed the marking. In *People v. Martinez*,[23] the Court ruled that the "marking" of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator, and (2) immediately upon confiscation — in order to protect innocent persons from dubious and concocted searches, and the apprehending officers as well from harassment suits based on planting of evidence and on allegations of robbery or theft.

Indeed, the records of the case are bereft of any detail relating to the marking of the confiscated sachet. All that the prosecution adduced on this score were the respective *Sinumpaang Salaysay*[24] of PO1 Antonio and PO1 Jiro III, wherein they declared that after the apprehension of Gatbalayan, they brought him as well as the seized item to the police station where the confiscated

[22] TSN dated December 10, 2003, p. 8.

[23] G.R. No. 191366, December 13, 2010.

[24] Records, pp. 129-130.

plastic sachet containing *shabu* was marked as "EXHIBIT 1 dtd 10 Sept. 02," and that it was ordered to be submitted (*ipinasumite*) to the Philippine National Police *(PNP)* Crime Laboratory for examination. The identity of the officer who made the marking and whether the marking was done in the presence of the accused were, however, not at all clear from the above documentary evidence.

It is likewise noteworthy that the prosecution failed to present evidence pertaining to the identity of the police investigator to whom the buy-bust team turned over the seized item. Although the Request for Laboratory Examination[25] was signed by a certain Santiago for and in behalf of Police Senior Inspector Anastacio Benzon, it was not shown that he was the same official who received the subject *shabu* from the buy-bust team or from the police investigator. A perusal of the Request for Laboratory Examination and the Chemistry Report No. D-1784-02E[26] reveals that the marking on the plastic sachet containing the subject *shabu* was *changed* to "EXHIBIT 1 JBG." The prosecution, however, failed to disclose the name and identity of the police officer who changed the marking of the specimen. Further, the prosecution evidence is wanting as to the identity of the person who submitted the specimen to the PNP Crime Laboratory; as to whether the forensic chemist whose name appeared in the chemistry report was the one who received the subject *shabu* when it was forwarded to the crime laboratory; and as to who exercised custody and possession of the specimen after the chemical examination and before it was offered in court. Neither was there any evidence adduced to show how the seized *shabu* was handled, stored and safeguarded pending its offer as evidence in court.

The Court, at this point, takes note of the RTC Order dated July 23, 2003 dispensing with the testimony of the forensic chemical officer and bearing the matters stipulated upon by the parties. The Court views the stipulation as confined merely to the handling of the specimen at the forensic laboratory and to

[25] *Id.* at 136.

[26] *Id.* at 133.

the analytical results obtained. *People v. Almorfe*[27] teaches that the testimony of the forensic chemist which is stipulated upon does not cover the manner as to how the specimen was handled before and after it came to the possession of the forensic chemist. It bears stressing that although the parties stipulated on the results of the laboratory examination, no stipulation was made with respect to the ultimate source of the drug submitted for examination.

While a perfect chain of custody is almost always impossible to achieve, an unbroken chain becomes indispensable and essential in the prosecution of drug cases owing to susceptibility of the seized drug to alteration, tampering, contamination and even substitution and exchange.[28] Hence, each and every link in the custody must be established beginning from the seizure of the *shabu* from the accused during the entrapment operation until its submission by the forensic chemist to the RTC. Indeed, the Court cannot entirely discount the likelihood or at least the possibility that there could have been alteration, tampering or substitution of substance in the chain of custody of the subject shabu, inadvertently or otherwise, from another case with a similar narcotic substance seized or subjected for chemical analysis.

Moreover, it must be pointed out that the subject 0.03 gram of *shabu* was never presented as evidence and marked as an exhibit during the pre-trial or even in the course of the trial proper. Neither PO1 Antonio nor PO1 Jiro III was confronted with it at the witness stand for proper identification and observation of the uniqueness of the subject narcotic substance. They were not able to testify as to the condition of the item while it was in their possession and control. Said flaw militates against the prosecution's cause for it does not only cast doubt on the identity of the *corpus delicti* but it also tends to discredit, if not negate, the claim of regularity in the conduct of official police operation. Oddly, the plastic sachet containing the subject *shabu* was formally offered by the prosecution as Exhibit "H"[29]

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[27] G.R. No. 181831, March 29, 2010, 617 SCRA 52, 61.

[28] *Id.* at 61-62.

[29] Records, pp. 139-140.

and admitted by the RTC per its Order[30] dated August 31, 2004. The defense was clearly sleeping on its feet when it did not pose any objection to the prosecution's offer of evidence.

In view of the foregoing loopholes in the evidence adduced against the accused as well as the gaps in the chain of custody, it can be reasonably concluded that the prosecution failed to convincingly establish the identity and integrity of the dangerous drug. Accordingly, there could be no assurance that the specimen of *shabu* offered in court as evidence against the accused was the same one seized from him, brought to the police station and afterwards, submitted for laboratory testing – especially considering that since the inception of this case, he has consistently denied that the supposed plastic sachet of *shabu* was not recovered from his possession when he was arrested at the "*peryahan*" on September 10, 2002 at 8:00 o'clock in the evening. In effect, the prosecution failed to fully prove the elements of the crime charged creating reasonable doubt on his criminal liability. As this Court held in *Catuiran v. People,*[31] the failure of the prosecution to offer the testimony of key witnesses to establish a sufficiently complete chain of custody of a specimen of *shabu*, and the irregularity which characterized the handling of the evidence before the same was finally offered in court, fatally conflicts with every proposition relative to the culpability of the accused. All told, the *corpus delicti* in this case is not legally extant.

In sustaining the conviction, the courts *a quo* relied on the evidentiary presumption that official duties have been regularly performed. Admittedly, the defense did not adduce evidence showing that PO1 Antonio and PO1 Jiro III had any ill motive to falsify their testimony. Nonetheless, the flagrant procedural lapses the police officers committed in handling the allegedly confiscated *shabu* in violation of the chain of custody requirement effectively negate the presumption of regularity in the performance of duties. Any taint of irregularity affects the whole performance

[30] *Id.* at 137.

[31] G.R. No. 175647, May 8, 2009, 587 SCRA 567, 580.

and should make the presumption unavailable.[32] It must be emphasized that the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt.[33]

The weakness of the defense of the accused, mere denial and frame-up, cannot justify his conviction. The burden is always on the prosecution to prove his guilt beyond reasonable doubt, and not on him to prove his innocence. The merit of his defense is not the issue here. It is safely entrenched in our jurisprudence that the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.[34] A finding of guilt must solely rest on the prosecution's own evidence, not on the weakness or even absence of that for the defense. Courts cannot magnify the weakness of the defense and overlook the prosecution's failure to discharge the *onus probandi*.

In our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. In order to convict an accused, the circumstances of the case must exclude all and every hypothesis consistent with his innocence. In the case at bench, the evidence adduced by the prosecution failed to overcome the constitutional presumption of innocence of the accused. What is required is that there be proof beyond reasonable doubt that the crime was committed and that the accused committed the crime.[35] It is only when the conscience is satisfied that the crime has indeed been committed by the person on trial that the judgment will be for conviction.

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[32] *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, 627 SCRA 308, 326.

[33] *People v. Magat*, G.R. No. 179939, September 29, 2008, 567 SCRA 86, 99.

[34] *People v. Batidor*, 362 Phil. 673, 685-686 (1999).

[35] *People v. Mangat*, 369 Phil. 347, 359 (1999).

The Court is not unaware of the drug menace that beset our country and the direct link of certain crimes to drug abuse. The unrelenting drive of our law enforcers against trafficking and use of illegal drugs and other substance is indeed commendable. Those who engage in the illicit trade of dangerous drugs and prey on the misguided members of the society, especially the susceptible youth, must be caught and properly prosecuted. Although the courts are committed to assist the government in its campaign against illegal drugs, a conviction under the Comprehensive Dangerous Drugs Act of 2002 can only be obtained after the prosecution discharges its constitutional burden to prove guilt beyond reasonable doubt. Otherwise, this Court is duty-bound to uphold the constitutional presumption of innocence.

WHEREFORE, the appeal is *GRANTED*. The Decision dated July 29, 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02221 is hereby *REVERSED* and *SET ASIDE* for failure of the prosecution to prove beyond reasonable doubt the guilt of appellant Jaime Gatlabayan *y* Batara who is accordingly hereby *ACQUITTED* of the crime charged against him and ordered immediately *RELEASED* from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is *ORDERED* to implement this decision and to inform this Court of the date of the actual release from confinement of the accused within five (5) days from receipt hereof.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Abad,* and *Sereno,*[**] *JJ.,* concur.

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[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 1029 dated June 30, 2011.

[**] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

SECOND DIVISION

[G.R. No. 193003. July 13, 2011]

FRANCISCO IMSON *y* ADRIANO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL POSSESSION OF DANGEROUS DRUGS; FAILURE OF THE POLICEMEN TO MAKE A PHYSICAL INVENTORY AND TO PHOTOGRAPH THE CONFISCATED ITEMS DO NOT RENDER THE SAME INADMISSIBLE IN EVIDENCE.— The failure of the policemen to make a physical inventory and to photograph the two plastic sachets containing *shabu* do not render the confiscated items inadmissible in evidence. In *People v. Campos*, the Court held that the failure of the policemen to make a physical inventory and to photograph the confiscated items are not fatal to the prosecution's cause. The Court held that: **The alleged procedural lapses in the conduct of the buy-bust operation, namely** the lack of prior coordination with the PDEA and **the failure to inventory and photograph the confiscated items immediately after the operation, are not fatal to the prosecution's cause**. x x x **The absence of an inventory of personal effects seized from appellant becomes immaterial to the legitimacy of the buy-bust operation for it is enough that it is established that the operation was indeed conducted and that the identity of the seller and the drugs subject of the sale are proven**. x x x.

2. ID.; ID.; FAILURE OF THE POLICEMEN TO IMMEDIATELY MARK THE SEIZED DRUGS DOES NOT AUTOMATICALLY IMPAIR THE INTEGRITY OF CHAIN OF CUSTODY.— [T]he failure of the policemen to mark the two plastic sachets containing *shabu* at the place of arrest does not render the confiscated items inadmissible in evidence. In *People v. Resurreccion*, the Court held that the failure of the policemen to immediately mark the confiscated items does not automatically impair the integrity of chain of custody. The Court held: **Jurisprudence tells us that the failure to**

immediately mark seized drugs will not automatically impair the integrity of chain of custody. The failure to strictly comply with Sec. 21(1), Art. II of RA 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused.

3. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; POLICEMEN PERFORMED THEIR OFFICIAL DUTIES REGULARLY UNLESS BAD FAITH OR IMPROPER MOTIVE WAS SHOWN OR THAT THE CONFISCATED ITEMS WERE TAMPERED.— The presumption is that the policemen performed their official duties regularly. In order to overcome this presumption, Imson must show that there was bad faith or improper motive on the part of the policemen, or that the confiscated items were tampered. Imson failed to do so.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 11 March 2010 Decision[2] and 21 July 2010 Resolution[3] of the Court of Appeals in CA-G.R. CR No. 30364. The Court of Appeals affirmed the

[1] *Rollo*, pp. 10-26.

[2] *Id.* at 29-49. Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Josefina Guevara-Salonga and Pampio A. Abarintos concurring.

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

2 August 2005 Decision[4] of the Regional Trial Court (RTC), National Capital Judicial Region, Malabon City, Branch 72, in Criminal Case Nos. 28218-MN and 28219-MN, finding petitioner Francisco A. Imson (Imson) and Rolando S. Dayao (Dayao) guilty beyond reasonable doubt of illegal possession of dangerous drugs.

The Facts

On 24 January 2003, at around 9:30 p.m., a confidential informant arrived at the District Drug Enforcement Unit office in Langaray, Caloocan City. The confidential informant advised PO1 Gerry Pajares (Pajares), PO1 Noli Pineda (Pineda) and other policemen that Imson was selling *shabu* at Raja Matanda Street, San Roque, Navotas. District Drug Enforcement Unit Chief P/Supt. Reynaldo Orante formed a team to conduct a buy bust operation, with Pajares acting as poseur buyer.

Pajares, Pineda, the confidential informant, and other policemen arrived at Raja Matanda Street at around 10:30 p.m. There, they saw Imson talking with Dayao. Thereafter, they saw Imson giving Dayao a transparent plastic sachet containing white crystalline substance. Pajares approached the two men and introduced himself. He immediately apprehended Imson while Pineda ran after Dayao who tried to escape. The policemen confiscated two plastic sachets containing the suspected *shabu*.

The policemen brought Imson and Dayao to the Langaray Police Station where Imson and Dayao executed their joint sworn statements and where PO1 Ariosto B. Rana marked the two plastic sachets with "RDS" and "FIA." The two plastic sachets were sent to the Philippine National Police - Northern Police Crime Laboratory Office for examination. Both tested positive for *shabu*.

Third Assistant State Prosecutor Marcos filed two informations dated 27 January 2003 for illegal possession of dangerous drugs against Imson and Dayao.

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[4] *Id.* at 70-76. Penned by Judge Benjamin M. Aquino, Jr.

The RTC's Ruling

In its 2 August 2005 Decision, the RTC found Imson and Dayao guilty beyond reasonable doubt of illegal possession of dangerous drugs. The RTC held:

> The denial, sort of alibi and insinuated claim of evidence planting put up by the two accused in these cases as their defense cannot be sustained by the Court.
>
> Dayao would want the Court to believe that at past 10:30 in the evening, he would be playing "*kara y krus*" along a street. This is hard to believe. The playing of "*kara y krus*" would require that it be done in a well lighted place, preferably during day time. While the possibility that it can be played during the night cannot be ruled out, it is not the normal time of the day to play "*kara y krus*." And "*kara y krus*" is a form of illegal gambling. You do not openly play it along a street/near a street corner.
>
> Imson, on the other hand, maintained that he was preparing food for dinner. While dinner may be taken even late in the evening, it is not usual for a man to do so. There must be an explanation for having a late dinner. In these cases, Imson did not offer any explanation for preparing to have dinner at past 10:30 in the evening.
>
> Additionally, the two accused did not claim that there was any ill motive that made the policemen concoct a tale that resulted in the filing of these cases against them.
>
> The denial made by the two accused cannot prevail. Denial, like alibi is a weak defense in criminal prosecution. It cannot prevail over positive, clear and convincing testimony to the effect that a crime was committed and the accused committed the same *(P. vs. Belibet, 197 SCRA 587)*.
>
> The insinuated claim of the accused to the effect that the *shabu* must have been planted by the police deserves little or scant consideration. It is the usual defense of those accused of violating the Dangerous Drugs Act of 2002 and, before that, of then existing laws on illegal drugs *(refer to P. vs. Nicolas, et al., G.R. No. 114116, February 1, 1995)*.
>
> On the other hand, the evidence of the prosecution tend to show that a buy bust operation was about to be conducted by reason of a report that accused Imson was selling *shabu*. It was no longer

undertaken because Imson was immediately seen handing *shabu* to Dayao. This resulted in the arrest of the two accused who were both found in possession of *shabu*. This version of the police is a reasonable one.[5]

Imson and Dayao appealed to the Court of Appeals.

The Court of Appeals' Ruling

In its 11 March 2010 Decision, the Court of Appeals affirmed the RTC's 2 August 2005 Decision. The Court of Appeals held:

> We x x x find no merit in Appellants' contention that they should be acquitted because of the allegedly procedural lapses committed by the police operatives who failed to conduct a physical inventory of the subject specimen and to photograph the same resulting in the failure of the prosecution to prove their guilt of the crime charged.
>
> On this regard, the required procedure on the seizure and custody of drugs as provided under Section 21, paragraph 1, Article II of R.A. No. 9165 pertinently provides:
>
> > 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.
>
> The aforecited section is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, which states:
>
> xxx xxx xxx
>
> > Sec. 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

[5] *Id.* at 74-75.

of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: 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:

xxx xxx xxx

To the mind of this Court, granting *arguendo* that the police operatives team failed to faithfully implement the post-operational requirement on the inventory and photographing of the seized drugs as required by Section 21 of RA 9165, nevertheless, jurisprudence has it that non-compliance with the procedure shall not invalidate the legitimate drug operation conducted by the police operatives. On this point, the pronouncement of the Supreme Court in *People v. Bralaan* is highly relevant, thus:

xxx xxx xxx

> Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefore, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. Its non-compliance will not render

> an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.
>
> xxx xxx xxx

Notably, the aforecited ruling was echoed by the Supreme Court in *People v. Pringas, viz*:

> xxx xxx xxx
>
> Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefore, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.
>
> xxx xxx xxx

At this juncture, We rule that the apprehending team was able to preserve the integrity of the subject drugs and that the prosecution was able to present the required unbroken chain in the custody of the subject drug, *viz*: a.) starting from the apprehension of the Appellants by the police operatives and the recovery of the subject illegal drugs by virtue of the former's valid warrantless arrest; b.) upon seizure of subject drugs by PO1 PAJARES and PO1 PINEDA, the same remained in their possession until the same were turned over to PO1 ARIOSTO B. RANA (PO1 RANA), the police investigator stationed in their headquarters, with the markings "RDS" and "FIA," initials of Appellants DAYAO and IMSON, respectively; c.) upon receipt of the subject drugs, a Laboratory Examination Request was then prepared [sic] P/Supt. ORANTE addressed to the Chief of the NPDO Crime Laboratory Office of Caloocan City requesting the Forensic Chemist on duty to examine the illegal drugs confiscated from Appellants; d.) the subject specimens were received by PO1 SAMONTE of the PNP-NPD Crime Laboratory Office from PO2 RANA; e.) the said specimens were examined by P/Insp. CALOBOCAL

who found the same to be positive for *shabu*; f.) thereafter, P/Supt. ORANTE prepared a *referral slip* dated 26 January 2003, addressed to the inquest prosecutor presenting as evidence, *inter alia*, the two (2) plastic sachets confiscated from the Appellants and the Laboratory Examination Report with PSR# D-097-03; g.) the two (2) plastic sachets recovered from Appellants IMSON and DAYAO were turned over to the custody of the trial prosecutor Fiscal RHODA MAGDALENE OSINAGA (Fiscal OSINAGA), who presented the same as prosecution evidence during the direct examination of PO2 PAJARES on 22 April 2005 marking them as Exhibits "C-1" and "C-2", respectively. To stress, the unbroken chain of custody of the subject specimen was established by the prosecution and supported by the evidence on hand.[6]

Imson and Dayao filed a motion for reconsideration. In its 21 July 2010 Resolution, the Court of Appeals denied the motion. Hence, the present petition.

The Issue

Imson raises as issue that the two plastic sachets containing *shabu* were inadmissible in evidence because the integrity of the chain of custody was impaired. He states:

> The failure to: (a) conduct a physical inventory; (b) photograph the plastic sachet in the presence of the accused or his representative, counsel, representative from the media and the Department of Justice and any elected public official; and (c) immediately mark the plastic sachet on site, all cast doubt as to whether the chain of custody remains intact.[7]

The Court's Ruling

The petition is unmeritorious.

The failure of the policemen to make a physical inventory and to photograph the two plastic sachets containing *shabu* do not render the confiscated items inadmissible in evidence. In *People v. Campos*,[8] the Court held that the failure of the policemen

[6] *Id.* at 45-48.

[7] *Id.* at 17.

[8] G.R. No. 186526, 25 August 2010, 629 SCRA 462.

to make a physical inventory and to photograph the confiscated items are not fatal to the prosecution's cause. The Court held that:

> **The alleged procedural lapses in the conduct of the buy-bust operation, namely** the lack of prior coordination with the PDEA and **the failure to inventory and photograph the confiscated items immediately after the operation, are not fatal to the prosecution's cause**.
>
> xxx xxx xxx
>
> **The absence of an inventory of personal effects seized from appellant becomes immaterial to the legitimacy of the buy-bust operation for it is enough that it is established that the operation was indeed conducted and that the identity of the seller and the drugs subject of the sale are proven**. *People v. Concepcion* so instructs:
>
> > "After going over the evidence on record, we find that there, indeed, was a buy-bust operation involving appellants. **The prosecution's failure to submit in evidence the required physical inventory of the seized drugs and the photography pursuant to Section 21, Article II of Republic Act No. 9165 will not exonerate appellants**. Non-compliance with said section is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.["][9] (Emphasis supplied)

Likewise, the failure of the policemen to mark the two plastic sachets containing *shabu* at the place of arrest does not render the confiscated items inadmissible in evidence. In *People v. Resurreccion*,[10] the Court held that the failure of the policemen to immediately mark the confiscated items does not automatically impair the integrity of chain of custody. The Court held:

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[9] *Id.* at 467-468.

[10] G.R. No. 186380, 12 October 2009, 603 SCRA 510.

Jurisprudence tells us that the failure to immediately mark seized drugs will not automatically impair the integrity of chain of custody.

The failure to strictly comply with Sec. 21(1), Art. II of RA 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused.

xxx xxx xxx

Accused-appellant broaches the view that SA Isidro's failure to mark the confiscated *shabu* immediately after seizure creates a reasonable doubt as to the drug's identity. *People v. Sanchez*, however, explains that RA 9165 does not specify a time frame for "immediate marking," or where said marking should be done:

> "What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation."

To be able to create a first link in the chain of custody, then, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. "Immediate Confiscation" has no exact definition. Thus, in *People v. Gum-Oyen*, **testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team**.[11] (Emphasis supplied)

[11] *Id.* at 518-520.

The presumption is that the policemen performed their official duties regularly.[12] In order to overcome this presumption, Imson must show that there was bad faith or improper motive on the part of the policemen, or that the confiscated items were tampered. Imson failed to do so.

WHEREFORE, the Court *AFFIRMS* the 11 March 2010 Decision and 21 July 2010 Resolution of the Court of Appeals in CA-G.R. CR No. 30364.

SO ORDERED.

Leonardo-de Castro,[*] Villarama, Jr.,[**] Perez, and Sereno, JJ., concur.

THIRD DIVISION

[G.R. No. 116121. July 18, 2011]

THE HEIRS OF THE LATE RUBEN REINOSO, SR., represented by Ruben Reinoso, Jr., *petitioners, vs.* **COURT OF APPEALS, PONCIANO TAPALES, JOSE GUBALLA, and FILWRITERS GUARANTY ASSURANCE CORPORATION,[*]** *respondents.*

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[12] *People v. De Guzman*, G.R. No. 177569, 28 November 2007, 539 SCRA 306, 317.

[*] Designated acting member per Special Order No. 1006 dated 10 June 2011.

[**] Designated acting member per Special Order No. 1043 dated 12 July 2011.

[*] Now Centennial Giarantee Assurance Corporation, *Rollo*, p. 244.

SYLLABUS

1. REMEDIAL LAW; APPEALS; DOCKET FEES; RULE; PAYMENT IN FULL OF THE DOCKET FEES WITHIN THE PRESCRIBED PERIOD IS MANDATORY; RELAXATION OF THE RULE, WHEN ALLOWED.— The rule is that payment in full of the docket fees within the prescribed period is mandatory. In *Manchester v. Court of Appeals*, it was held that a court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. The strict application of this rule was, however, relaxed two (2) years after in the case of *Sun Insurance Office, Ltd. v. Asuncion*, wherein the Court decreed that where the initiatory pleading is not accompanied by the payment of the docket fee, the court may allow payment of the fee within a reasonable period of time, but in no case beyond the applicable prescriptive or reglementary period. This ruling was made on the premise that the plaintiff had demonstrated his willingness to abide by the rules by paying the additional docket fees required. x x x. It has been on record that the Court, in several instances, allowed the relaxation of the rule on non-payment of docket fees in order to afford the parties the opportunity to fully ventilate their cases on the merits. x x x. While there is a crying need to unclog court dockets on the one hand, there is, on the other, a greater demand for resolving genuine disputes fairly and equitably, for it is far better to dispose of a case on the merit which is a primordial end, rather than on a technicality that may result in injustice.

2. ID.; ID.; ID.; STRICT APPLICATION OF THE RULE ON NON-PAYMENT OF DOCKET FEES, SUSPENDED; GENERAL OBJECTIVE OF PROCEDURE IS NOT TO HINDER BUT TO PROMOTE THE ADMINISTRATION OF JUSTICE.— In this case, it cannot be denied that the case was litigated before the RTC and said trial court had already rendered a decision. While it was at that level, the matter of non-payment of docket fees was never an issue. It was only the CA which *motu proprio* dismissed the case for said reason. Considering the foregoing, there is a need to suspend the strict application of the rules so that the petitioners would be able to fully and finally prosecute their claim on the merits at the appellate level rather than fail to secure justice on a technicality, for, indeed, the general objective of procedure is to facilitate the

application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.

3. ID.; ID.; ID.; DOCTRINE OF "LENIENCY BECAUSE OF RECENCY," APPLIED.— The Court also takes into account the fact that the case was filed before the *Manchester* ruling came out. Even if said ruling could be applied retroactively, liberality should be accorded to the petitioners in view of the recency then of the ruling. Leniency because of recency was applied to the cases of *Far Eastern Shipping Company v. Court of Appeals* and *Spouses Jimmy and Patri Chan v. RTC of Zamboanga.* In the case of *Mactan Cebu International Airport Authority v. Mangubat (Mactan),* it was stated that the "intent of the Court is clear to afford litigants full opportunity to comply with the new rules and to temper enforcement of sanctions in view of the *recency* of the changes introduced by the new rules." In *Mactan,* the Office of the Solicitor General *(OSG)* also failed to pay the correct docket fees on time.

4. ID.; ID.; ID.; THE DIFFERENCE BETWEEN THE ACTUAL FEES PAID AND THE CORRECT PAYABLE DOCKET FEES MUST BE PAID BY THE PARTY WHICH SHALL CONSTITUTE A LIEN ON THE JUDGMENT.— The petitioners, however, are liable for the difference between the actual fees paid and the correct payable docket fees to be assessed by the clerk of court which shall constitute a lien on the judgment pursuant to Section 2 of Rule 141 which provides: SEC. 2. Fees in lien. – Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; FINDINGS OF THE TRIAL COURT AS TO THE NEGLIGENCE OF THE PRIVATE RESPONDENT'S EMPLOYEE-TRUCK DRIVER, SUSTAINED.— The facts are beyond dispute. Reinoso, the *jeepney* passenger, died as a result of the collision of a *jeepney* and a truck on June 14, 1979 at around 7:00 o'clock in the

evening along E. Rodriguez Avenue, Quezon City. It was established that the primary cause of the injury or damage was the negligence of the truck driver who was driving it at a very fast pace. Based on the sketch and spot report of the police authorities and the narration of the *jeepney* driver and his passengers, the collision was brought about because the truck driver suddenly swerved to, and encroached on, the left side portion of the road in an attempt to avoid a wooden barricade, hitting the passenger *jeepney* as a consequence.

6. ID.; ID.; ID.; WHENEVER AN EMPLOYEE'S NEGLIGENCE CAUSES DAMAGE OR INJURY TO ANOTHER, THERE INSTANTLY ARISES A PRESUMPTION *JURIS TANTUM* THAT THE EMPLOYER FAILED TO EXERCISE *DILIGENTISSIMI PATRIS FAMILIES* IN THE SELECTION OR SUPERVISION OF HIS EMPLOYEE.— The Court likewise sustains the finding of the RTC that the truck owner, Guballa, failed to rebut the presumption of negligence in the hiring and supervision of his employee. x x x. Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption *juris tantum* that the employer failed to exercise *diligentissimi patris families* in the selection or supervision of his employee. Thus, in the selection of prospective employees, employers are required to examine them as to their qualification, experience and service record. With respect to the supervision of employees, employers must formulate standard operating procedures, monitor their implementation, and impose disciplinary measures for breaches thereof. These facts must be shown by concrete proof, including documentary evidence. Thus, the RTC committed no error in finding that the evidence presented by respondent Guballa was wanting.

7. ID.; DAMAGES; INTEREST; PAYMENT OF 12% LEGAL INTEREST *PER ANNUM,* WARRANTED.— Following the guidelines enunciated in the case of *Eastern Shipping Lines, Inc. v. Court of Appeals,* petitioners are entitled to the payment of 12% legal interest *per annum* on the total amount awarded to be computed from the time of finality of judgment until fully paid.

APPEARANCES OF COUNSEL

Anthony L. Po for petitioners.
F. Sumulong & Associates Law Office for respondent Ponciano Tapales.
Jeffrey-John Zarate for respondent Jose Guballa.
Antonio Fernando for respondent Centennial Guarantee Assurance Corp.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review assailing the May 20, 1994 Decision[1] and June 30, 1994 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. CV No. 19395, which set aside the March 22, 1988 Decision of the Regional Trial Court, Branch 8, Manila *(RTC)* for non-payment of docket fees. The dispositive portion of the CA decision reads:

> IN VIEW OF ALL THE FOREGOING, the decision appealed from is SET ASIDE and REVERSED and the complaint in this case is ordered DISMISSED.
>
> No costs pronouncement.
>
> SO ORDERED.

The complaint for damages arose from the collision of a passenger *jeepney* and a truck at around 7:00 o'clock in the evening of June 14, 1979 along E. Rodriguez Avenue, Quezon City. As a result, a passenger of the *jeepney*, Ruben Reinoso, Sr. *(Reinoso)*, was killed. The passenger *jeepney* was owned by Ponciano Tapales *(Tapales)* and driven by Alejandro Santos *(Santos)*, while the truck was owned by Jose Guballa *(Guballa)* and driven by Mariano Geronimo *(Geronimo)*.

On November 7, 1979, the heirs of Reinoso *(petitioners)* filed a complaint for damages against Tapales and Guballa. In turn, Guballa filed a third party complaint against Filwriters Guaranty Assurance Corporation (FGAC) under Policy Number OV-09527.

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[1] *Rollo*, pp. 24-28.

[2] *Id.* at 30.

On March 22, 1988, the RTC rendered a decision in favor of the petitioners and against Guballa. The decision in part, reads:

In favor of herein plaintiffs and against defendant Jose Guballa:

1. For the death of Ruben Reinoso, Sr.	₱30,000.00
2. Loss of earnings (monthly income at the time of death (₱2,000.00 Court used ₱1,000.00 only per month (or ₱12,000.00 only per year) & victim then being 55 at death had ten (10) years life expectancy…….	120,000.00
3. Mortuary, Medical & funeral expenses and all incidental expenses in the wake in serving those who condoled ……	15,000.00
4. Moral damages …….....	50,000.00
5. Exemplary damages …….....	25,000.00
6. Litigation expenses ……..	15,000.00
7. Attorney's fees ……	25,000.00

Or a total of ₱250,000.00

For damages to property:

In favor of defendant Ponciano Tapales and against defendant Jose Guballa:

1. Actual damages for repair is already awarded to defendant-cross-claimant Ponciano Tapales by Br. 9, RTC-Malolos, Bulacan (*Vide*: Exh. 1-G-Tapales); hence, cannot recover twice.	
2. Compensatory damages (earnings at ₱150.00 per day) and for two (2) months jeepney stayed at the repair shop…….	9,000.00
3. Moral damages ……	10,000.00
4. Exemplary damages …….	10,000.00
5. Attorney's fees……	15,000.00

or a total of ₱44,000.00

Under the 3rd party complaint against 3rd party defendant Filwriters Guaranty Assurance Corporation, the Court hereby renders judgment in favor of said 3rd party plaintiff by way of 3rd party liability under policy No. OV-09527 in the amount of ₱50,000.00 undertaking plus 10,000.00 as and for attorney's fees.

For all the foregoing, it is the well considered view of the Court that plaintiffs, defendant Ponciano Tapales and 3rd Party plaintiff Jose Guballa established their claims as specified above, respectively. Totality of evidence preponderance in their favor.

J U D G M E N T

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

In favor of plaintiffs for the death of Ruben Reinoso, Sr……..……. ₱250,000.00;

In favor of defendant Ponciano Tapales due to damage of his passenger jeepney…….……..……. ₱44,000.00;

In favor of defendant Jose Guballa under Policy No. OV-09527…….…… ₱60,000.00;

All the specified accounts with 6% legal rate of interest per annum from date of complaint until fully paid (*Reformina vs. Tomol)*, 139 SCRA 260; and finally;

Costs of suit.

SO ORDERED.[3]

On appeal, the CA, in its Decision dated May 20, 1994, set aside and reversed the RTC decision and dismissed the complaint on the ground of non-payment of docket fees pursuant to the doctrine laid down in *Manchester v. CA*.[4] In addition, the CA ruled that since prescription had set in, petitioners could no longer pay the required docket fees.[5]

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[3] *Rollo,* pp. 54-56.

[4] 233 Phil. 579 (1987).

[5] *Rollo,* pp. 24-28.

Petitioners filed a motion for reconsideration of the CA decision but it was denied in a resolution dated June 30, 1994.[6] Hence, this appeal, anchored on the following

GROUNDS:

A. The Court of Appeals MISAPPLIED THE RULING of the Supreme Court in the case of *Manchester Corporation vs. Court of Appeals* to this case.

B. The issue on the specification of the damages appearing in the prayer of the Complaint was NEVER PLACED IN ISSUE BY ANY OF THE PARTIES IN THE COURT OF ORIGIN (REGIONAL TRIAL COURT) NOR IN THE COURT OF APPEALS.

C. The issues of the case revolve around the more substantial issue as to the negligence of the private respondents and their culpability to petitioners.[7]

The petitioners argue that the ruling in *Manchester* should not have been applied retroactively in this case, since it was filed prior to the promulgation of the *Manchester* decision in 1987. They plead that though this Court stated that failure to state the correct amount of damages would lead to the dismissal of the complaint, said doctrine should be applied prospectively.

Moreover, the petitioners assert that at the time of the filing of the complaint in 1979, they were not certain of the amount of damages they were entitled to, because the amount of the lost income would still be finally determined in the course of the trial of the case. They claim that the jurisdiction of the trial court remains even if there was failure to pay the correct filing fee as long as the correct amount would be paid subsequently.

Finally, the petitioners stress that the alleged defect was never put in issue either in the RTC or in the CA.

The Court finds merit in the petition.

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[6] *Id.* at 30.

[7] *Id.* at 15-19.

The rule is that payment in full of the docket fees within the prescribed period is mandatory.[8] In *Manchester v. Court of Appeals*,[9] it was held that a court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. The strict application of this rule was, however, relaxed two (2) years after in the case of *Sun Insurance Office, Ltd. v. Asuncion*,[10] wherein the Court decreed that where the initiatory pleading is not accompanied by the payment of the docket fee, the court may allow payment of the fee within a reasonable period of time, but in no case beyond the applicable prescriptive or reglementary period. This ruling was made on the premise that the plaintiff had demonstrated his willingness to abide by the rules by paying the additional docket fees required.[11] Thus, in the more recent case of *United Overseas Bank v. Ros*,[12] the Court explained that where the party does not deliberately intend to defraud the court in payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court, the liberal doctrine enunciated in *Sun Insurance Office, Ltd.*, and not the strict regulations set in *Manchester*, will apply. It has been on record that the Court, in several instances, allowed the relaxation of the rule on non-payment of docket fees in order to afford the parties the opportunity to fully ventilate their cases on the merits. In the case of *La Salette College v. Pilotin*,[13] the Court stated:

> Notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, we also recognize that its strict application is qualified by the following: *first*, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; *second*, such power should be used by the court in conjunction with its exercise of sound discretion in accordance

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[8] *Pedrosa v. Hill*, 327 Phil. 153, 158 (1996).

[9] *Supra* note 4.

[10] 252 Phil. 280 (1989).

[11] *Id.* at 291.

[12] G.R. No. 171532, August 7, 2007, 529 SCRA 334, 353.

[13] 463 Phil. 785 (2003).

with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.[14]

While there is a crying need to unclog court dockets on the one hand, there is, on the other, a greater demand for resolving genuine disputes fairly and equitably,[15] for it is far better to dispose of a case on the merit which is a primordial end, rather than on a technicality that may result in injustice.

In this case, it cannot be denied that the case was litigated before the RTC and said trial court had already rendered a decision. While it was at that level, the matter of non-payment of docket fees was never an issue. It was only the CA which *motu proprio* dismissed the case for said reason.

Considering the foregoing, there is a need to suspend the strict application of the rules so that the petitioners would be able to fully and finally prosecute their claim on the merits at the appellate level rather than fail to secure justice on a technicality, for, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.[16]

The Court also takes into account the fact that the case was filed before the *Manchester* ruling came out. Even if said ruling could be applied retroactively, liberality should be accorded to the petitioners in view of the recency then of the ruling. Leniency because of recency was applied to the cases of *Far Eastern Shipping Company v. Court of Appeals*[17] and *Spouses Jimmy and Patri Chan v. RTC of Zamboanga*.[18] In the case of *Mactan*

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[14] *Id.* at 794.

[15] *Santos v. Court of Appeals*, 323 Phil. 762, 770 (1996).

[16] *Bautista v. Unangst*, G.R. No. 173002, July 4, 2008, 557 SCRA 256, 271.

[17] G.R. No. 130150, October 1, 1998, 297 SCRA 30.

[18] G.R. No. 149253, April 15, 2004, 427 SCRA 796.

Cebu International Airport Authority v. Mangubat (Mactan),[19] it was stated that the "intent of the Court is clear to afford litigants full opportunity to comply with the new rules and to temper enforcement of sanctions in view of the *recency* of the changes introduced by the new rules." In *Mactan*, the Office of the Solicitor General *(OSG)* also failed to pay the correct docket fees on time.

We held in another case:

> x x x It bears stressing that the rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that, on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within the power of the Court to suspend the Rules, or except a particular case from its operation.[20]

The petitioners, however, are liable for the difference between the actual fees paid and the correct payable docket fees to be assessed by the clerk of court which shall constitute a lien on the judgment pursuant to Section 2 of Rule 141 which provides:

> SEC. 2. Fees in lien. – Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees.

As the Court has taken the position that it would be grossly unjust if petitioners' claim would be dismissed on a strict application of the *Manchester* doctrine, the appropriate action, under ordinary circumstances, would be for the Court to remand

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[19] 371 Phil. 393 (1999).

[20] *Cua, Jr. v. Tan*, G.R. Nos. 181455-56, December 4, 2009, 607 SCRA 645, 687.

the case to the CA. Considering, however, that the case at bench has been pending for more than 30 years and the records thereof are already before this Court, a remand of the case to the CA would only unnecessarily prolong its resolution. In the higher interest of substantial justice and to spare the parties from further delay, the Court will resolve the case on the merits.

The facts are beyond dispute. Reinoso, the *jeepney* passenger, died as a result of the collision of a *jeepney* and a truck on June 14, 1979 at around 7:00 o'clock in the evening along E. Rodriguez Avenue, Quezon City. It was established that the primary cause of the injury or damage was the negligence of the truck driver who was driving it at a very fast pace. Based on the sketch and spot report of the police authorities and the narration of the *jeepney* driver and his passengers, the collision was brought about because the truck driver suddenly swerved to, and encroached on, the left side portion of the road in an attempt to avoid a wooden barricade, hitting the passenger *jeepney* as a consequence. The analysis of the RTC appears in its decision as follows:

> Perusal and careful analysis of evidence adduced as well as proper consideration of all the circumstances and factors bearing on the issue as to who is responsible for the instant vehicular mishap convince and persuade this Court that preponderance of proof is in favor of plaintiffs and defendant Ponciano Tapales. The greater mass of evidence spread on the records and its influence support plaintiffs' plaint including that of defendant Tapales.
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> The Land Transportation and Traffic Rule (R.A. No. 4136), reads as follows:
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> > "Sec. 37. Driving on right side of highway.— Unless a different course of action is required in the interest of the safety and the security of life, person or property, or because of unreasonable difficulty of operation in compliance therewith, every person operating a motor vehicle or an animal drawn vehicle on highway shall pass to the right when meeting persons or vehicles coming toward him, and to the left when overtaking persons or vehicles going the same direction, and when turning to the left in going from one highway to another, every vehicle shall be conducted to the right of the center of the intersection of the highway."

Having in mind the foregoing provision of law, this Court is convinced of the veracity of the version of the passenger jeepney driver Alejandro Santos, (plaintiffs' and Tapales' witness) that while running on lane No. 4 westward bound towards Ortigas Avenue at between 30-40 kms. per hour (63-64 tsn, Jan. 6, 1984) the "sand & gravel" truck from the opposite direction driven by Mariano Geronimo, the headlights of which the former had seen while still at a distance of about 30-40 meters from the wooden barricade astride lanes 1 and 2, upon reaching said wooden block suddenly swerved to the left into lanes 3 and 4 at high speed "*napakabilis po ng dating ng* truck." (29 tsn, Sept. 26, 1985) in the process hitting them (Jeepney passenger) at the left side up to where the reserve tire was in an oblique manner "*pahilis*" (57 tsn, Sept. 26, 1985). The jeepney after it was bumped by the truck due to the strong impact was thrown "resting on its right side while the left side was on top of the *Bangketa* (side walk)." The passengers of the jeepney and its driver were injured including two passengers who died. The left side of the jeepney suffered considerable damage as seen in the picture (Exhs. 4 & 5-Tapales, pages 331-332, records) taken while at the repair shop.

The Court is convinced of the narration of Santos to the effect that the "gravel & sand" truck was running in high speed on the good portion of E. Rodriguez Avenue (lanes 1 & 2) before the wooden barricade and (having in mind that it had just delivered its load at the Corinthian Gardens) so that when suddenly confronted with the wooden obstacle before it had to avoid the same in a manner of a reflex reaction or knee-jerk response by forthwith swerving to his left into the right lanes (lanes 3 & 4). At the time of the bumping, the jeepney was running on its right lane No. 4 and even during the moments before said bumping, moving at moderate speed thereon since lane No. 3 was then somewhat rough because being repaired also according to Mondalia who has no reason to prevaricate being herself one of those seriously injured. The narration of Santos and Mondalia are convincing and consistent in depicting the true facts of the case untainted by vacillation and therefore, worthy to be relied upon. Their story is forfeited and confirmed by the sketch drawn by the investigating officer Pfc. F. Amaba, Traffic Division, NPD, Quezon City who rushed to the scene of the mishap (*Vide*: Resolution of Asst. fiscal Elizabeth B. Reyes marked as Exhs. 7, 7-A, 7-B-Tapales, pp. 166-168, records; the Certified Copy found on pages 598-600, *ibid.*, with the attached police sketch of Pfc. Amaba, marked as Exh. 8-Tapales on page 169, *ibid.*; certified copy of which is on page 594,

ibid.) indicating the fact that the bumping indeed occurred at lane No. 4 and showing how the 'gavel & sand' truck is positioned in relation to the jeepney. The said police sketch having been made right after the accident is a piece of evidence worthy to be relied upon showing the true facts of the bumping-occurrence. The rule that official duty had been performed (Sec.5(m), R-131, and also Sec. 38, R-a30, Rev. Rules of Court) – there being no evidence adduced and made of record to the contrary – is that said circumstance involving the two vehicles had been the result of an official investigation and must be taken as true by this Court.[21]

While ending up on the opposite lane is not conclusive proof of fault in automobile collisions,[22] the position of the two vehicles, as depicted in the sketch of the police officers, clearly shows that it was the truck that hit the *jeepney*. The evidentiary records disclosed that the truck was speeding along E. Rodriguez, heading towards Santolan Street, while the passenger *jeepney* was coming from the opposite direction. When the truck reached a certain point near the Meralco Post No. J9-450, the front portion of the truck hit the left middle side portion of the passenger *jeepney*, causing damage to both vehicles and injuries to the driver and passengers of the *jeepney*. The truck driver should have been more careful, because, at that time, a portion of E. Rodriguez Avenue was under repair and a wooden barricade was placed in the middle thereof.

The Court likewise sustains the finding of the RTC that the truck owner, Guballa, failed to rebut the presumption of negligence in the hiring and supervision of his employee. Article 2176, in relation to Article 2180 of the Civil Code, provides:

> Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.
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> xxx xxx xxx

[21] Records, Vol. I, pp. 698-699.

[22] *Macalinao v. Ong*, 514 Phil. 127, 137 (2005).

Art. 2180. The obligation imposed by Art. 2176 is demandable not only for one's own acts or omissions but also for those of persons for whom one is responsible.

xxx xxx xxx

Employers shall be liable for the damage caused by their employees and household helpers acting within the scope of their assigned tasks even though the former are not engaged in any business or industry.

xxx xxx xxx

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption *juris tantum* that the employer failed to exercise *diligentissimi patris families* in the selection or supervision of his employee.[23] Thus, in the selection of prospective employees, employers are required to examine them as to their qualification, experience and service record. With respect to the supervision of employees, employers must formulate standard operating procedures, monitor their implementation, and impose disciplinary measures for breaches thereof. These facts must be shown by concrete proof, including documentary evidence.[24] Thus, the RTC committed no error in finding that the evidence presented by respondent Guballa was wanting. It ruled:

x x x. As expected, defendant Jose Guballa, attempted to overthrow this presumption of negligence by showing that he had exercised the due diligence required of him by seeing to it that the driver must check the vital parts of the vehicle he is assigned to before he leaves the compound like the oil, water, brakes, gasoline, horn (9 tsn, July 17, 1986); and that Geronimo had been driving for him sometime in 1976 until the collision in litigation came about (5-6 tsn, *ibid*.); that whenever his trucks gets out of the compound to make deliveries,

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[23] *Id*.

[24] *Pleyto v. Lomboy*, 476 Phil. 373, 386 (2004).

it is always accompanied with two (2) helpers (16-17 tsn, *ibid.*). This was all which he considered as selection and supervision in compliance with the law to free himself from any responsibility. This Court then cannot consider the foregoing as equivalent to an exercise of all the care of a good father of a family in the selection and supervision of his driver Mariano Geronimo.[25]

Following the guidelines enunciated in the case of *Eastern Shipping Lines, Inc. v. Court of Appeals,*[26] petitioners are entitled to the payment of 12% legal interest *per annum* on the total amount awarded to be computed from the time of finality of judgment until fully paid.

WHEREFORE, the petition is *GRANTED*. The May 20, 1994 Decision and June 30, 1994 Resolution of the Court of Appeals are *REVERSED* and *SET ASIDE* and the March 22, 1988 Decision of the Regional Trial Court, Branch 8, Manila, is *REINSTATED*, with the *MODIFICATION* that the private respondents should, as they are hereby ordered to pay interest at the rate of 12% per annum reckoned from the finality of this judgment until fully paid.

The Clerk of Court of the Regional Trial Court of Manila, or his duly authorized deputy, is hereby ordered to compute the correct docket fees and to enforce the judgment lien by collecting the additional fees from the petitioners.

SO ORDERED.

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

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[25] Records, Vol. I, pp. 701-702.

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

[**] Designated as additional member of the Third Division per Special Order No. 1042 dated July 6, 2011.

THIRD DIVISION

[G.R. No. 153982. July 18, 2011]

SAN MIGUEL PROPERTIES PHILIPPINES, INC., *petitioner, vs.* **GWENDELLYN ROSE S. GUCABAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF THE COURT OF APPEALS, ESPECIALLY IF SUBSTANTIATED BY THE AVAILING RECORDS, ACCORDED RESPECT IF NOT FINALITY.— [W]e note in this case the inconsistency in the factual findings and conclusions of the Labor Arbiter and the NLRC, yet the incongruence has already been addressed and settled by the Court of Appeals which affirmed the NLRC. Not being a trier of facts, this Court then ought to accord respect if not finality to the findings of the Court of Appeals, especially since, as will be shown, they are substantiated by the availing records. Hence, we deny the petition.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; RESIGNATION; DEFINED; THE ACTS OF THE EMPLOYEE BEFORE AND AFTER THE ALLEGED RESIGNATION MUST BE CONSIDERED IN DETERMINING WHETHER HE IN FACT INTENDED TO TERMINATE HIS EMPLOYMENT; BURDEN OF PROVING THAT THE EMPLOYEE VOLUNTARILY RESIGNED RESTS WITH THE EMPLOYER.— Resignation – the formal pronouncement or relinquishment of a position or office – is the voluntary act of an employee who is in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and he has then no other choice but to disassociate himself from employment. The intent to relinquish must concur with the overt act of relinquishment; hence, the acts of the employee before and after the alleged resignation must be considered in determining whether he in fact intended to terminate his employment. In illegal dismissal cases, fundamental is the rule that when an employer interposes the defense of resignation, on him necessarily rests the burden to prove that the employee indeed voluntarily resigned. Guided by these principles, we

agree with the Court of Appeals that with the availing evidence, SMPI was unable to discharge this burden.

3. ID.; ID.; CONSTRUCTIVE DISMISSAL; THE EMPLOYEE'S CONTINUED EMPLOYMENT IS RENDERED IMPOSSIBLE, UNREASONABLE OR UNLIKELY UNDER THE CIRCUMSTANCES.— [W]hether there have been negotiations or not, the irreducible fact remains that Gucaban's separation from the company was the confluence of the fraudulent representation to her that her office would be declared redundant, coupled with the subsequent alienation which she suffered from the company by reason of her refusal to tender resignation. The element of voluntariness in her resignation is, therefore, missing. She had been constructively and, hence, illegally dismissed as indeed her continued employment is rendered impossible, unreasonable or unlikely under the circumstances.

4. ID.; ID.; AWARD OF MORAL DAMAGES IN TERMINATION CASES, WHEN PROPER; AWARD OF EXEMPLARY DAMAGES, AFFIRMED.— Moral damages are awarded in termination cases where the employee's dismissal was attended by bad faith, malice or fraud, or where it constitutes an act oppressive to labor, or where it was done in a manner contrary to morals, good customs or public policy. In Gucaban's case, the said bases indeed obtain when she was fraudulently induced to resign and accede to a quitclaim upon the false representation of an impending and genuine reorganization as well as on the pretext that such option would be the most beneficial. This, coupled with the subsequent oppression that immediately preceded her involuntary resignation, deserves an award of moral damages consistent with the Court of Appeals' ruling. Accordingly, Gucaban is likewise entitled to exemplary damages as decreed by the Court of Appeals.

5. ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT AND PAYMENT OF BACKWAGES; AWARD OF SEPARATION PAY IN LIEU OF REINSTATEMENT, PROPER.— [R]einstatement and payment of backwages, as the normal consequences of illegal dismissal, presuppose that the previous position from which the employee has been removed is still in existence or there is an unfilled position of a nature, more or less, similar to the one previously occupied by said employee. Yet, it has been more than a decade since the incident which led to Gucaban's

involuntary resignation took place and, hence, with the changes in SMPI's corporate structure through the years, the former position occupied by Gucaban, or an equivalent thereof, may no longer be existing or is currently occupied. Furthermore, there is the possibility that Gucaban's rejoining SMPI's workforce would only exacerbate the tension and strained relations which in the first place had given rise to this incident. This, considering that as project development manager she was holding a key position in the company founded on trust and confidence and, hence, there is also the possibility of compromising her efficiency and productivity on the job. For these two reasons, the ruling of the Court of Appeals is modified in this respect. In lieu of reinstatement, an award of separation pay is in order, equivalent to one (1) month salary for every year of service.

APPEARANCES OF COUNSEL

Dela Rosa & Nograles for petitioner.
Antonio R. Bautista & Partners for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court assailing the April 11, 2002 Decision[1] of the Court of Appeals in CA-G.R. SP No. 60135, as well as the June 14, 2002 Resolution[2] therein which denied reconsideration. The assailed decision affirmed the November 29, 1999 decision[3] of the National Labor Relations Commission (NLRC) in NLRC NCR-CA No. 019439-99, but modified the award of damages in the case. In turn, the decision of the NLRC had reversed and set aside the finding of illegal dismissal in the March 26,

[1] Penned by Associate Justice Ma. Alicia Austria-Martinez (now retired Associate Justice of the Supreme Court), with Associate Justices Hilarion L. Aquino and Mercedes Gozo-Dadole, concurring; *rollo*, pp. 60-68.

[2] *Id.* at 70.

[3] The decision was signed by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Rogelio I. Rayala (on leave) and Commissioner Alberto R. Quimpo, concurring; CA *rollo*, pp. 40-51.

1999 ruling[4] of the Labor Arbiter in NLRC NCR Case No. 00-06-05215-98.

The facts follow.

Respondent Gwendellyn Rose Gucaban (Gucaban) was well into the tenth year of her career as a licensed civil engineer when she joined the workforce of petitioner San Miguel Properties Philippines, Inc. (SMPI) in 1991. Initially engaged as a construction management specialist, she, by her satisfactory performance on the job, was promoted in 1994 and 1995, respectively, to the position of technical services manager, and then of project development manager. As project development manager, she also sat as a member of the company's management committee. She had been in continuous service in the latter capacity until her severance from the company in February 1998.[5]

In her complaint[6] for illegal dismissal filed on June 26, 1998, Gucaban alleged that her separation from service was practically forced upon her by management. She claimed that on January 27, 1998, she was informed by SMPI's President and Chief Executive Officer, Federico Gonzalez (Gonzalez), that the company was planning to reorganize its manpower in order to cut on costs, and that she must file for resignation or otherwise face termination. Three days later, the Human Resource Department allegedly furnished her a blank resignation form which she refused to sign. From then on, she had been hounded by Gonzalez to sign and submit her resignation letter.[7]

Gucaban complained of the ugly treatment which she had since received from Gonzalez and the management supposedly on account of her refusal to sign the resignation letter. She claimed she had been kept off from all the meetings of the

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[4] The decision was signed by Labor Arbiter Pablo C. Espiritu, Jr.; *id.* at 136-150.

[5] CA *rollo*, pp. 47, 137, 255, 387.

[6] The complaint was docketed as NLRC Case No. 00-06-05215-98, *id.* at 245-253.

[7] CA *rollo*, pp. 245-249.

management committee,[8] and that on February 12, 1998, she received an evaluation report signed by Gonzalez showing that for the covered period she had been negligent and unsatisfactory in the performance of her duties.[9] She found said report to be unfounded and unfair, because no less than the company's Vice-President for Property Management, Manuel Torres (Torres), in a subsequent memorandum, had actually vouched for her competence and efficiency on the job.[10] She herself professed having been consistently satisfactory in her job performance as shown by her successive promotions in the company.[11] It was supposedly the extreme humiliation and alienation that impelled her to submit a signed resignation letter on February 18, 1998.[12]

Gucaban surmised that she had merely been tricked by SMPI into filing her resignation letter because it never actualized its reorganization and streamlining plan; on the contrary, SMPI allegedly expanded its employee population and also made new appointments and promotions to various other positions. She felt that she had been dismissed without cause and, hence, prayed for reinstatement and payment of backwages and damages.[13]

SMPI argued that it truly encountered a steep market decline in 1997 that necessitated cost-cutting measures and streamlining of its employee structure which, in turn, would require the abolition of certain job positions; Gucaban's post as project development manager was one of such positions. As a measure of generosity, it allegedly proposed to Gucaban that she voluntarily resign from office in consideration of a financial package[14] – an offer for which Gucaban was supposedly given the first week of February 1998 to evaluate. Gucaban, however, did not communicate her acceptance of the offer and, instead, she allegedly

[8] *Id.* at 249-253.

[9] Annex "F" of the Complaint, *id.* at 278-280.

[10] Annex "G" of the Complaint, *id.* at 281.

[11] CA *rollo*, p. 250. See also Annexes "H", "I" and "J" of the Complaint, *id.* at 282-286.

[12] Annex "K" of the Complaint, *id.* at 292.

[13] CA *rollo*, p. 251.

[14] *Id.* at 387.

conferred with the Human Resource Department and negotiated to augment her benefits package.[15]

SMPI claimed that Gucaban was able to grasp the favorable end of the bargain and, expectant of an even more generous benefits package, she voluntarily tendered her resignation effective February 27, 1998. On the day before her effective date of resignation, she signed a document denominated as *Receipt and Release* whereby she acknowledged receipt of ₱1,131,865.67 cash representing her monetary benefits and waived her right to demand satisfaction of any employment-related claims which she might have against management.[16] SMPI admitted having made several other appointments in June 1998, but the same, however, were supposedly part of the full implementation of its reorganization scheme.[17]

In its March 26, 1999 Decision,[18] the Labor Arbiter dismissed the complaint for lack of merit, thus:

WHEREFORE, judgment is hereby rendered DISMISSING the complaint for lack of merit.

SO ORDERED.[19]

Addressing in the affirmative the issue of whether the subject resignation was voluntary, the Labor Arbiter found no proven force, coercion, intimidation or any other circumstance which could otherwise invalidate Gucaban's resignation. He found incredible Gucaban's claim of humiliation and alienation, because the mere fact that she was excluded from the meetings of the management committee would not be so humiliating and alienating as to compel her to decide to leave the company.[20] He likewise

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[15] *Id.* at 54-69, 412-417.

[16] *Id.* at 88.

[17] Annex "6" of Petitioner's Position Paper filed with the Labor Arbiter, *id.* at 89. *See* also CA *rollo*, pp. 60, 89.

[18] The decision was signed by Labor Arbiter Pablo C. Espiritu, Jr.; *id.* at 136-150.

[19] *Id.* at 150.

[20] CA *rollo*, pp. 142-143.

dismissed her claim that SMPI merely feigned the necessity of reorganization in that while the company indeed made new other appointments following Gucaban's resignation, still, this measure was an implementation of its reorganization plan.[21]

Gucaban appealed to the NLRC[22] which, in its November 29, 1999 Decision,[23] reversed the ruling of the Labor Arbiter. Finding that Gucaban has been illegally dismissed, it ordered her reinstatement without loss of seniority rights and with full backwages, as well as ordered the award of damages and attorney's fees. It disposed of the appeal as follows:

> WHEREFORE, the appealed decision is SET ASIDE. On the basis of our finding that the complainant was illegally dismissed, judgment is hereby rendered directing the respondent to reinstate complainant to her position last held, and to pay her full backwages computed from the time of her dismissal until she is actually reinstated. As alleged and prayed for in the complaint, the respondent is likewise directed to pay complainant moral damages limited however to ₱200,000.00, exemplary damages of ₱100,000.00, and ten percent (10%) of the total award as attorney's fees.
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> SO ORDERED.[24]

SMPI sought reconsideration,[25] but it was denied.[26] It elevated the matter to the Court of Appeals *via* a petition for *certiorari*.[27]

On April 11, 2002, the Court of Appeals issued the assailed Decision[28] finding partial merit in the petition. It affirmed the NLRC's finding of illegal/constructive dismissal, but modified the monetary award as follows:

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[21] *Id.* at 144.

[22] *Id.* at 151-171.

[23] The decision was signed by Commissioner Vicente S.E. Veloso; *id.* at 40-50.

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

[25] *Rollo*, pp. 210-221.

[26] *Id.* at 251-252.

[27] CA *rollo*, pp. 2-30.

[28] *Id.* at 386-393.

WHEREFORE, we grant the petition for *certiorari* insofar only in the granting of the exorbitant amount of ₱200,000.00 moral damages and ₱100,000.00 exemplary damages.

The damages awarded are reduced to ₱50,000.00 moral damages and ₱25,000.00 exemplary damages as discussed in the text of the decision. The ten percent (10%) awarded for attorneys fees shall be based on the total amount awarded.

SO ORDERED.[29]

SMPI's motion for reconsideration was denied;[30] hence, this recourse to the Court.

SMPI posits that the Court of Appeals' finding of illegal dismissal was at best conjectural, based as it is on a misapprehension of facts and on Gucaban's self-serving allegations of alienation and humiliation which, nevertheless, could not have given sufficient motivation for her to resign. It insists that Gucaban, in exchange for a benefits package, has voluntarily tendered her resignation following the presentation to her of the possibility of company reorganization and of the resulting abolition of her office as necessitated by the company's business losses at the time. It adds that Gucaban has, in fact, been able to negotiate with the company for a better separation package which she voluntarily accepted as shown by her unconditional resignation letter and the accompanying *Receipt and Release* form.[31] It cites *Samaniego v. NLRC,*[32] *Sicangco v. NLRC,*[33] *Domondon v. NLRC*[34] and *Guerzon v. Pasig Industries, Inc.*[35] to support its cause.[36]

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[29] *Id.* at 393.

[30] *Id.* at 420.

[31] *Rollo,* pp. 379-385.

[32] G.R. No. 93059, June 3, 1991, 198 SCRA 111.

[33] G.R. No. 110261, August 4, 1994, 235 SCRA 96.

[34] 508 Phil. 541 (2005).

[35] G.R. No. 170266, September 12, 2008, 565 SCRA 120.

[36] *Rollo*, pp. 372-377, 898-900. *See* also Manifestation dated March 6, 2009 and Manifestation dated November 14, 2005, *rollo*, pp. 860-862.

Gucaban stands by the uniform findings of the NLRC and the Court of Appeals. In her Comment on the Petition, she points out that indeed SMPI was unable to conclusively refute the allegations in her complaint, particularly those which negate the voluntariness of her resignation.[37] She insists that SMPI had no intention to reorganize at the time the option to resign was presented to her. She discloses that while actual reorganization took place more than a year after she was fraudulently eased out of the company, the said measure was supposedly brought about by the change in management and not by a need to cut on expenditures. In connection with this, she surmises why would SMPI actually implement its reorganization plan belatedly if there were, at the time of her resignation, an existing need to cut on costs, and why would those affected employees be given financial benefits far better than hers.[38] She concludes that given the foregoing, the cases relied on by petitioner do not apply to the case at bar.[39]

Replying, SMPI counters that the fact that the company had undertaken an albeit belated reorganization would mean that there was such a plan in existence at the time of Gucaban's resignation. It professes that in June 1998, the company designated several of its personnel to different positions which, therefore, indicates a reorganization following respondent's resignation. Moreover, it points out that Gucaban's claim of trickery does not sit well with the fact that she is a well-educated person who naturally cannot be inveigled into resigning from employment against her will.[40]

Prefatorily, we note in this case the inconsistency in the factual findings and conclusions of the Labor Arbiter and the NLRC, yet the incongruence has already been addressed and settled by the Court of Appeals which affirmed the NLRC. Not being a

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[37] *Id.* at 709-711.

[38] *Id.* at 712-715. *See* also Memorandum, *id.* at 877-881.

[39] *Id.* at 712.

[40] Petitioner's Memorandum, *id.* at 905-908.

trier of facts, this Court then ought to accord respect if not finality to the findings of the Court of Appeals, especially since, as will be shown, they are substantiated by the availing records.[41] Hence, we deny the petition.

Resignation – the formal pronouncement or relinquishment of a position or office – is the voluntary act of an employee who is in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and he has then no other choice but to disassociate himself from employment.[42] The intent to relinquish must concur with the overt act of relinquishment;[43] hence, the acts of the employee before and after the alleged resignation must be considered in determining whether he in fact intended to terminate his employment.[44] In illegal dismissal cases, fundamental is the rule that when an employer interposes the defense of resignation, on him necessarily rests the burden to prove that the employee indeed voluntarily resigned.[45] Guided by these principles, we agree with the Court of Appeals that with the availing evidence, SMPI was unable to discharge this burden.

While indeed the abolition of Gucaban's position as a consequence of petitioner's supposed reorganization plan is not

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[41] *Procter and Gamble Philippines v. Bondesto*, 468 Phil. 932, 941 (2004); *Hantex Trading Co., Inc. v. Court of Appeals*, 438 Phil. 737, 743 (2002); *Permex, Inc. v. NLRC*, 380 Phil. 79, 85 (2000).

[42] *Nationwide Security and Allied Services, Inc. v. Ronald P. Valderama*, G.R. No. 186614, February 23, 2011; *Alfaro v. Court of Appeals*, 416 Phil. 310, 320 (2001), citing *Philippine Wireless, Inc. (Pocketbell) v. NLRC*, 310 SCRA 363 (1999), *Valdez v. NLRC*, 286 SCRA 87 (1998) and *Habana v. NLRC*, 298 SCRA 537 (1998); *Intertrod Maritime, Inc. v. NLRC*, G.R. No. 81087, June 19, 1991, 198 SCRA 318, 323. *See* also *Batongbacal v. Associated Bank*, 250 Phil. 602, 608 (1988).

[43] *Nationwide Security and Allied Services, Inc. v. Ronald P. Valderama, supra*; *Cheniver Deco Print Technics, Corp. v. NLRC*, 382 Phil. 651, 659 (2000), citing *Pascua v. NLRC*, 287 SCRA 554 (1998).

[44] *Nationwide Security and Allied Services, Inc. v. Ronald P. Valderama, supra* note 42.

[45] *Id*.

the ground invoked in this case of termination, still, the question of whether or not there was such reorganization plan in place at the time of Gucaban's separation from the company, is material to the determination of whether her resignation was of her own volition as claimed by SMPI, inasmuch as the facts of this case tell that Gucaban could not have filed for resignation had Gonzalez not communicated to her the alleged reorganization plan for the company.

In all stages of the proceedings, SMPI has been persistent that there was an existing reorganization plan in 1998 and that it was implemented shortly after the effective date of Gucaban's resignation. As proof, it submitted a copy of its June 9, 1998 Memorandum which shows that new appointments had been made to various positions in the company. A fleeting glance at the said document, however, tells that there were four high-ranking personnel who received their respective promotions, yet interestingly it tells nothing of a reorganization scheme being implemented within the larger corporate structure.[46]

Equally interesting is that SMPI, in its *Supplemental Argument to the Motion for Reconsideration* filed with the NLRC, attached copies of the notices it sent to the Department of Labor and Employment on July 13, 1999 and December 29, 1998 to the effect that effective February 15, August 15 and September 15, 1999 it would have to terminate the services of its 76 employees due to business losses and financial reverses.[47] True, while a reorganization of SMPI's corporate structure might have indeed taken place as shown by these notices, nevertheless, it happened only in the latter part of 1999 – or more than a year after Gucaban's separation from the company and incidentally, after she filed the instant complaint.[48] SMPI's claim in this respect all the more loses its bearing, considering that said corporate

[46] *See* CA *rollo*, p. 89.

[47] *Id.* at 198-211.

[48] *See* Notices of Termination submitted by SMPI to the Department of Labor and Employment involving 42 of its employees on the ground that its business was suffering reverses and losses. *Id.* at 206-211.

restructuring was brought about rather by the sudden change in management than the need to cope with business losses. And this fact has been explained by Gucaban in her Comment and in her Memorandum filed with the Court of Appeals.[49]

It is not difficult to see that, shortly prior to and at the time of Gucaban's alleged resignation, there was actually no genuine corporate restructuring plan in place as yet. In other words, although the company might have been suffering from losses due to market decline as alleged, there was still no concrete plan for a corporate reorganization at the time Gonzalez presented to Gucaban the seemingly last available alternative options of voluntary resignation and termination by abolition of her office. Certainly, inasmuch as the necessity of corporate reorganization generally lies within the exclusive prerogative of management, Gucaban at that point had no facility to ascertain the truth behind it, and neither was she in a position to question it right then and there. Indeed, she could not have chosen to file for resignation had SMPI not broached to her the possibility of her being terminated from service on account of the supposed reorganization.

It is then understandable for Gucaban, considering the attractive financial package which SMPI admittedly offered to her, to opt for resignation instead of suffer termination – a consequence the certainty of which she was made to believe. As rightly noted by the Court of Appeals, that there was no actual reorganization plan in place when Gucaban was induced to resign, and that she had been excluded from the meetings of the management committee since she refused to sign her resignation letter followed by the soured treatment that caused her humiliation and alienation, are matters which SMPI has not directly addressed and successfully refuted.[50]

Another argument advanced by SMPI to support its claim that the resignation of Gucaban was voluntary is that the latter has actually been given ample time to weigh her options and

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[49] CA *rollo*, pp. 238-239, 318-319.

[50] *Id.* at 391.

was, in fact, able to negotiate with management for improved benefits. Again, this contention is specious as the same is not supported by the availing records.[51] Indeed, as clarified by Gucaban, the increased benefits was the result of practice sanctioned and even encouraged by the mother company in favor of those availing of early retirement and that the increased basic monthly rate in the computation of the benefits is applied to April and retroacts to January.[52]

Besides, whether there have been negotiations or not, the irreducible fact remains that Gucaban's separation from the company was the confluence of the fraudulent representation to her that her office would be declared redundant, coupled with the subsequent alienation which she suffered from the company by reason of her refusal to tender resignation. The element of voluntariness in her resignation is, therefore, missing. She had been constructively and, hence, illegally dismissed as indeed her continued employment is rendered impossible, unreasonable or unlikely under the circumstances.[53] The observation made by the Court of Appeals is instructive:

> x x x As correctly noted by public respondent NLRC, respondent Gucaban did not voluntarily resign but was forced to do so because of petitioner's representation regarding its planned reorganization. Mr. Gonzale[z] informed respondent that if she does not resign from her employment, she shall be terminated which would mean less financial benefits than that offered to her. When respondent initially refused, petitioner's subsequent actions as alleged by respondent which were not rebutted by petitioner, show that she is being eased out from the company. Said actions rendered respondent's continuous employment with petitioner impossible, unreasonable and unlikely. x x x
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> x x x [R]esignation must be voluntary and made with the intention of relinquishing the office, accompanied with an act of relinquishment. Indeed, it would have been illogical for private respondent herein

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[51] *Id*.

[52] *Id.* at 320-321, 391.

[53] See *Philippine Japan Active Carbon Corporation v. NLRC,* G.R. No. 83239, March 8, 1989, 253 SCRA 149, 153.

to resign and then file a complaint for illegal dismissal. Resignation is inconsistent with the filing of the said complaint. x x x

x x x Since respondent could not have resigned absent petitioner's broaching to her the idea of voluntary resignation instead of retrenchment, coupled with petitioner's acts of discrimination, petitioner in effect forced respondent to resign. The same is constructive dismissal and is a dismissal without cause. x x x

As respondent was dismissed without cause, the NLRC ruling is correct that she is entitled to reinstatement and backwages, the latter to be computed from her dismissal up to the time of her actual reinstatement pursuant to Art. 279 of the Labor Code.[54]

At this juncture, we find that the cases invoked by SMPI are hardly supportive of its case. In *Samaniego,* one of the issues addressed by the Court is whether the resignation of petitioners therein was voluntary; but while the matter of reorganization was indeed raised as a peripheral issue, nevertheless, the same has dealt merely with the validity thereof. As in the cases of *Domondon* and *Guerzon,* the Court, in *Samaniego,* did not tackle the matter of the existence or non-existence of a genuine and *bona fide* reorganization at the time the option to resign was presented to the employee as would affect his decision to voluntarily resign or not. And in *Sicangco,* the Court dismissed the allegation of involuntary resignation by a well-educated employee because there was no proven fraud, intimidation or undue influence that could support it. In the instant case, the pressing matter is whether there was in place a genuine reorganization plan awaiting immediate implementation in good faith at or about the time Gucaban resolved to hand in her resignation letter. This issue is primordial, because to reiterate, Gucaban indeed would not have opted to resign without the company having laid out to her its prospect of a corporate restructuring – which SMPI failed to establish as existing at the time – as well as the certainty of a consequent termination should she not resign.

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[54] CA *rollo,* pp. 390-391.

A final word. Moral damages are awarded in termination cases where the employee's dismissal was attended by bad faith, malice or fraud, or where it constitutes an act oppressive to labor, or where it was done in a manner contrary to morals, good customs or public policy. [55] In Gucaban's case, the said bases indeed obtain when she was fraudulently induced to resign and accede to a quitclaim upon the false representation of an impending and genuine reorganization as well as on the pretext that such option would be the most beneficial. This, coupled with the subsequent oppression that immediately preceded her involuntary resignation, deserves an award of moral damages consistent with the Court of Appeals' ruling. Accordingly, Gucaban is likewise entitled to exemplary damages as decreed by the Court of Appeals.

Lastly, reinstatement and payment of backwages, as the normal consequences of illegal dismissal, presuppose that the previous position from which the employee has been removed is still in existence or there is an unfilled position of a nature, more or less, similar to the one previously occupied by said employee.[56] Yet, it has been more than a decade since the incident which led to Gucaban's involuntary resignation took place and, hence, with the changes in SMPI's corporate structure through the years, the former position occupied by Gucaban, or an equivalent thereof, may no longer be existing or is currently occupied. Furthermore, there is the possibility that Gucaban's rejoining SMPI's workforce would only exacerbate the tension and strained relations which in the first place had given rise to this incident. This, considering that as project development manager she was holding a key position in the company founded on trust and confidence and, hence, there is also the possibility of

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[55] *Mayon Hotel and Restaurant v. Adana,* 497 Phil. 892, 922 (2005); *Litonjua Group of Companies v. Vigan*, 412 Phil. 627, 643 (2001); *Equitable Banking Corp. v. NLRC,* 339 Phil. 541, 565 (1997); and *Airline Pilots Association of the Philippines v. NLRC,* 328 Phil. 814, 830 (1996). See *Maglutac v. NLRC,* G.R. Nos. 78345 and 78637, September 21, 1990, 189 SCRA 767, citing *Guita v. Court of Appeals,* 139 SCRA 576 (1985).

[56] See *General Milling Corporation v. Casio,* G.R. No. 149552, March 10, 2010, 615 SCRA 13; *Escobin v. NLRC,* 351 Phil. 973, 1000 (1998).

compromising her efficiency and productivity on the job.[57] For these two reasons, the ruling of the Court of Appeals is modified in this respect. In lieu of reinstatement, an award of separation pay is in order, equivalent to one (1) month salary for every year of service.

WHEREFORE, the Petition is *DENIED*. The April 11, 2002 Decision of the Court of Appeals in CA-G.R. SP No. 60135, as well as its June 14, 2002 Resolution, are hereby *AFFIRMED* with the *MODIFICATION* that petitioner San Miguel Properties Philippines, Inc. is *DIRECTED* to pay respondent Gwendellyn Rose S. Gucaban separation pay in lieu of reinstatement and backwages. The case is *REMANDED* to the Labor Arbiter for execution and for the proper determination of respondent's separation pay, less any amount which she may have received as financial assistance.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Abad,* and *Mendoza, JJ.,* concur.

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[57] See *Cabigting v. San Miguel Foods, Inc*., G.R. No. 167706, November 5, 2009, 605 SCRA 14 and *Globe Mackay Cable and Radio Corporation v. NLRC,* G.R. No. 82511, March 3, 1992, 206 SCRA 701, 711.

[*] Designated additional member per Special Order No. 1042 dated July 6, 2011.

THIRD DIVISION

[G.R. No. 163551. July 18, 2011]

DATU KIRAM SAMPACO, substituted by HADJI SORAYA S. MACABANDO, *petitioner, vs.* **HADJI SERAD MINGCA LANTUD,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; TORRENS TITLE; THE INDEFEASIBILITY OF TITLE DOES NOT ATTACH TO TITLES SECURED BY FRAUD AND MISREPRESENTATION.— The Torrens title is conclusive evidence with respect to the ownership of the land described therein, and other matters which can be litigated and decided in land registration proceedings. Tax declarations and tax receipts cannot prevail over a certificate of title which is an incontrovertible proof of ownership. An original certificate of title issued by the Register of Deeds under an administrative proceeding is as indefeasible as a certificate of title issued under judicial proceedings. However, the Court has ruled that indefeasibility of title does not attach to titles secured by fraud and misrepresentation.

2. ID.; ID.; ID.; ID.; FINDINGS THAT THERE WAS FRAUD IN THE ISSUANCE OF THE FREE PATENT TITLE BASED ONLY ON THE ALLEGATION OF THE PARTY THAT THE SUBJECT LAND WAS RESIDENTIAL, NOT PROPER; NOT ONLY AGRICULTURAL LANDS, BUT ALSO RESIDENTIAL LANDS, MAY BE ACQUIRED BY FREE PATENT.— It should be pointed out that the allegation in the Complaint that the land is residential was made only by respondent, but the true classification of the disputed land as residential was not shown to have been made by the President, upon recommendation by the Secretary of Environment and Natural Resources, pursuant to Section 9 of Commonwealth Act No. 141, otherwise known as *The Public Land Act*. Hence, the trial court erred in concluding that there was fraud in the issuance of respondent's free patent title on the ground that it covered residential land based only on the Complaint which stated that

the property was residential land when it was not shown that it was the President who classified the disputed property as residential, and OCT No. P-658 itself stated that the free patent title covered agricultural land. It has been stated that at present, not only agricultural lands, but also residential lands, have been made available by recent legislation for acquisition by free patent by any natural born Filipino citizen. Nevertheless, the fact is that in this case, the free patent title was granted over agricultural land as stated in OCT No. P-658.

3. ID.; ID.; ID.; ID.; THE CERTIFICATION ISSUED BY THE BUREAU OF LANDS, BY ITSELF, IS INSUFFICIENT TO PROVE FRAUD, FOR FRAUD AND MISREPRESENTATION AS GROUNDS FOR CANCELLATION OF PATENT AND ANNULMENT OF TITLE, SHOULD NEVER BE PRESUMED BUT MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE.— The Court holds that the certification, by itself, is insufficient to prove the alleged fraud. Fraud and misrepresentation, as grounds for cancellation of patent and annulment of title, should never be presumed, but must be proved by clear and convincing evidence, mere preponderance of evidence not being adequate. Fraud is a question of fact which must be proved. The signatory of the certification, Datu Samra Andam, A/Adm. Assistant II, Natural Resources District No. XII-3, Marawi City, was not presented in court to testify on the due issuance of the certification, and to testify on the details of his certification, particularly the reason why the said office had no records of the data contained in OCT No. P-658 or to testify on the fact of fraud, if any. Thus, the Court holds that the evidence on record is insufficient to prove that fraud was committed in the issuance of respondent's Torrens title. Hence, respondent's Torrens title is a valid evidence of his ownership of the land in dispute.

4. ID.; ID.; ACTION REINVINDICATORIA; REQUISITES TO PROSPER; PERSON WHO CLAIMS THAT HE HAS A BETTER RIGHT TO THE PROPERTY MUST FIRST FIX THE IDENTITY OF THE LAND HE IS CLAIMING BY DESCRIBING THE METES AND BOUNDS THEREOF.— Under Article 434 of the Civil Code, to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two (2) things: *first*, the identity of the land claimed; and *second*, his title thereto.

In regard to the first requisite, in an *accion reinvindicatoria*, the person who claims that he has a better right to the property must first fix the identity of the land he is claiming by describing the location, area and boundaries thereof. In this case, petitioner claims that the property in dispute is part of his larger property. However, petitioner failed to identify his larger property by providing evidence of the metes and bounds thereof, so that the same may be compared with the technical description contained in the title of respondent, which would have shown whether the disputed property really formed part of petitioner's larger property. The appellate court correctly held in its Resolution dated May 13, 2004 that petitioner's claim is solely supported by testimonial evidence, which did not conclusively show the metes and bounds of petitioner's larger property in relation to the metes and bounds of the disputed property; thus, there is no sufficient evidence on record to support petitioner's claim that the disputed property is part of his larger property.

5. ID.; ID.; ID.; ID.; NOT PROVED; CLAIMANT MUST AFFIRMATIVELY DECLARE AND PROVE THAT HE ACTUALLY POSSESSED AND CULTIVATED THE DISPUTED PROPERTY TO THE EXCLUSION OF OTHER CLAIMANTS WHO STAND ON EQUAL FOOTING UNDER THE PUBLIC LAND ACT AS ANY OTHER PIONEERING CLAIMANTS.— The Court holds that petitioner failed to prove the requisites of reconveyance as he failed to prove the identity of his larger property in relation to the disputed property, and his claim of title by virtue of open, public and continuous possession of the disputed property in the concept of owner is nebulous in the light of a similar claim by respondent who holds a free patent title over the subject property. As stated in ***Ybañez v. Intermediate Appellate Court***, it is relatively easy to declare and claim that one owns and possesses public agricultural land, but it is entirely a different matter to affirmatively declare and to prove before a court of law that one actually possessed and cultivated the entire area to the exclusion of other claimants who stand on equal footing under the *Public Land Act* (Commonwealth Act No. 141, as amended) as any other pioneering claimants.

6. ID.; ID.; ID.; ID.; A COUNTERCLAIM FOR THE CANCELLATION OF TITLE IS NOT A COLLATERAL ATTACK BUT A DIRECT ATTACK ON THE TORRENS

TITLE; THE COUNTERCLAIM FOR THE CANCELLATION OF TITLE AND RECONVEYANCE OF THE SUBJECT PROPERTY HAS ALREADY PRESCRIBED.— Here, the case cited by petitioner, ***Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago***, declared that the one-year prescriptive period does not apply when the party seeking annulment of title or reconveyance is in possession of the lot, as well as distinguished a collateral attack under Section 48 of PD No. 1529 from a direct attack, and held that a counterclaim may be considered as a complaint or an independent action and can be considered a direct attack on the title, thus: Section 48 of P.D. 1529, the Property Registration Decree, provides that a certificate of title shall not be subject to collateral attack and cannot be altered, modified, or canceled **except in a direct proceeding**. **An action is an attack on a title when the object of the action is to nullify the title, and thus challenge the judgment or proceeding pursuant to which the title was decreed. The attack is direct when the object of an action is to annul or set aside such judgment, or enjoin its enforcement**. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment or proceeding is nevertheless made as an incident thereof. x x x **A counterclaim can be considered a direct attack on the title**. In *Development Bank of the Philippines v. Court Appeals*, we ruled on the validity of a certificate of title despite the fact that the nullity thereof was raised only as a counterclaim. **It was held that a counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff. It stands on the same footing and is to be tested by the same rules as if it were an independent action**. x x x Based on the foregoing, the Court holds that petitioner's counterclaim for cancellation of respondent's title is not a collateral attack, but a direct attack on the Torrens title of petitioner. However, the counterclaim seeking for the cancellation of title and reconveyance of the subject property has prescribed as petitioner has not proven actual possession and ownership of the property due to his failure to prove the identity of his larger property that would show that the disputed property is a part thereof, and his claim of title to the subject property by virtue of open, public and continuous possession in the concept of owner is nebulous in the light of a similar claim by respondent who holds a Torrens

title to the subject property. Respondent's original certificate of title was issued on May 22, 1981, while the counterclaim was filed by petitioner on October 15, 1984, which is clearly beyond the one-year prescriptive period.

APPEARANCES OF COUNSEL

Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero Law Office for petitioner.

Paisal A. Padate for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* of the Court of Appeals' Decision dated August 15, 2003 in CA-G.R. CV No. 63801 and its Resolution dated May 13, 2004, denying petitioner's motion for reconsideration.

The facts, as stated by the Court of Appeals, are as follows:

On September 14, 1984, respondent Hadji Serad Mingca Lantud, the plaintiff in the lower court, filed an action to quiet title with damages[1] with the Regional Trial Court (RTC) of Lanao del Sur, Branch 8, Marawi City (trial court), against petitioner Datu Kiram Sampaco (deceased), the defendant in the lower court, who has been substituted by his heirs, represented by Hadji Soraya Sampaco-Macabando.[2]

Respondent alleged in his Complaint[3] that he is the owner in fee simple of a parcel of residential lot located at Marinaut, Marawi City, with an area of 897 square meters covered by Original Certificate of Title (OCT) No. P-658. On August 25, 1984, petitioner Datu Kiram Sampaco, through his daughter

[1] Docketed as Civil Case No. CI-11-84.

[2] Substitution per Order of the trial court dated November 18, 1993, records, p. 257.

[3] Records, p. 1.

Soraya Sampaco-Macabando with several armed men, forcibly and unlawfully entered his property and destroyed the nursery buildings, cabbage seedlings and other improvements therein worth ₱10,000.00. On August 30, 1984, Barangay Captain Hadji Hassan Abato and his councilmen prepared and issued a decision[4] in writing stating that petitioner Datu Kiram Sampaco is the owner of the subject parcel of land. Respondent stated that the acts of petitioner and the said decision of the *Barangay* Captain may cast a cloud over or otherwise prejudice his title. Respondent stated that he and his predecessors-in-interest have been in open, public and exclusive possession of the subject property. He prayed that the acts of petitioner and the decision of Barangay Captain Hadji Hassan Abato and his councilmen be declared invalid, and that petitioner be ordered to pay respondent damages in the amount of ₱10,000.00 and attorney's fees.

In his Answer,[5] defendant Datu Kiram Sampaco, petitioner herein, denied the material allegations of the Complaint. Petitioner asserted that he and his predecessors-in-interest are the ones who had been in open, public, continuous, and exclusive possession of the property in dispute. Petitioner alleged that OCT No. P-658 was secured in violation of laws and through fraud, deception and misrepresentation, considering that the subject parcel of land is a residential lot and the title issued is a free patent. Moreover, respondent and his predecessors-in-interest had never taken actual possession or occupied the land under litigation. On the contrary, petitioner has all the evidence of actual possession and ownership of permanent improvements and other plants on the land in dispute.

Petitioner filed a counterclaim for actual and moral damages, and attorney's fees for the unfounded complaint and prayed for its dismissal. He also sought the cancellation of respondent's OCT No. P-658 and the reconveyance of the subject parcel of land.

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[4] Exhibit "5", *id.* at 378.

[5] Records, p. 7.

During the trial, respondent Hadji Lantud testified that he acquired the subject lot from his grandmother, Intumo Pagsidan, a portion thereof from his grandmother's helper, Totop Malacop, pursuant to a court decision after litigating with him.[6] Respondent had been residing on the lot for more than 30 years, applied for a title thereto and was issued OCT No. P-658.[7] He paid the corresponding real estate taxes for the land.[8] He planted assorted trees and plants on the lot like bananas, jackfruits, coconuts and others.[9] He testified that he was not aware of the alleged litigation over the lot before Barangay Captain Hadji Hassan Abato, although he was furnished a copy of the decision.[10]

On the other hand, petitioner Datu Kiram Sampaco testified that the land under litigation is only a portion of the 1,800 square meters of land that he inherited in 1952 from his father, Datu Sampaco Gubat.[11] Since then, he had been in adverse possession and ownership of the subject lot, cultivating and planting trees and plants through his caretaker Hadji Mustapha Macawadib.[12] In 1962, he mortgaged the land (1,800 square meters) with the Development Bank of the Philippines, Ozamis branch.[13] He declared the land (1,800 square meters) for taxation purposes[14] and paid real estate taxes, and adduced in evidence the latest Tax Receipt No. 1756386 dated September 15, 19[9]3.[15] Petitioner presented four corroborating witnesses as regards his possession of the subject property.

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[6] RTC Decision, *rollo*, pp. 58-59.

[7] *Id.* at 59; records, p. 424.

[8] RTC Decision, *rollo*, p. 59; Exhibits "B", to "D", records, pp. 375-377.

[9] RTC Decision, *rollo*, p. 59.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id.*; Exhibit "1", records, p. 443.

[14] RTC Decision, *rollo*, p. 60; records, pp. 445-447.

[15] RTC Decision, *rollo*, p. 60.

After trial on the merits, the trial court rendered a Decision on March 31, 1999 in favor of petitioner, the dispositive portion of which reads:

> WHEREFORE, premises considered the court is of the opinion and so holds that the preponderance of evidence is in favor of the defendant and against the plaintiff. Judgment is hereby rendered as follows:
>
> 1. Dismissing plaintiff's complaint for lack of merit;
> 2. Declaring Original Certificate of Title No. P-658 (Exh. A) null and void and of no legal effect;
> 3. Declaring the defendant the absolute or true owner and possessor of the land in dispute; and
> 4. Ordering the plaintiff to pay the defendant the sum of ₱10,000.00 for attorney's fees plus ₱500.00 per appearance.[16]

The trial court held that the issuance of respondent's title, OCT No. P-658, was tainted with fraud and irregularities and the title is, therefore, spurious; hence, it is null and void, and without any probative value. The finding of fraud was based on: (1) the Certification issued by Datu Samra Andam, A/Adm. Assistant II, Natural Resources District No. XII-3, Marawi City, stating that the data contained in respondent's title were verified and had no record in the said office; (2) the said Certification was not refuted or rebutted by respondent; (3) while free patents are normally issued for agricultural lands, respondent's title is a free patent title issued over a residential land as the lot is described in the Complaint as a residential lot; and (4) Yusoph Lumampa, an employee of the local Bureau of Lands, to whom respondent allegedly entrusted the paperwork of the land titling, was not presented as a witness.

Moreover, the trial court stated that respondent failed to establish with competent and credible evidence that he was in prior possession of the subject property. No corroborative witness was presented to further prove his prior possession.

On the other hand, the trial court stated that petitioner offered documentary evidence, consisting of a contract of real estate

[16] *Id.* at 69-70.

mortgage of the subject property, tax declarations, an official tax receipt, and testimonial evidence to prove that he had been in open, public, continuous, and lawful possession of the subject property in the concept of owner.

Respondent appealed the decision of the trial court to the Court of Appeals.

On August 15, 2003, the Court of Appeals rendered a Decision reversing the decision of the trial court, the dispositive portion of which reads:

WHEREFORE:

1. The appeal is granted and the appealed judgment is hereby totally REVERSED.
2. To quiet his title, plaintiff-appellant Hadji Serad Mingca Lantud is confirmed the owner of the parcel of land covered by Original Certificate of Title No. P-658;
3. The defendant-appellee is ordered to pay ₱50,000.00 as attorney's fees to the plaintiff-appellant; and
4. Costs against the defendant-appellee.[17]

Petitioner's motion for reconsideration was denied by the Court of Appeals in its Resolution[18] dated May 13, 2004.

The Court of Appeals held that there is no controversy that respondent is a holder of a Torrens title; hence, he is the owner of the subject property. The appellate court stressed that Section 47[19] of the Land Registration Act (Act No. 496) provides that the certificate of title covering registered land shall be received as evidence in all courts of the Philippines and shall be conclusive as to all matters stated therein.

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[17] *Rollo,* p. 46.

[18] *Id.* at 49.

[19] Sec. 47. The original certificate in the registration book, any copy thereof duly certified under the signature of the clerk, or of the register of deeds of the province or city where the land is situated, and the seal of the court, and also the owner's duplicate certificate, shall be received as evidence in all the courts of the Philippine Islands and shall be conclusive as to all matters contained therein except as far as otherwise provided in this Act.

The Court of Appeals stated that the Torrens title has three attributes: (1) a Torrens title is the best evidence of ownership over registered land and, unless annulled in an appropriate proceeding, the title is conclusive on the issue of ownership; (2) a Torrens title is incontrovertible and indefeasible upon the expiration of one year from the date of the entry of the decree of registration;[20] and (3) a Torrens title is not subject to collateral attack.[21]

The Court of Appeals held that petitioner's counterclaim filed on October 15, 1984 for cancellation of respondent's original certificate of title issued on May 22, 1981 was filed beyond the statutory one-year period; hence, petitioner's title had become indefeasible, and cannot be affected by the decision made by Barangay Captain Hadji Hassan Abato and his councilmen. Moreover, the appellate court held that petitioner's prayer for the cancellation of respondent's title, OCT No. P-658, through a counterclaim included in his Answer is a collateral attack, which the law does not allow, citing *Cimafranca v. Court of Appeals*[22] and *Natalia Realty Corporation v. Valdez.*[23]

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[20] Presidential Decree (PD) No. 1529, Sec. 32. *Review of decree of registration; Innocent purchaser for value*. — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely, affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration **not later than one year from and after the date of the entry of such decree of registration**, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value. (Emphasis supplied.)

[21] PD No. 1529, Sec. 48. *Certificate not subject to collateral attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified or cancelled except in a direct proceeding in accordance with law.

[22] 231 Phil. 559 (1987).

[23] 255 Phil. 510 (1989).

The allegation of fraud in securing OCT No. P-658 on the ground that the property in dispute is a residential lot and not subject of a free patent was not given weight by the appellate court as it was supported only by testimonial evidence that did not show how (by metes and bounds) and why the property in dispute could not have been the subject of a free patent. The appellate court stated that a mere preponderance of evidence is not adequate to prove fraud;[24] it must be established by clear and convincing evidence.

The Court of Appeals also noted that petitioner claimed that the subject property is only part of his larger property. Although petitioner introduced proof of payment of the real estate taxes of the said property, as well as a previous mortgage of the property, petitioner did not show that the disputed property is part of his larger property. Hence, the appellate court stated that under such circumstances, it cannot rule that petitioner owned the land under litigation, since petitioner failed to show that it is part of his larger property.

The Court of Appeals did not award actual and moral damages, because respondent failed to prove the amount of any actual damages sustained, and the instances enumerated under Article 2219 of the Civil Code warranting the award of moral damages were not present.

However, the Court of Appeals awarded attorney's fees in the amount of ₱50,000.00, considering that respondent was forced to incur expenses to protect his right through the action to quiet title.

Petitioner filed this petition raising the following issues:

I

THE COURT OF APPEALS MISERABLY FAILED TO CONSIDER THE FACT THAT THE TORRENS TITLE INVOLVED HEREIN WAS ISSUED PURSUANT TO A FREE PATENT WHICH COULD NOT BE VALIDLY ISSUED OVER A PRIVATE LAND.

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[24] CA Decision, *rollo*, p. 45, citing *Maestrado v. Court of Appeals*, 327 SCRA 678, 694 (2000).

II

THE COURT OF APPEALS ERRED IN DISREGARDING THE FACT THAT AS CERTIFIED TO BY THE BUREAU OF LANDS ITSELF NO SUCH FREE PATENT OVER THE SUBJECT LAND WAS ISSUED BY IT; HENCE, SAID FREE PATENT IS SPURIOUS.

III

THE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE TRIAL COURT THAT THE SUBJECT LOT HAD LONG BEEN OWNED, POSSESSED AND CULTIVATED BY THE DEFENDANT (PETITIONER HEREIN) OR HIS PREDECESSORS-IN-INTEREST SINCE TIME IMMEMORIAL IN THE CONCEPT OF AN OWNER.

IV

THE COURT OF APPEALS ERRED IN RULING THAT THE PETITIONER'S COUNTERCLAIM FOR CANCELLATION OF RESPONDENT'S TITLE IS BARRED.

V

THE COURT OF APPEALS ERRED IN RULING THAT THE COUNTERCLAIM IN THE INSTANT CASE IS A COLLATERAL ATTACK ON RESPONDENT-PLAINTIFF'S TITLE.

VI

THE COURT OF APPEALS ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION.[25]

The main issue is whether or not the Court of Appeals erred in sustaining the validity of OCT No. P-658 and confirming respondent as owner of the property in dispute.

Petitioner contends that the Court of Appeals erred in disregarding the fact that the Torrens title was issued to respondent by virtue of a free patent covering a residential lot that is private land as it has been acquired by petitioner through open, public, continuous and lawful possession of the land in the concept of owner. Petitioner thus prayed for the cancellation of respondent's title and the reconveyance of the subject property.

[25] *Rollo*, pp. 20-21.

Hence, the Court of Appeals erred in declaring that the subject lot belongs to respondent.

The contention is without merit.

The Torrens title is conclusive evidence with respect to the ownership of the land described therein, and other matters which can be litigated and decided in land registration proceedings.[26] Tax declarations and tax receipts cannot prevail over a certificate of title which is an incontrovertible proof of ownership.[27] An original certificate of title issued by the Register of Deeds under an administrative proceeding is as indefeasible as a certificate of title issued under judicial proceedings.[28] However, the Court has ruled that indefeasibility of title does not attach to titles secured by fraud and misrepresentation.[29]

In this case, petitioner alleged in his Answer to respondent's Complaint in the trial court that respondent's title, OCT No. P-658, was secured in violation of the law and through fraud, deception and misrepresentation, because the subject parcel of land is a residential lot, which cannot be subject of a free patent, since only agricultural lands are subject of a free patent.

The trial court found that "[t]he lot under litigation as clearly described in the complaint is a residential lot and a free patent title thereto cannot validly be issued." This finding was one of the bases for the trial court's declaration that the issuance of OCT was tainted with fraud and irregularities and is, therefore, spurious; thus, OCT No. P-658 is null and void.

It should be pointed out that the allegation in the Complaint that the land is residential was made only by respondent, but

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[26] *Carvajal v. Court of Appeals*, 345 Phil. 582, 594 (1997).

[27] *Heirs of Leopoldo Vencilao, Sr. v. Court of Appeals*, 351 Phil. 815, 823 (1998).

[28] *Ybañez v. Intermediate Appellate Court*, G.R. No. 68291, March 6, 1991, 194 SCRA 743, 749.

[29] *Republic v. Mangotara*, G.R. Nos. 170375, 170505 & 173355-56, July 7, 2010, 624 SCRA 360, 489, citing *Republic v. Heirs of Felipe Alejaga, Sr.*, 441 Phil. 656, 674 (2002); *Meneses v. Court of Appeals*, G.R. Nos. 82220, 82251 & 83059, July 14, 1995, 246 SCRA 162.

the true classification of the disputed land as residential was not shown to have been made by the President, upon recommendation by the Secretary of Environment and Natural Resources, pursuant to Section 9 of Commonwealth Act No. 141, otherwise known as *The Public Land Act*.[30] Hence, the trial court erred in concluding that there was fraud in the issuance of respondent's free patent title on the ground that it covered residential land based only on the Complaint which stated that the property was residential land when it was not shown that it was the President who classified the disputed property as residential, and OCT No. P-658 itself stated that the free patent title covered agricultural land. It has been stated that at present, not only agricultural lands, but also residential lands, have been made available by recent legislation for acquisition by free patent by any natural born Filipino citizen.[31] Nevertheless, the fact is that in this case, the free patent title was granted over agricultural land as stated in OCT No. P-658.

Moreover, petitioner contends in his petition that the Certification[32] dated July 24, 1987 issued by Datu Samra I. Andam, A/Adm. Assistant II, Natural Resources District

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[30] Commonwealth Act No. 141 (*The Public Land Act*). Sec. 9. For the purpose of their administration and disposition, the lands of the public domain alienable or open to disposition shall be classified, according to the use or purposes to which such lands are destined, as follows:

(a) Agricultural;

(b) Residential, commercial, industrial, or for similar productive purposes;

(c) Educational, charitable, or other similar purposes; and

(d) Reservations for townsites and for public and quasi-public uses.

The President, upon recommendation by the Secretary of Agriculture and Natural Resources (now Secretary of Environment and Natural Resources), shall from time to time make the classifications provided for in this section, and may, at any time and in a similar manner, transfer lands from one class to another.

[31] Antonio H. Noblejas and Edilberto H. Noblejas, *Registration of Land Titles and Deeds*, 1986 edition, p. 389. *See* also Republic Act No. 10023 (*An Act Authorizing the Issuance of Free Patents to Residential Lands*), approved on March 9, 2010.

[32] Exhibit "15", records, p. 462.

No. XII-3, Bureau of Lands, Marawi City, certifying that the data contained in OCT No. P-658 in respondent's name had no records in the said office, showed that respondent's Torrens title was spurious.

The Court holds that the certification, by itself, is insufficient to prove the alleged fraud. Fraud and misrepresentation, as grounds for cancellation of patent and annulment of title, should never be presumed, but must be proved by clear and convincing evidence, mere preponderance of evidence not being adequate.[33] Fraud is a question of fact which must be proved.[34] The signatory of the certification, Datu Samra Andam, A/Adm. Assistant II, Natural Resources District No. XII-3, Marawi City, was not presented in court to testify on the due issuance of the certification, and to testify on the details of his certification, particularly the reason why the said office had no records of the data contained in OCT No. P-658 or to testify on the fact of fraud, if any.

Thus, the Court holds that the evidence on record is insufficient to prove that fraud was committed in the issuance of respondent's Torrens title. Hence, respondent's Torrens title is a valid evidence of his ownership of the land in dispute.

On the other hand, petitioner claims ownership of the subject lot, which is merely a portion of a larger property (1,800 square meters) that he allegedly inherited from his father in 1952, by virtue of open, public and continuous possession of the land in the concept of owner making it petitioner's private property. Hence, petitioner prays for reconveyance of the said property.

Article 434 of the Civil Code governs an action for reconveyance, thus:

> Art. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

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[33] *Republic v. Mangotara, supra* note 29, at 491, citing *Saad-Agro Industries, Inc. v. Republic*, 503 SCRA 522, 528-529 (2006).

[34] *Quinsay v. Intermediate Appellate Court*, G.R. No. 67935, March 18, 1991, 195 SCRA 268, 282.

Under Article 434 of the Civil Code, to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two (2) things: *first*, the identity of the land claimed; and *second*, his title thereto.[35]

In regard to the first requisite, in an *accion reinvindicatoria*, the person who claims that he has a better right to the property must first fix the identity of the land he is claiming by describing the location, area and boundaries thereof.[36]

In this case, petitioner claims that the property in dispute is part of his larger property. However, petitioner failed to identify his larger property by providing evidence of the metes and bounds thereof, so that the same may be compared with the technical description contained in the title of respondent, which would have shown whether the disputed property really formed part of petitioner's larger property. The appellate court correctly held in its Resolution dated May 13, 2004 that petitioner's claim is solely supported by testimonial evidence, which did not conclusively show the metes and bounds of petitioner's larger property in relation to the metes and bounds of the disputed property; thus, there is no sufficient evidence on record to support petitioner's claim that the disputed property is part of his larger property.

In regard to the second requisite of title to property, both petitioner and respondent separately claim that they are entitled to ownership of the property by virtue of open, public, continuous and exclusive possession of the same in the concept of owner. Petitioner claims that he inherited the subject property from his father in 1952, while respondent claims that he acquired the property from his grandmother Intumo Pagsidan, a portion thereof from his grandmother's helper Totop Malacop pursuant to a court decision after litigating with him.[37] Respondent has OCT No. P-658 to prove his title to the subject property, while petitioner

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[35] *Hutchinson v. Buscas*, 498 Phil. 257, 262 (2005).

[36] *Id*.

[37] RTC Decision, *rollo*, pp. 58-59.

merely claims that the property is already his private land by virtue of his open, public, continuous possession of the same in the concept of owner.

The Court holds that petitioner failed to prove the requisites of reconveyance as he failed to prove the identity of his larger property in relation to the disputed property, and his claim of title by virtue of open, public and continuous possession of the disputed property in the concept of owner is nebulous in the light of a similar claim by respondent who holds a free patent title over the subject property. As stated in ***Ybañez v. Intermediate Appellate Court***,[38] it is relatively easy to declare and claim that one owns and possesses public agricultural land, but it is entirely a different matter to affirmatively declare and to prove before a court of law that one actually possessed and cultivated the entire area to the exclusion of other claimants who stand on equal footing under the *Public Land Act* (Commonwealth Act No. 141, as amended) as any other pioneering claimants.

Further, petitioner contends that the Court of Appeals erred in ruling that petitioner's counterclaim is time-barred, since the one-year prescriptive period does not apply when the person seeking annulment of title or reconveyance is in possession of the lot, citing ***Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago***.[39] Petitioner also contends that the Court of Appeals erred in ruling that the counterclaim in this case is a collateral attack on respondent's title, citing ***Cimafranca v. Intermediate Appellate Court***.[40] Petitioner cites the case of ***Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago***,[41] which held that a counterclaim can be considered a direct attack on the title.

The Court notes that the case of ***Cimafranca v. Intermediate Appellate Court***,[42] cited by the Court of Appeals to support its

[38] *Supra* note 28.

[39] 452 Phil. 238 (2003).

[40] 231 Phil. 559 (1987).

[41] *Supra* note 39.

[42] *Supra* note 40.

ruling that the prayer for the cancellation of respondent's title through a counterclaim included in petitioner's Answer is a collateral attack on the said title, is inapplicable to this case. In ***Cimafranca***, petitioners therein filed a complaint for Partition and Damages, and respondents therein indirectly attacked the validity of the title involved in their counterclaim. Hence, the Court ruled that a Torrens title cannot be attacked collaterally, and the issue on its validity can be raised only in an action expressly instituted for that purpose.

Here, the case cited by petitioner, ***Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago***, declared that the one-year prescriptive period does not apply when the party seeking annulment of title or reconveyance is in possession of the lot, as well as distinguished a collateral attack under Section 48 of PD No. 1529 from a direct attack, and held that a counterclaim may be considered as a complaint or an independent action and can be considered a direct attack on the title, thus:

> **The one-year prescriptive period, however, does not apply when the person seeking annulment of title or reconveyance is in possession of the lot**. This is because the action partakes of a suit to quiet title which is imprescriptible. In *David v. Malay*, we held that a person in actual possession of a piece of land under claim of ownership may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, and his undisturbed possession gives him the continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his title.
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> xxx xxx xxx
>
> Section 48 of P.D. 1529, the Property Registration Decree, provides that a certificate of title shall not be subject to collateral attack and cannot be altered, modified, or canceled **except in a direct proceeding**. **An action is an attack on a title when the object of the action is to nullify the title, and thus challenge the judgment or proceeding pursuant to which the title was decreed. The attack is direct when the object of an action is to annul or set aside such judgment, or enjoin its enforcement**. On the other hand, the attack is indirect or collateral when, in an action to obtain a different

relief, an attack on the judgment or proceeding is nevertheless made as an incident thereof.

x x x **A counterclaim can be considered a direct attack on the title**. In *Development Bank of the Philippines v. Court Appeals*, we ruled on the validity of a certificate of title despite the fact that the nullity thereof was raised only as a counterclaim. **It was held that a counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff. It stands on the same footing and is to be tested by the same rules as if it were an independent action**. x x x[43]

The above ruling of the court on the definition of collateral attack under Section 48 of P.D. No. 1529 was reiterated in ***Leyson v. Bontuyan***,[44] ***Heirs of Enrique Diaz v. Virata***,[45] ***Arangote v. Maglunob***,[46] and ***Catores v. Afidchao***.[47]

Based on the foregoing, the Court holds that petitioner's counterclaim for cancellation of respondent's title is not a collateral attack, but a direct attack on the Torrens title of petitioner. However, the counterclaim seeking for the cancellation of title and reconveyance of the subject property has prescribed as petitioner has not proven actual possession and ownership of the property due to his failure to prove the identity of his larger property that would show that the disputed property is a part thereof, and his claim of title to the subject property by virtue of open, public and continuous possession in the concept of owner is nebulous in the light of a similar claim by respondent who holds a Torrens title to the subject property.

Respondent's original certificate of title was issued on May 22, 1981, while the counterclaim was filed by petitioner on

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[43] *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago, supra* note 39, at 252-253. (Emphasis supplied). *See* also *Arangote v. Maglunob*, G.R. No. 178906, February 18, 2009, 579 SCRA 620; *Leyson v. Bontuyan*, G.R. No. 156357, February 18, 2005, 452 SCRA 94.

[44] *Leyson v. Bontuyan, supra* note 43.

[45] G.R. No. 162037, August 7, 2006, 498 SCRA 141.

[46] *Supra* note 43.

[47] G.R. No. 151240, March 31, 2009, 582 SCRA 653.

October 15, 1984, which is clearly beyond the one-year prescriptive period.

In fine, the Court of Appeals did not err in confirming that respondent is the owner of the parcel of land covered by OCT No. P-658.

WHEREFORE, the petition is *DENIED*. The Court of Appeals' decision dated August 15, 2003, and its Resolution dated May 13, 2004 in CA-G.R. CV No. 63801, are hereby *AFFIRMED*.

No costs.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Abad,* and *Mendoza, JJ.,* concur.

EN BANC

[G.R. No. 163653. July 19, 2011]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **FILINVEST DEVELOPMENT CORPORATION,** *respondent.*

[G.R. No. 167689. July 19, 2011]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **FILINVEST DEVELOPMENT CORPORATION,** *respondent.*

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[*] Designated additional member per Special Order No. 1042 dated July 6, 2011.

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; THE POWER OF THE COMMISSIONER OF INTERNAL REVENUE TO DISTRIBUTE, APPORTION OR ALLOCATE GROSS INCOME OR DEDUCTIONS BETWEEN OR AMONG CONTROLLED TAXPAYERS MAY BE EXERCISED WHETHER OR NOT FRAUD INHERES IN THE TRANSACTION UNDER SCRUTINY; TERMS "CONTROLLED" AND "CONTROLLED TAXPAYER," DEFINED.— Admittedly, Section 43 of the 1993 NIRC provides that, "(i)n any case of two or more organizations, trades or businesses (whether or not incorporated and whether or not organized in the Philippines) owned or controlled directly or indirectly by the same interests, the Commissioner of Internal Revenue is authorized to distribute, apportion or allocate gross income or deductions between or among such organization, trade or business, if he determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organization, trade or business." In amplification of the equivalent provision under Commonwealth Act No. 466, Sec. 179(b) of Revenue Regulation No. 2 states as follows: *Determination of the taxable net income of controlled taxpayer*. – (A) *DEFINITIONS*. – When used in this section – x x x. The term "controlled" includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. It is the reality of the control which is decisive, not its form or mode of exercise. A presumption of control arises if income or deductions have been arbitrarily shifted. The term "controlled taxpayer" means any one of two or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests. x x x As may be gleaned from the definitions of the terms "controlled" and "controlled taxpayer" under paragraphs (a) (3) and (4) of the foregoing provision, it would appear that FDC and its affiliates come within the purview of Section 43 of the 1993 NIRC. Aside from owning significant portions of the shares of stock of FLI, FAI, DSCC and FCI, the fact that FDC extended substantial sums of money as cash advances to its said affiliates for the purpose of providing them financial assistance for their operational and capital expenditures seemingly indicate that

the situation sought to be addressed by the subject provision exists. From the tenor of paragraph (c) of Section 179 of Revenue Regulation No. 2, it may also be seen that the CIR's power to distribute, apportion or allocate gross income or deductions between or among controlled taxpayers may be likewise exercised whether or not fraud inheres in the transaction/s under scrutiny. For as long as the controlled taxpayer's taxable income is not reflective of that which it would have realized had it been dealing at arm's length with an uncontrolled taxpayer, the CIR can make the necessary rectifications in order to prevent evasion of taxes.

2. ID.; ID.; THE POWER OF THE COMMISSIONER OF INTERNAL REVENUE TO DISTRIBUTE, APPORTION OR ALLOCATE GROSS INCOME AND DEDUCTIONS UNDER SECTION 43 OF THE 1993 NATIONAL INTERNAL REVENUE CODE AND SECTION 179 OF REVENUE REGULATION NO. 2 DOES NOT INCLUDE THE POWER TO IMPUTE "THEORETICAL INTERESTS" TO THE CONTROLLED TAXPAYER'S TRANSACTIONS; REASON. — [T]he CIR's powers of distribution, apportionment or allocation of gross income and deductions under Section 43 of the 1993 NIRC and Section 179 of Revenue Regulation No. 2 does not include the power to impute "theoretical interests" to the controlled taxpayer's transactions. Pursuant to Section 28 of the 1993 NIRC, after all, the term "gross income" is understood to mean all income from whatever source *derived*, including, but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business; gains derived from dealings in property"; interest; rents; royalties; dividends; annuities; prizes and winnings; pensions; and partner's distributive share of the gross income of general professional partnership. While it has been held that the phrase "*from whatever source derived*" indicates a legislative policy to include all income not expressly exempted within the class of taxable income under our laws, the term "income" has been variously interpreted to mean "cash *received* or its equivalent," "the amount of money *coming* to a person within a specific time" or "something distinct from principal or capital." Otherwise stated, there must be proof of the actual or, at the very least, probable receipt or realization by the controlled

taxpayer of the item of gross income sought to be distributed, apportioned or allocated by the CIR.

3. ID.; ID.; NO FACTUAL BASIS FOR THE IMPUTATION OF THEORETICAL INTERESTS ON THE ADVANCES EXTENDED BY THE CORPORATION TO ITS AFFILIATES AND ASSESS DEFICIENCY INCOME TAXES THEREON;THE GENERAL RULE OF REQUIRING ADHERENCE TO THE LETTER IN CONSTRUING STATUTES APPLIES WITH PECULIAR STRICTNESS TO TAX LAWS AND THE PROVISIONS OF A TAXING ACT ARE NOT TO BE EXTENDED BY IMPLICATION.— Even if we were to accord precipitate credulity to the CIR's bare assertion that FDC had deducted substantial interest expense from its gross income, there would still be no factual basis for the imputation of theoretical interests on the subject advances and assess deficiency income taxes thereon. More so, when it is borne in mind that, pursuant to Article 1956 of the *Civil Code of the Philippines*, no interest shall be due unless it has been expressly stipulated in writing. Considering that taxes, being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares, the rule is likewise settled that tax statutes must be construed strictly against the government and liberally in favor of the taxpayer. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. While it is true that taxes are the lifeblood of the government, it has been held that their assessment and collection should be in accordance with law as any arbitrariness will negate the very reason for government itself.

4. ID.; ID.; REQUISITES FOR THE NON-RECOGNITION OF GAIN OR LOSS FROM THE EXCHANGE OF PROPERTY FOR TAX AS PROVIDED UNDER SECTION 34 (C) (2) OF THE 1993 NATIONAL INTERNAL REVENUE CODE; COMPLIED WITH.— In G.R. No. 167689, we also find a dearth of merit in the CIR's insistence on the imposition of deficiency income taxes on the transfer FDC and FAI effected in exchange for the shares of stock of FLI. With respect to the Deed of Exchange executed between FDC, FAI and FLI, Section 34 (c) (2) of the 1993 NIRC pertinently provides as

follows: Sec. 34. **Determination of amount of and recognition of gain or loss**.- x x x (c) **Exception** – x x x x *No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for shares of stock in such corporation of which as a result of such exchange said person, alone or together with others, not exceeding four persons, gains control of said corporation;* **Provided,** *That stocks issued for services shall not be considered as issued in return of property*. As even admitted in the 14 February 2001 Stipulation of Facts submitted by the parties, the requisites for the non-recognition of gain or loss under the foregoing provision are as follows: (a) the transferee is a corporation; (b) the transferee exchanges its shares of stock for property/ies of the transferor; (c) the transfer is made by a person, acting alone or together with others, not exceeding four persons; and, (d) as a result of the exchange the transferor, alone or together with others, not exceeding four, gains control of the transferee. Acting on the 13 January 1997 request filed by FLI, the BIR had, in fact, acknowledged the concurrence of the foregoing requisites in the Deed of Exchange the former executed with FDC and FAI by issuing BIR Ruling No. S-34-046-97. With the BIR's reiteration of said ruling upon the request for clarification filed by FLI, there is also no dispute that said transferee and transferors subsequently complied with the requirements provided for the non-recognition of gain or loss from the exchange of property for tax, as provided under Section 34 (c) (2) of the 1993 NIRC.

5. ID.; ID.; GAIN OR LOSS WILL NOT BE RECOGNIZED IN CASE THE EXCHANGE OF PROPERTY FOR STOCKS RESULTS IN THE CONTROL OF THE TRANSFEREE BY THE TRANSFEROR, ALONE OR WITH OTHER TRANSFERORS NOT EXCEEDING FOUR PERSONS; TERM "CONTROL," DEFINED; THE EXCHANGE OF PROPERTY FOR STOCKS BETWEEN FILINVEST DEVELOPMENT CORPORATION, FILINVEST ASIA CORPORATION AND FILINVEST LAND, INC. QUALIFIES AS A TAX FREE TRANSACTION.— The paucity of merit in the CIR's position is, however, evident from the categorical language of Section 34 (c) (2) of the 1993 NIRC which provides that gain or loss will not be recognized in case the exchange of property for stocks results in the control of the transferee

by the transferor, alone or with other transferors not exceeding four persons. Rather than isolating the same as proposed by the CIR, FDC's 2,579,575,000 shares or 61.03% control of FLI's 4,226,629,000 outstanding shares should, therefore, be appreciated in combination with the 420,877,000 new shares issued to FAI which represents 9.96% control of said transferee corporation. Together FDC's 2,579,575,000 shares (61.03%) and FAI's 420,877,000 shares (9.96%) clearly add up to 3,000,452,000 shares or 70.99% of FLI's 4,226,629,000 shares. Since the term "control" is clearly defined as "ownership of stocks in a corporation possessing at least fifty-one percent of the total voting power of classes of stocks entitled to one vote" under Section 34 (c) (6) [c] of the 1993 NIRC, the exchange of property for stocks between FDC, FAI and FLI clearly qualify as a tax-free transaction under paragraph 34 (c) (2) of the same provision.

6. ID.; ID.; DEFICIENCY INCOME TAX ASSESSMENT ON THE SUPPOSED GAIN THE RESPONDENT CORPORATION REALIZED FROM THE INCREASE OF THE VALUE OF ITS SHAREHOLDINGS IN FILINVEST ASIA CORPORATION, NOT PROPER.— [I]t also appears that the supposed reduction of FDC's shares in FLI posited by the CIR is more apparent than real. As the uncontested owner of 80% of the outstanding shares of FAI, it cannot be gainsaid that FDC ideally controls the same percentage of the 420,877,000 shares issued to its said co-transferor which, by itself, represents 7.968% of the outstanding shares of FLI. Considered alongside FDC's 61.03% control of FLI as a consequence of the 29 November 1996 Deed of Transfer, said 7.968% add up to an aggregate of 68.998% of said transferee corporation's outstanding shares of stock which is evidently still greater than the 67.42% FDC initially held prior to the exchange. This much was admitted by the parties in the 14 February 2001 Stipulation of Facts, Documents and Issues they submitted to the CTA. Inasmuch as the combined ownership of FDC and FAI of FLI's outstanding capital stock adds up to a total of 70.99%, it stands to reason that neither of said transferors can be held liable for deficiency income taxes the CIR assessed on the supposed gain which resulted from the subject transfer.

7. ID.; DOCUMENTARY STAMP TAX; THE INSTRUCTIONAL LETTERS AS WELL AS THE JOURNAL AND THE CASH

VOUCHERS EVIDENCING THE ADVANCES EXTENDED BY THE CORPORATION TO ITS AFFILIATES QUALIFIED AS LOAN AGREEMENTS UPON WHICH THE DOCUMENTARY STAMP TAXES MAY BE IMPOSED.— When read in conjunction with Section 173 of the 1993 NIRC, [Section 180 of the NIRC] concededly applies to "(a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines." Correlatively, applying Section 3 (b) and Section 6 of Revenue Regulations No. 9-94 the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed.

8. ID.; ID.; IMPOSITION OF DEFICIENCY INTEREST AND COMPROMISE PENALTY, WARRANTED.— [W]e find that both the CTA and the CA erred in invalidating the assessments issued by the CIR for the deficiency documentary stamp taxes due on the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997. In Assessment Notice No. SP-DST-96-00020-2000, the CIR correctly assessed the sum of ₱6,400,693.62 for documentary stamp tax, ₱3,999,793.44 in interests and ₱25,000.00 as compromise penalty, for a total of ₱10,425,487.06. Alongside the sum of ₱4,050,599.62 for documentary stamp tax, the CIR similarly assessed ₱1,721,099.78 in interests and ₱25,000.00 as compromise penalty in Assessment Notice No. SP-DST-97-00021-2000 or a total of ₱5,796,699.40. The imposition of deficiency interest is justified under Sec. 249 (a) and (b) of the NIRC which authorizes the assessment of the same "at the rate of twenty percent (20%), or such higher rate as may be prescribed by regulations," from the date prescribed for the payment of the unpaid amount of tax until full payment. The imposition of the compromise penalty is, in turn, warranted under Sec. 250 of the NIRC which prescribes the imposition thereof "in case of each failure to file an information or return, statement or list, or keep any record or supply any information required" on the date prescribed therefor.

9. ID.; BIR RULINGS; PRINCIPLE OF NON-RETROACTIVITY OF THE RULING OF THE BUREAU OF INTERNAL REVENUE; RULINGS, CIRCULARS, RULES AND REGULATIONS PROMULGATED BY THE BUREAU OF INTERNAL REVENUE HAVE NO RETROACTIVE APPLICATION IF TO SO APPLY THEM WOULD BE PREJUDICIAL TO THE TAXPAYERS; EXCEPTIONS; APPLICATION.— In keeping with the caveat attendant to every BIR Ruling to the effect that it is valid only if the facts claimed by the taxpayer are correct, we find that the CA reversibly erred in utilizing BIR Ruling No. 116-98, dated 30 July 1998 which, strictly speaking, could be invoked only by ASB Development Corporation, the taxpayer who sought the same. In said ruling, the CIR opined that documents like those evidencing the advances FDC extended to its affiliates are not subject to documentary stamp tax x x x. In its appeal before the CA, the CIR argued that the foregoing ruling was later modified in BIR Ruling No. 108-99 dated 15 July 1999, which opined that inter-office memos evidencing lendings or borrowings extended by a corporation to its affiliates are akin to promissory notes, hence, subject to documentary stamp taxes. In brushing aside the foregoing argument, however, the CA applied Section 246 of the 1993 NIRC from which proceeds the settled principle that rulings, circulars, rules and regulations promulgated by the BIR have no retroactive application if to so apply them would be prejudicial to the taxpayers. Admittedly, this rule does not apply: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith. Not being the taxpayer who, in the first instance, sought a ruling from the CIR, however, FDC cannot invoke the foregoing principle on non-retroactivity of BIR rulings.

10. ID.; INCOME TAX; A MERE ADVANCE IN THE VALUE OF THE PROPERTY OF A PERSON OR CORPORATION IN NO SENSE CONSTITUTE THE INCOME SPECIFIED IN THE REVENUE LAW AS THE SAME CONSTITUTES AND CAN BE TREATED MERELY AS AN INCREASE OF CAPITAL; INCOME TAX ASSESSMENT ON THE

INCREASE IN THE VALUE OF THE CORPORATION'S SHAREHOLDINGS IN ANOTHER HAS NO BASIS UNTIL THE SAME IS ACTUALLY SOLD AT A PROFIT.— [N]o reversible error can be imputed against both the CTA and the CA for invalidating the Assessment Notice issued by the CIR for the deficiency income taxes FDC is supposed to have incurred as a consequence of the dilution of its shares in FAC. x x x Alongside the principle that tax revenues are not intended to be liberally construed, the rule is settled that the findings and conclusions of the CTA are accorded great respect and are generally upheld by this Court, unless there is a clear showing of a reversible error or an improvident exercise of authority. Absent showing of such error here, we find no strong and cogent reasons to depart from said rule with respect to the CTA's finding that no deficiency income tax can be assessed on the gain on the supposed dilution and/or increase in the value of FDC's shareholdings in FAC which the CIR, at any rate, failed to establish. Bearing in mind the meaning of "gross income" as above discussed, it cannot be gainsaid, even then, that a mere increase or appreciation in the value of said shares cannot be considered income for taxation purposes. Since "a mere advance in the value of the property of a person or corporation in no sense constitute the 'income' specified in the revenue law," it has been held in the early case of *Fisher vs. Trinidad,* that it "constitutes and can be treated merely as an increase of capital." Hence, the CIR has no factual and legal basis in assessing income tax on the increase in the value of FDC's shareholdings in FAC until the same is actually sold at a profit.

DE CASTRO*, J., concurring opinion*:

1. TAXATION; 1993 NATIONAL INTERNAL REVENUE CODE (NIRC); SECTION 34(C)(2) THEREOF; GAIN OR LOSS ON PROPERTY-FOR-SHARES EXCHANGE BETWEEN CORPORATIONS, WHEN MAY BE RECOGNIZED; PROPERTY-FOR-SHARES EXCHANGE BETWEEN THE FILINVEST DEVELOPMENT CORPORATION AND FILINVEST ALABANG, INC. AND THE FILINVEST LAND WAS TAX FREE.— [T]he property-for-shares exchange between Filinvest Development Corporation (FDC) and Filinvest Alabang, Inc. (FAI), on one hand, and Filinvest Land, Inc. (FLI),

on the other, was tax-free under Section 34(C)(2) of the National Internal Revenue Code (NIRC) of 1993. Section 34(C)(2) of the NIRC of 1993 provided: Sec. 34. *Determination of amount of and recognition of gain or loss.* – x x x (c) e*xchange of property*. – x x x (2) x x x **No gain or loss shall be also be recognized if property is transferred to a corporation by a person in exchange for stock in such a corporation of which as a result of such exchange said person, alone or with others, not exceeding four persons, gains control of said corporation.** *Provided*, That stocks issued for services shall not be considered as issued in return for property. *Control* was defined as "ownership of stocks in a corporation possessing at least fifty-one per cent of the total voting power of all classes of stock entitled to vote." When FDC and FAI transferred real property to FLI, they respectively acquired, in return, 61.03% and 9.96% of the outstanding capital stock of FLI. Together, FDC and FAI held 70.99% of the outstanding capital stock of FLI after the exchange, thus, gaining control of FLI. There is no basis for the argument of the Commissioner of Internal Revenue (CIR) that the foregoing property-for-shares exchange was not tax-free because as a result of the same, the shareholding of FDC in FLI actually decreased from 67.42% to 61.03%. Even with such decrease, the shareholding of FDC in FLI after the exchange was still beyond 51%, hence, FDC still had control of FLI within the meaning of Section 34(C)(2) of the NIRC of 1993. Control by FDC over FLI after the exchange is even more evident when the shareholdings of FDC in FLI are combined with that of FAI. It is also significant to note that FDC owns 80% of FAI.

2. STATUTORY CONSTRUCTION; STATUTES; WHERE THE LAW SPEAKS IN CLEAR AND CATEGORICAL LANGUAGE, THERE IS NO ROOM FOR INTERPRETATION BUT ONLY FOR APPLICATION.— Section 34(C)(2) of the NIRC of 1993 is clear. Therefore, no statutory construction or interpretation is needed. Neither can conditions or limitations be introduced where none is provided for. Rewriting the law is a forbidden ground that only Congress may tread upon. The Court may not construe a statute that is free from doubt. Where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. The Court has no choice but to see to it that its mandate is obeyed.

3. TAXATION; 1993 NATIONAL INTERNAL REVENUE CODE (NIRC); SECTION 34 (C) (2) THEREOF; INCOME, DEFINED; ANY INCREASE IN THE VALUE OF THE SHAREHOLDINGS AS A RESULT OF THE PROPERTY FOR SHARES EXCHANGE BETWEEN CORPORATION IS NOT YET TAXABLE INCOME UNTIL SAID SHAREHOLDINGS ARE SOLD AT A PRICE HIGHER THAN THE COST OF ACQUIRING THEM.— [A]ny increase in the value of the shareholdings of FDC in Filinvest Asia Corporation (FAC) is not yet taxable income for it remains unrealized until said shareholdings are sold or disposed of. Income in tax law is "an amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment." It means cash or its equivalent. It is gain derived and severed from capital, from labor, or from both combined. Income should be reported at the time of the actual gain. For income tax purposes, income is an actual gain or an actual increase of wealth. In this case, FDC will only enjoy actual gain if it is able to sell its shareholdings in FAC at a price higher than the cost of acquiring the same. In fact, as long as FDC holds on to its shareholdings in FAC, FDC is at risk of suffering loss should the value of its shareholdings in FAC decrease in the future.

4. ID.; ID.; SECTION 43 THEREOF; ALLOCATION OF INCOME AND DEDUCTION; PROOF OF ACTUAL OR PROBABLE INCOME RECEIVED BY THE CONTROLLED TAXPAYERS FROM THE TRANSACTION IS NOT REQUIRED BEFORE THE COMMISSIONER OF INTERNAL REVENUE MAY EXERCISE HIS POWER TO DISTRIBUTE, APPORTION OR ALLOCATE GROSS INCOME OR DEDUCTIONS BETWEEN OR AMONG CONTROLLED TAXPAYERS; IT IS SUFFICIENT FOR THE COMMISSIONER TO ESTABLISH THAT THE INCOME REPORTED BY THE CONTROLLED TAXPAYER FROM THE TRANSACTION AMONGST THEMSELVES FALL BELOW THE ARM'S LENGTH STANDARD.— [T]he CIR need not establish that the cash advances extended by FDC to its affiliates were sourced from the loans obtained by FDC from commercial banks. The source of the cash advances is irrelevant. What the CIR is seeking to tax herein is the interest income FDC should have earned from the cash advances it extended to its affiliates; the

theory being that FDC would have imposed and collected said interest had it been dealing at arm's length with an uncontrolled company. It is just as unnecessary for the CIR to present proof of actual or probable receipt by FDC of interest income from the cash advances it extended to its affiliates. Section 43 of the NIRC of 1993 should be appreciated as an exception to the general rules on income taxation as it addresses a very specific situation: controlled taxpayers dealing with each other not at arm's length. To exercise his authority under said provision, it is already sufficient for the CIR to establish that the income reported by the controlled taxpayer from the transaction amongst themselves fall below the arm's length standard; in which case, the CIR may already impute such arm's length income on the transaction, and accordingly distribute, apportion, or allocate the same among the controlled taxpayers who participated in said transaction. To require the CIR to still submit proof of the actual or probable income received by the controlled taxpayers from the transaction, and limit the income which the CIR may distribute, apportion, or allocate to that which was thus proved, would not only severely limit the authority of the CIR under Section 43 of the NIRC of 1993, but would also render the arm's length standard useless and superfluous.

5. STATUTORY CONSTRUCTION; STATUTES; WHERE TWO STATUTES ARE OF EQUAL THEORETICAL APPLICATION TO A PARTICULAR CASE, THE ONE SPECIALLY DESIGNED THEREFORE SHOULD PREVAIL; SECTION 43 OF THE 1993 NATIONAL INTERNAL REVENUE CODE PREVAILS OVER ARTICLE 1956 OF THE CIVIL CODE. — Section 43 of the NIRC of 1993 prevails over Article 1956 of the Civil Code. *Lex specialis derogat generali*. General legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable. In other words, where two statutes are of equal theoretical application to a particular case, the one specially designed therefore should prevail.

6. TAXATION; TAX EVASION; HOW COMMITTED IN INTER-COMPANY LOANS AND ADVANCES AMONG CONTROLLED TAXPAYERS.— As for loans and advances among controlled taxpayers, tax evasion may be committed by (1) charging interest

thereon but not at arm's length rate; or (2) not charging any interest at all. Expectedly, in the latter case, there would be no express stipulation in writing that interest is due on the loans or advances. Are we saying that the CIR may impute arm's length interest in the former case, but is totally powerless to impute any interest in the latter case? This will render the latter a completely effective means of tax evasion. Controlled taxpayers can just do away with any written stipulation of interest on the loans or advances altogether, and even when such absence of interest is contrary to the arm's length standard, the CIR will be unable to exercise its authority under Section 43 of the NIRC of 1993.

7. ID.; NATIONAL INTERNAL REVENUE CODE OF 1997; RULINGS OR CIRCULAR PROMULGATED BY THE COMMISSIONER SHALL NOT BE GIVEN RETROACTIVE APPLICATION; EXCEPTIONS; REVENUE MEMORANDUM ORDER (RMO) NO. 63-99 CANNOT BE RETROACTIVELY APPLIED TO THE CASE AT BAR.— [T]he CIR cannot impute any interest income on the cash advances FDC extended to its affiliates for the simple reason that Revenue Memorandum Order (RMO) No. 63-99, which sets down the guidelines for the determination of taxable income on inter-company loans or advances, applying what is now Section 50 of the NIRC of 1997, was issued only on July 19, 1999. x x x. FDC extended the cash advances to its affiliates in 1996 and 1997, when there was yet no clear regulation as to the tax treatment of loans and advances among controlled taxpayers that would have accordingly guided the concerned taxpayers and the Bureau of Internal Revenue (BIR) officials. RMO No. 63-99 cannot be applied retroactively to FDC and its affiliates as Section 246 of the NIRC of 1997 expressly proscribes the same, to wit: x x x (a) where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith.

8. ID.; DOCUMENTARY STAMP TAX; INSTRUCTIONAL LETTERS, JOURNALS, AND CASH VOUCHERS EVIDENCING THE ADVANCES THE CORPORATION EXTENDED TO ITS AFFILIATES ARE CLASSIFIED AS LOAN

AGREEMENTS SUBJECT TO DOCUMENTARY STAMP TAX.— I join the majority opinion in classifying the instructional letters, journals, and cash vouchers evidencing the advances FDC extended to its affiliates as loan agreements, upon which documentary stamp taxes (DST) may be imposed. Regardless of whether or not the CIR may impute interest on the cash advances, there is no dispute that said advances were in the nature of loans, which were extended by FDC to its affiliates as financial assistance for the latter's operational and capital expenditures, and which were repaid by the affiliates to FDC within the duration of one week to three months.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Estelito P. Mendoza and *Lorenzo G. Timbol* for respondent.

D E C I S I O N

PEREZ, *J.*:

Assailed in these twin petitions for review on *certiorari* filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure* are the decisions rendered by the Court of Appeals (CA) in the following cases: (a) Decision dated 16 December 2003 of the then Special Fifth Division in CA-G.R. SP No. 72992;[1] and, (b) Decision dated 26 January 2005 of the then Fourteenth Division in CA-G.R. SP No. 74510.[2]

The Facts

The owner of 80% of the outstanding shares of respondent Filinvest Alabang, Inc. (FAI), respondent Filinvest Development Corporation (FDC) is a holding company which also owned 67.42% of the outstanding shares of Filinvest Land, Inc. (FLI). On 29 November 1996, FDC and FAI entered into a Deed of

[1] *Rollo* (G.R. No. 163653), pp. 40-57.

[2] *Rollo* (G.R. No. 167689), pp. 68-88.

Exchange with FLI whereby the former both transferred in favor of the latter parcels of land appraised at ₱4,306,777,000.00. In exchange for said parcels which were intended to facilitate development of medium-rise residential and commercial buildings, 463,094,301 shares of stock of FLI were issued to FDC and FAI.[3] As a result of the exchange, FLI's ownership structure was changed to the extent reflected in the following tabular *précis, viz.*:

Stockholder	*Number and Percentage of Shares Held Prior to the Exchange*		*Number of Additional Shares Issued*	*Number and Percentage of Shares Held After the Exchange*	
FDC	2,537,358,000	67.42%	42,217,000	2,579,575,000	61.03%
FAI	0	0	420,877,000	420,877,000	9.96%
OTHERS	1,226,177,000	32.58%	0	1,226,177,000	29.01%
	3,763,535,000	100%	463,094,301	4,226,629,000	(100%)

On 13 January 1997, FLI requested a ruling from the Bureau of Internal Revenue (BIR) to the effect that no gain or loss should be recognized in the aforesaid transfer of real properties. Acting on the request, the BIR issued Ruling No. S-34-046-97 dated 3 February 1997, finding that the exchange is among those contemplated under Section 34 (c) (2) of the old National Internal Revenue Code (NIRC)[4] which provides that "(n)o gain or loss shall be recognized if property is transferred to a corporation by a person in exchange for a stock in such corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation."[5] With the BIR's reiteration of the foregoing ruling upon the 10 February 1997 request for clarification filed

[3] *Id.* at 219-222; 241-245.

[4] Now Section 40 of the NIRC.

[5] *Rollo* (G.R. No. 167689), pp. 246-251.

by FLI,[6] the latter, together with FDC and FAI, complied with all the requirements imposed in the ruling.[7]

On various dates during the years 1996 and 1997, in the meantime, FDC also extended advances in favor of its affiliates, namely, FAI, FLI, Davao Sugar Central Corporation (DSCC) and Filinvest Capital, Inc. (FCI).[8] Duly evidenced by instructional letters as well as cash and journal vouchers, said cash advances amounted to ₱2,557,213,942.60 in 1996[9] and ₱3,360,889,677.48 in 1997.[10] On 15 November 1996, FDC also entered into a Shareholders' Agreement with Reco Herrera PTE Ltd. (RHPL) for the formation of a Singapore-based joint venture company called Filinvest Asia Corporation (FAC), tasked to develop and manage FDC's 50% ownership of its PBCom Office Tower Project (the Project). With their equity participation in FAC respectively pegged at 60% and 40% in the Shareholders' Agreement, FDC subscribed to ₱500.7 million worth of shares in said joint venture company to RHPL's subscription worth ₱433.8 million. Having paid its subscription by executing a Deed of Assignment transferring to FAC a portion of its rights and interest in the Project worth ₱500.7 million, FDC eventually reported a net loss of ₱190,695,061.00 in its Annual Income Tax Return for the taxable year 1996.[11]

On 3 January 2000, FDC received from the BIR a Formal Notice of Demand to pay deficiency income and documentary stamp taxes, plus interests and compromise penalties,[12] covered by the following Assessment Notices, *viz.*: (a) Assessment Notice

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[6] *Id.* at 252-253.

[7] *Id.* at 222.

[8] *Rollo*, (G.R. No. 163653), pp. 211-309.

[9] FLI (₱863,619,234.42), FAI (₱1,216,477,700.00); and DSCC (₱477,117,008.18).

[10] FLI (₱1,717,096,764.22); FAI (₱1,258,792,913.26); and, FCI (₱385,000,000.00).

[11] *Rollo*, (G.R. No. 167689), pp. 223-224.

[12] *Id.* at 284-285.

No. SP-INC-96-00018-2000 for deficiency income taxes in the sum of ₱150,074,066.27 for 1996; (b) Assessment Notice No. SP-DST-96-00020-2000 for deficiency documentary stamp taxes in the sum of ₱10,425,487.06 for 1996; (c) Assessment Notice No. SP-INC-97-00019-2000 for deficiency income taxes in the sum of ₱5,716,927.03 for 1997; and (d) Assessment Notice No. SP-DST-97-00021-2000 for deficiency documentary stamp taxes in the sum of ₱5,796,699.40 for 1997.[13] The foregoing deficiency taxes were assessed on the taxable gain supposedly realized by FDC from the Deed of Exchange it executed with FAI and FLI, on the dilution resulting from the Shareholders' Agreement FDC executed with RHPL as well as the "arm's-length" interest rate and documentary stamp taxes imposable on the advances FDC extended to its affiliates.[14]

On 3 January 2000, FAI similarly received from the BIR a Formal Letter of Demand for deficiency income taxes in the sum of ₱1,477,494,638.23 for the year 1997.[15] Covered by Assessment Notice No. SP-INC-97-0027-2000,[16] said deficiency tax was also assessed on the taxable gain purportedly realized by FAI from the Deed of Exchange it executed with FDC and FLI.[17] On 26 January 2000 or within the reglementary period of thirty (30) days from notice of the assessment, both FDC and FAI filed their respective requests for reconsideration/protest, on the ground that the deficiency income and documentary stamp taxes assessed by the BIR were bereft of factual and legal basis.[18] Having submitted the relevant supporting documents pursuant to the 31 January 2000 directive from the BIR Appellate Division, FDC and FAI filed on 11 September 2000 a letter requesting an early resolution of their request for reconsideration/protest on the ground that the 180 days prescribed for the resolution thereof

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[13] *Id.* at 291-294.

[14] *Id.* at 286-290.

[15] *Id.* at 295-296.

[16] *Id.* at 299.

[17] *Id.* at 297-298.

[18] *Id.* at 300-315; 316-326.

under Section 228 of the NIRC was going to expire on 20 September 2000.[19]

In view of the failure of petitioner Commissioner of Internal Revenue (CIR) to resolve their request for reconsideration/protest within the aforesaid period, FDC and FAI filed on 17 October 2000 a petition for review with the Court of Tax Appeals (CTA) pursuant to Section 228 of the 1997 NIRC. Docketed before said court as CTA Case No. 6182, the petition alleged, among other matters, that as previously opined in BIR Ruling No. S-34-046-97, no taxable gain should have been assessed from the subject Deed of Exchange since FDC and FAI collectively gained further control of FLI as a consequence of the exchange; that correlative to the CIR's lack of authority to impute theoretical interests on the cash advances FDC extended in favor of its affiliates, the rule is settled that interests cannot be demanded in the absence of a stipulation to the effect; that not being promissory notes or certificates of obligations, the instructional letters as well as the cash and journal vouchers evidencing said cash advances were not subject to documentary stamp taxes; and, that no income tax may be imposed on the prospective gain from the supposed appreciation of FDC's shareholdings in FAC. As a consequence, FDC and FAC both prayed that the subject assessments for deficiency income and documentary stamp taxes for the years 1996 and 1997 be cancelled and annulled.[20]

On 4 December 2000, the CIR filed its answer, claiming that the transfer of property in question should not be considered tax free since, with the resultant diminution of its shares in FLI, FDC did not gain further control of said corporation. Likewise calling attention to the fact that the cash advances FDC extended to its affiliates were interest free despite the interest bearing loans it obtained from banking institutions, the CIR invoked Section 43 of the old NIRC which, as implemented by Revenue Regulations No. 2, Section 179 (b) and (c), gave him "the power to allocate, distribute or apportion income or

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[19] *Id.* at 327.

[20] *Id.* at 179-211.

deductions between or among such organizations, trades or business in order to prevent evasion of taxes." The CIR justified the imposition of documentary stamp taxes on the instructional letters as well as cash and journal vouchers for said cash advances on the strength of Section 180 of the NIRC and Revenue Regulations No. 9-94 which provide that loan transactions are subject to said tax irrespective of whether or not they are evidenced by a formal agreement or by mere office memo. The CIR also argued that FDC realized taxable gain arising from the dilution of its shares in FAC as a result of its Shareholders' Agreement with RHPL.[21]

At the pre-trial conference, the parties filed a Stipulation of Facts, Documents and Issues[22] which was admitted in the 16 February 2001 resolution issued by the CTA. With the further admission of the Formal Offer of Documentary Evidence subsequently filed by FDC and FAI[23] and the conclusion of the testimony of Susana Macabelda anent the cash advances FDC extended in favor of its affiliates,[24] the CTA went on to render the Decision dated 10 September 2002 which, with the exception of the deficiency income tax on the interest income FDC supposedly realized from the advances it extended in favor of its affiliates, cancelled the rest of deficiency income and documentary stamp taxes assessed against FDC and FAI for the years 1996 and 1997,[25] thus:

WHEREFORE, in view of all the foregoing, the court finds the instant petition partly meritorious. Accordingly, Assessment Notice No. SP-INC-96-00018-2000 imposing deficiency income tax on FDC for taxable year 1996, Assessment Notice No. SP-DST-96-00020-2000 and SP-DST-97-00021-2000 imposing deficiency documentary stamp tax on FDC for taxable years 1996 and 1997, respectively and Assessment Notice No. SP-INC-97-0027-2000

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[21] *Id.* at 212-217.

[22] *Id.* at 218-240.

[23] *Rollo* (G.R. No. 163653), p. 45.

[24] *Rollo* (G.R. No. 167689), pp. 412-454.

[25] *Id.* at 455-477.

imposing deficiency income tax on FAI for the taxable year 1997 are hereby **CANCELLED** and **SET ASIDE**. However, [FDC] is hereby **ORDERED to PAY** the amount of ₱5,691,972.03 as deficiency income tax for taxable year 1997. In addition, petitioner is also **ORDERED to PAY** 20% delinquency interest computed from February 16, 2000 until full payment thereof pursuant to Section 249 (c) (3) of the Tax Code.[26]

Finding that the collective increase of the equity participation of FDC and FAI in FLI rendered the gain derived from the exchange tax-free, the CTA also ruled that the increase in the value of FDC's shares in FAC did not result in economic advantage in the absence of actual sale or conversion thereof. While likewise finding that the documents evidencing the cash advances FDC extended to its affiliates cannot be considered as loan agreements that are subject to documentary stamp tax, the CTA enunciated, however, that the CIR was justified in assessing undeclared interests on the same cash advances pursuant to his authority under Section 43 of the NIRC in order to forestall tax evasion. For persuasive effect, the CTA referred to the equivalent provision in the Internal Revenue Code of the United States (IRC-US), *i.e.*, Sec. 482, as implemented by Section 1.482-2 of 1965-1969 Regulations of the Law of Federal Income Taxation.[27]

Dissatisfied with the foregoing decision, FDC filed on 5 November 2002 the petition for review docketed before the CA as CA-G.R. No. 72992, pursuant to Rule 43 of the *1997 Rules of Civil Procedure*. Calling attention to the fact that the cash advances it extended to its affiliates were interest-free in the absence of the express stipulation on interest required under Article 1956 of the *Civil Code*, FDC questioned the imposition of an arm's-length interest rate thereon on the ground, among others, that the CIR's authority under Section 43 of the NIRC: (a) does not include the power to impute imaginary interest on said transactions; (b) is directed only against controlled taxpayers and not against mother or holding corporations; and, (c) can only be invoked in cases of understatement of taxable net income

[26] *Id.* at 477.

[27] *Id.* at 463-476.

or evident tax evasion.[28] Upholding FDC's position, the CA's then Special Fifth Division rendered the herein assailed decision dated 16 December 2003,[29] the decretal portion of which states:

> WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The assailed Decision dated September 10, 2002 rendered by the Court of Tax Appeals in CTA Case No. 6182 directing petitioner Filinvest Development Corporation to pay the amount of ₱5,691,972.03 representing deficiency income tax on allegedly undeclared interest income for the taxable year 1997, plus 20% delinquency interest computed from February 16, 2000 until full payment thereof is **REVERSED and SET ASIDE** and, a new one entered annulling Assessment Notice No. SP-INC-97-00019-2000 imposing deficiency income tax on petitioner for taxable year 1997. No pronouncement as to costs.[30]

With the denial of its partial motion for reconsideration of the same 11 December 2002 resolution issued by the CTA,[31] the CIR also filed the petition for review docketed before the CA as CA-G.R. No. 74510. In essence, the CIR argued that the CTA reversibly erred in cancelling the assessment notices: (a) for deficiency income taxes on the exchange of property between FDC, FAI and FLI; (b) for deficiency documentary stamp taxes on the documents evidencing FDC's cash advances to its affiliates; and (c) for deficiency income tax on the gain FDC purportedly realized from the increase of the value of its shareholdings in FAC.[32] The foregoing petition was, however, denied due course and dismissed for lack of merit in the herein assailed decision dated 26 January 2005[33] rendered by the CA's then Fourteenth Division, upon the following findings and conclusions, to wit:

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[28] *Rollo* (G.R. No. 163653), pp. 81-121.

[29] *Id.* at 40-57.

[30] *Id.* at 56.

[31] *Rollo* (G.R. No. 167689), pp. 479-480.

[32] *Id.* at 30 and 76.

[33] *Id.* at 68-88.

1. As affirmed in the 3 February 1997 BIR Ruling No. S-34-046-97, the 29 November 1996 Deed of Exchange resulted in the combined control by FDC and FAI of more than 51% of the outstanding shares of FLI, hence, no taxable gain can be recognized from the transaction under Section 34 (c) (2) of the old NIRC;

2. The instructional letters as well as the cash and journal vouchers evidencing the advances FDC extended to its affiliates are not subject to documentary stamp taxes pursuant to BIR Ruling No. 116-98, dated 30 July 1998, since they do not partake the nature of loan agreements;

3. Although BIR Ruling No. 116-98 had been subsequently modified by BIR Ruling No. 108-99, dated 15 July 1999, to the effect that documentary stamp taxes are imposable on inter-office memos evidencing cash advances similar to those extended by FDC, said latter ruling cannot be given retroactive application if to do so would be prejudicial to the taxpayer;

4. FDC's alleged gain from the increase of its shareholdings in FAC as a consequence of the Shareholders' Agreement it executed with RHPL cannot be considered taxable income since, until actually converted thru sale or disposition of said shares, they merely represent unrealized increase in capital.[34]

Respectively docketed before this Court as G.R. Nos. 163653 and 167689, the CIR's petitions for review on *certiorari* assailing the 16 December 2003 decision in CA-G.R. No. 72992 and the 26 January 2005 decision in CA-G.R. SP No. 74510 were consolidated pursuant to the 1 March 2006 resolution issued by this Court's Third Division.

The Issues

In G.R. No. 163653, the CIR urges the grant of its petition on the following ground:

THE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE COURT OF TAX APPEALS AND IN

[34] *Id.* at 76-88.

HOLDING THAT THE ADVANCES EXTENDED BY RESPONDENT TO ITS AFFILIATES ARE NOT SUBJECT TO INCOME TAX.[35]

In G.R. No. 167689, on the other hand, petitioner proffers the following issues for resolution:

I

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE EXCHANGE OF SHARES OF STOCK FOR PROPERTY AMONG FILINVEST DEVELOPMENT CORPORATION (FDC), FILINVEST ALABANG, INCORPORATED (FAI) AND FILINVEST LAND INCORPORATED (FLI) MET ALL THE REQUIREMENTS FOR THE NON-RECOGNITION OF TAXABLE GAIN UNDER SECTION 34 (c) (2) OF THE OLD NATIONAL INTERNAL REVENUE CODE (NIRC) (NOW SECTION 40 (C) (2) (c) OF THE NIRC.

II

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE LETTERS OF INSTRUCTION OR CASH VOUCHERS EXTENDED BY FDC TO ITS AFFILIATES ARE NOT DEEMED LOAN AGREEMENTS SUBJECT TO DOCUMENTARY STAMP TAXES UNDER SECTION 180 OF THE NIRC.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT GAIN ON DILUTION AS A RESULT OF THE INCREASE IN THE VALUE OF FDC'S SHAREHOLDINGS IN FAC IS NOT TAXABLE.[36]

The Court's Ruling

While the petition in G.R. No. 163653 is bereft of merit, we find the CIR's petition in G.R. No. 167689 impressed with partial merit.

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[35] *Rollo* (G.R. No. 163653), p. 19.

[36] *Rollo*, (G.R. No. 167689), pp. 31-32.

In G.R. No. 163653, the CIR argues that the CA erred in reversing the CTA's finding that theoretical interests can be imputed on the advances FDC extended to its affiliates in 1996 and 1997 considering that, for said purpose, FDC resorted to interest-bearing fund borrowings from commercial banks. Since considerable interest expenses were deducted by FDC when said funds were borrowed, the CIR theorizes that interest income should likewise be declared when the same funds were sourced for the advances FDC extended to its affiliates. Invoking Section 43 of the 1993 NIRC in relation to Section 179(b) of Revenue Regulation No. 2, the CIR maintains that it is vested with the power to allocate, distribute or apportion income or deductions between or among controlled organizations, trades or businesses even in the absence of fraud, since said power is intended "to prevent evasion of taxes or clearly to reflect the income of any such organizations, trades or businesses." In addition, the CIR asseverates that the CA should have accorded weight and respect to the findings of the CTA which, as the specialized court dedicated to the study and consideration of tax matters, can take judicial notice of US income tax laws and regulations.[37]

Admittedly, Section 43 of the 1993 NIRC[38] provides that, "(i)n any case of two or more organizations, trades or businesses (whether or not incorporated and whether or not organized in the Philippines) owned or controlled directly or indirectly by the same interests, the Commissioner of Internal Revenue is authorized to distribute, apportion or allocate gross income or deductions between or among such organization, trade or business, if he determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organization, trade or business." In amplification of the equivalent provision[39] under Commonwealth Act No. 466,[40] Sec. 179(b) of Revenue Regulation No. 2 states as follows:

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[37] *Rollo* (G.R. No. 163653), pp. 20-32.

[38] Now Section 50 of the 1997 NIRC.

[39] Section 44.

[40] *An Act to Revise, Amend and Codify the Internal Revenue Laws of the Philippines.*

Determination of the taxable net income of controlled taxpayer. – (A) *DEFINITIONS.* – When used in this section –

(1) The term "organization" includes any kind, whether it be a sole proprietorship, a partnership, a trust, an estate, or a corporation or association, irrespective of the place where organized, where operated, or where its trade or business is conducted, and regardless of whether domestic or foreign, whether exempt or taxable, or whether affiliated or not.

(2) The terms "trade" or "business" include any trade or business activity of any kind, regardless of whether or where organized, whether owned individually or otherwise, and regardless of the place where carried on.

(3) The term "controlled" includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. It is the reality of the control which is decisive, not its form or mode of exercise. A presumption of control arises if income or deductions have been arbitrarily shifted.

(4) The term "controlled taxpayer" means any one of two or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests.

(5) The term "group" and "group of controlled taxpayers" means the organizations, trades or businesses owned or controlled by the same interests.

(6) The term "true net income" means, in the case of a controlled taxpayer, the net income (or as the case may be, any item or element affecting net income) which would have resulted to the controlled taxpayer, had it in the conduct of its affairs (or, as the case may be, any item or element affecting net income) which would have resulted to the controlled taxpayer, had it in the conduct of its affairs (or, as the case may be, in the particular contract, transaction, arrangement or other act) dealt with the other members or members of the group at arm's length. It does not mean the income, the deductions, or the item or element of either, resulting to the controlled taxpayer by reason of the particular contract, transaction, or arrangement, the controlled taxpayer, or the interest controlling it, chose to make (even though such contract, transaction, or arrangement be legally binding upon the parties thereto).

(B) *SCOPE AND PURPOSE*. - The purpose of Section 44 of the Tax Code is to place a controlled taxpayer on a tax parity with an uncontrolled taxpayer, by determining, according to the standard of an uncontrolled taxpayer, the true net income from the property and business of a controlled taxpayer. The interests controlling a group of controlled taxpayer are assumed to have complete power to cause each controlled taxpayer so to conduct its affairs that its transactions and accounting records truly reflect the net income from the property and business of each of the controlled taxpayers. If, however, this has not been done and the taxable net income are thereby understated, the statute contemplates that the Commissioner of Internal Revenue shall intervene, and, by making such distributions, apportionments, or allocations as he may deem necessary of gross income or deductions, or of any item or element affecting net income, between or among the controlled taxpayers constituting the group, shall determine the true net income of each controlled taxpayer. The standard to be applied in every case is that of an uncontrolled taxpayer. Section 44 grants no right to a controlled taxpayer to apply its provisions at will, nor does it grant any right to compel the Commissioner of Internal Revenue to apply its provisions.

(C) *APPLICATION* – Transactions between controlled taxpayer and another will be subjected to special scrutiny to ascertain whether the common control is being used to reduce, avoid or escape taxes. In determining the true net income of a controlled taxpayer, the Commissioner of Internal Revenue is not restricted to the case of improper accounting, to the case of a fraudulent, colorable, or sham transaction, or to the case of a device designed to reduce or avoid tax by shifting or distorting income or deductions. The authority to determine true net income extends to any case in which either by inadvertence or design the taxable net income in whole or in part, of a controlled taxpayer, is other than it would have been had the taxpayer in the conduct of his affairs been an uncontrolled taxpayer dealing at arm's length with another uncontrolled taxpayer.[41]

As may be gleaned from the definitions of the terms "controlled" and "controlled taxpayer" under paragraphs (a) (3) and (4) of the foregoing provision, it would appear that FDC and its affiliates come within the purview of Section 43 of the 1993 NIRC.

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[41] As quoted in Montejo, *National Internal Revenue Code Annotated*, 1963 ed., pp. 164-165.

Aside from owning significant portions of the shares of stock of FLI, FAI, DSCC and FCI, the fact that FDC extended substantial sums of money as cash advances to its said affiliates for the purpose of providing them financial assistance for their operational and capital expenditures seemingly indicate that the situation sought to be addressed by the subject provision exists. From the tenor of paragraph (c) of Section 179 of Revenue Regulation No. 2, it may also be seen that the CIR's power to distribute, apportion or allocate gross income or deductions between or among controlled taxpayers may be likewise exercised whether or not fraud inheres in the transaction/s under scrutiny. For as long as the controlled taxpayer's taxable income is not reflective of that which it would have realized had it been dealing at arm's length with an uncontrolled taxpayer, the CIR can make the necessary rectifications in order to prevent evasion of taxes.

Despite the broad parameters provided, however, we find that the CIR's powers of distribution, apportionment or allocation of gross income and deductions under Section 43 of the 1993 NIRC and Section 179 of Revenue Regulation No. 2 does not include the power to impute "theoretical interests" to the controlled taxpayer's transactions. Pursuant to Section 28 of the 1993 NIRC,[42] after all, the term "gross income" is understood to mean all income from whatever source *derived*, including, but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business; gains derived from dealings in property;" interest; rents; royalties; dividends; annuities; prizes and winnings; pensions; and partner's distributive share of the gross income of general professional partnership.[43] While it has been held that the phrase "*from whatever source derived*" indicates a legislative policy to include all income not expressly exempted within the class of taxable income under our laws, the term "income" has been variously interpreted to mean "cash *received*

[42] Now Section 32 of the 1997 NIRC.

[43] *CIR v. Philippine Airlines, Inc.*, G.R. No. 160528, 9 October 2006, 504 SCRA 90, 99.

or its equivalent," "the amount of money *coming* to a person within a specific time" or "something distinct from principal or capital."[44] Otherwise stated, there must be proof of the actual or, at the very least, probable receipt or realization by the controlled taxpayer of the item of gross income sought to be distributed, apportioned or allocated by the CIR.

Our circumspect perusal of the record yielded no evidence of actual or possible showing that the advances FDC extended to its affiliates had resulted to the interests subsequently assessed by the CIR. For all its harping upon the supposed fact that FDC had resorted to borrowings from commercial banks, the CIR had adduced no concrete proof that said funds were, indeed, the source of the advances the former provided its affiliates. While admitting that FDC obtained interest-bearing loans from commercial banks,[45] Susan Macabelda - FDC's Funds Management Department Manager who was the sole witness presented before the CTA - clarified that the subject advances were sourced from the corporation's rights offering in 1995 as well as the sale of its investment in Bonifacio Land in 1997.[46] More significantly, said witness testified that said advances: (a) were extended to give FLI, FAI, DSCC and FCI financial assistance for their operational and capital expenditures; and, (b) were all temporarily in nature since they were repaid within the duration of one week to three months and were evidenced by mere journal entries, cash vouchers and instructional letters.[47]

Even if we were, therefore, to accord precipitate credulity to the CIR's bare assertion that FDC had deducted substantial interest expense from its gross income, there would still be no factual basis for the imputation of theoretical interests on the subject advances and assess deficiency income taxes thereon.

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[44] *CIR v. AIR India,* 241 Phil. 689, 694-695 (1988) citing *CIR v. British Overseas Airways Corporation,* G.R. Nos. 65773-74, 30 April 1987, 149 SCRA 395.

[45] *Rollo* (G.R. No. 167689), pp. 446-447. TSN, 25 July 2001, pp. 9-10.

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

[47] *Id.* at 426. TSN, 26 June 2001, p. 15.

More so, when it is borne in mind that, pursuant to Article 1956 of the *Civil Code of the Philippines*, no interest shall be due unless it has been expressly stipulated in writing. Considering that taxes, being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares,[48] the rule is likewise settled that tax statutes must be construed strictly against the government and liberally in favor of the taxpayer.[49] Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication.[50] While it is true that taxes are the lifeblood of the government, it has been held that their assessment and collection should be in accordance with law as any arbitrariness will negate the very reason for government itself.[51]

In G.R. No. 167689, we also find a dearth of merit in the CIR's insistence on the imposition of deficiency income taxes on the transfer FDC and FAI effected in exchange for the shares of stock of FLI. With respect to the Deed of Exchange executed between FDC, FAI and FLI, Section 34 (c) (2) of the 1993 NIRC pertinently provides as follows:

Sec. 34. **Determination of amount of and recognition of gain or loss**.-

xxx xxx xxx

(c) **Exception** – x x x

No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for shares of stock in such corporation of which as a result of such exchange said person, alone or together with others, not exceeding four persons, gains

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[48] *Republic of the Philippines v. Intermediate Appellate Court*, G.R. No. 69344, 26 April 1991, 196 SCRA 335, 340.

[49] *Mactan Cebu International Airport Authority v. Hon. Ferdinand J. Marcos*, 330 Phil. 392, 405 (1996).

[50] *CIR v. Court of Appeals*, 338 Phil. 322, 330 (1997).

[51] *Commissioner of Internal Revenue v. Reyes*, G.R. No. 159694, 27 January 2006; *Azucena T. Reyes v. Commissioner of Internal Revenue*, G.R. No. 163581, 27 January 2006, 480 SCRA 382, 397.

control of said corporation; **Provided,** *That stocks issued for services shall not be considered as issued in return of property.*

As even admitted in the 14 February 2001 Stipulation of Facts submitted by the parties,[52] the requisites for the non-recognition of gain or loss under the foregoing provision are as follows: (a) the transferee is a corporation; (b) the transferee exchanges its shares of stock for property/ies of the transferor; (c) the transfer is made by a person, acting alone or together with others, not exceeding four persons; and, (d) as a result of the exchange the transferor, alone or together with others, not exceeding four, gains control of the transferee.[53] Acting on the 13 January 1997 request filed by FLI, the BIR had, in fact, acknowledged the concurrence of the foregoing requisites in the Deed of Exchange the former executed with FDC and FAI by issuing BIR Ruling No. S-34-046-97.[54] With the BIR's reiteration of said ruling upon the request for clarification filed by FLI,[55] there is also no dispute that said transferee and transferors subsequently complied with the requirements provided for the non-recognition of gain or loss from the exchange of property for tax, as provided under Section 34 (c) (2) of the 1993 NIRC.[56]

Then as now, the CIR argues that taxable gain should be recognized for the exchange considering that FDC's controlling interest in FLI was actually decreased as a result thereof. For said purpose, the CIR calls attention to the fact that, prior to the exchange, FDC owned 2,537,358,000 or 67.42% of FLI's 3,763,535,000 outstanding capital stock. Upon the issuance of 443,094,000 additional FLI shares as a consequence of the exchange and with only 42,217,000 thereof accruing in favor of FDC for a total of 2,579,575,000 shares, said corporation's controlling interest was supposedly reduced to 61%.03 when

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[52] *Rollo* (G.R. No. 167689), pp. 218-240.

[53] *Id.* at 229.

[54] *Id.* at 246-251.

[55] *Id.* at 252-253.

[56] *Id.* at 222.

reckoned from the transferee's aggregate 4,226,629,000 outstanding shares. Without owning a share from FLI's initial 3,763,535,000 outstanding shares, on the other hand, FAI's acquisition of 420,877,000 FLI shares as a result of the exchange purportedly resulted in its control of only 9.96% of said transferee corporation's 4,226,629,000 outstanding shares. On the principle that the transaction did not qualify as a tax-free exchange under Section 34 (c) (2) of the 1993 NIRC, the CIR asseverates that taxable gain in the sum of ₱263,386,921.00 should be recognized on the part of FDC and in the sum of ₱3,088,711,367.00 on the part of FAI.[57]

The paucity of merit in the CIR's position is, however, evident from the categorical language of Section 34 (c) (2) of the 1993 NIRC which provides that gain or loss will not be recognized in case the exchange of property for stocks results in the control of the transferee by the transferor, alone or with other transferors not exceeding four persons. Rather than isolating the same as proposed by the CIR, FDC's 2,579,575,000 shares or 61.03% control of FLI's 4,226,629,000 outstanding shares should, therefore, be appreciated in combination with the 420,877,000 new shares issued to FAI which represents 9.96% control of said transferee corporation. Together FDC's 2,579,575,000 shares (61.03%) and FAI's 420,877,000 shares (9.96%) clearly add up to 3,000,452,000 shares or 70.99% of FLI's 4,226,629,000 shares. Since the term "control" is clearly defined as "ownership of stocks in a corporation possessing at least fifty-one percent of the total voting power of classes of stocks entitled to one vote" under Section 34 (c) (6) [c] of the 1993 NIRC, the exchange of property for stocks between FDC, FAI and FLI clearly qualify as a tax-free transaction under paragraph 34 (c) (2) of the same provision.

Against the clear tenor of Section 34(c) (2) of the 1993 NIRC, the CIR cites then Supreme Court Justice Jose Vitug and CTA Justice Ernesto D. Acosta who, in their book *Tax Law and Jurisprudence*, opined that said provision could be inapplicable

[57] *Id.* at 33-40.

if control is already vested in the exchangor prior to exchange.[58] Aside from the fact that that the 10 September 2002 Decision in CTA Case No. 6182 upholding the tax-exempt status of the exchange between FDC, FAI and FLI was penned by no less than Justice Acosta himself,[59] FDC and FAI significantly point out that said authors have acknowledged that the position taken by the BIR is to the effect that "the law would apply even when the exchangor already has control of the corporation at the time of the exchange."[60] This was confirmed when, apprised in FLI's request for clarification about the change of percentage of ownership of its outstanding capital stock, the BIR opined as follows:

> Please be informed that regardless of the foregoing, the transferors, Filinvest Development Corp. and Filinvest Alabang, Inc. still gained control of Filinvest Land, Inc. The term 'control' shall mean ownership of stocks in a corporation by possessing at least 51% of the total voting power of all classes of stocks entitled to vote. Control is determined by the amount of stocks received, *i.e.*, total subscribed, whether for property or for services by the transferor or transferors. In determining the 51% stock ownership, only those persons who transferred property for stocks in the same transaction may be counted up to the maximum of five (BIR Ruling No. 547-93 dated December 29, 1993.[61]

At any rate, it also appears that the supposed reduction of FDC's shares in FLI posited by the CIR is more apparent than real. As the uncontested owner of 80% of the outstanding shares of FAI, it cannot be gainsaid that FDC ideally controls the same percentage of the 420,877,000 shares issued to its said co-transferor which, by itself, represents 7.968% of the outstanding shares of FLI. Considered alongside FDC's 61.03% control of FLI as a consequence of the 29 November 1996 Deed of Transfer, said 7.968% add up to an aggregate of 68.998% of said transferee

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[58] Tax Law and Jurisprudence, 2000 Edition, p. 161.

[59] *Rollo* (G.R. No. 167689), pp. 455-477.

[60] Tax Law and Jurisprudence, 2000 Edition, pp. 161-162.

[61] *Rollo* (G.R. No. 167689), p. 253.

corporation's outstanding shares of stock which is evidently still greater than the 67.42% FDC initially held prior to the exchange. This much was admitted by the parties in the 14 February 2001 Stipulation of Facts, Documents and Issues they submitted to the CTA.[62] Inasmuch as the combined ownership of FDC and FAI of FLI's outstanding capital stock adds up to a total of 70.99%, it stands to reason that neither of said transferors can be held liable for deficiency income taxes the CIR assessed on the supposed gain which resulted from the subject transfer.

On the other hand, insofar as documentary stamp taxes on loan agreements and promissory notes are concerned, Section 180 of the NIRC provides follows:

Sec. 180. **Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.** – *On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bill of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit or note:* **Provided**, *That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax:* **Provided however**, *That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000.00) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of documentary stamp tax provided under this Section.*

[62] *Id.* at 221.

When read in conjunction with Section 173 of the 1993 NIRC,[63] the foregoing provision concededly applies to "(a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines." Correlatively, Section 3 (b) and Section 6 of Revenue Regulations No. 9-94 provide as follows:

Section 3. Definition of Terms. – For purposes of these Regulations, the following term shall mean:

(b) 'Loan agreement' – refers to a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities, which may be evidenced by credit memo, advice or drawings.

The terms 'Loan Agreement" under Section 180 and "Mortgage' under Section 195, both of the Tax Code, as amended, generally refer to distinct and separate instruments. A loan agreement shall be taxed under Section 180, while a deed of mortgage shall be taxed under Section 195."

"Section 6. Stamp on all Loan Agreements. – All loan agreements whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located in the Philippines shall be subject to the documentary stamp tax of thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.

[63] Sec. 173. Stamp taxes upon documents, instruments, loan agreements and papers. – Upon documents, instruments, loan agreements, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting , or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: **Provided**, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.

In cases where no formal agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code.

Applying the aforesaid provisions to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed. In keeping with the caveat attendant to every BIR Ruling to the effect that it is valid only if the facts claimed by the taxpayer are correct, we find that the CA reversibly erred in utilizing BIR Ruling No. 116-98, dated 30 July 1998 which, strictly speaking, could be invoked only by ASB Development Corporation, the taxpayer who sought the same. In said ruling, the CIR opined that documents like those evidencing the advances FDC extended to its affiliates are not subject to documentary stamp tax, to wit:

On the matter of whether or not the inter-office memo covering the advances granted by an affiliate company is subject to documentary stamp tax, it is informed that nothing in Regulations No. 26 (Documentary Stamp Tax Regulations) and Revenue Regulations No. 9-94 states that the same is subject to documentary stamp tax. Such being the case, said inter-office memo evidencing the lendings or borrowings which is neither a form of promissory note nor a certificate of indebtedness issued by the corporation-affiliate or a certificate of obligation, which are, more or less, categorized as 'securities,' is not subject to documentary stamp tax imposed under Sections 180, 174 and 175 of the Tax Code of 1997, respectively. Rather, the inter-office memo is being prepared for accounting purposes only in order to avoid the co-mingling of funds of the corporate affiliates.

In its appeal before the CA, the CIR argued that the foregoing ruling was later modified in BIR Ruling No. 108-99 dated 15 July 1999, which opined that inter-office memos evidencing lendings or borrowings extended by a corporation to its affiliates are akin to promissory notes, hence, subject to documentary

stamp taxes.[64] In brushing aside the foregoing argument, however, the CA applied Section 246 of the 1993 NIRC[65] from which proceeds the settled principle that rulings, circulars, rules and regulations promulgated by the BIR have no retroactive application if to so apply them would be prejudicial to the taxpayers.[66] Admittedly, this rule does not apply: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith.[67] Not being the taxpayer who, in the first instance, sought a ruling from the CIR, however, FDC cannot invoke the foregoing principle on non-retroactivity of BIR rulings.

Viewed in the light of the foregoing considerations, we find that both the CTA and the CA erred in invalidating the assessments

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[64] After a careful restudy of the aforementioned ruling, this office is of the opinion as it hereby hold that inter-office memo covering the advances granted by a corporation affiliate company, *i.e.*, or inter-office memo evidencing lendings/borrowings is in the nature of a promissory note subject to the documentary stamp tax imposed under Section 180 of the Tax Code of 1997.

This modifies BIR Ruling No. 116-98 dated 30 July 1998 insofar as inter-office memo covering the advances granted by a corporation affiliate company, *i.e.*, inter-office memo evidencing lendings/borrowings, is concerned which shall be subject to documentary stamp tax imposed under Section 180 of the Tax Code of 1997.

[65] Section 246. Non-retroactivity of Rulings.— Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith.

[66] *CIR v. Benguet Corporation*, G.R. No. 145559, 14 July 2006, 495 SCRA 59, 65-66.

[67] Section 246, 1993 NIRC.

issued by the CIR for the deficiency documentary stamp taxes due on the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997. In Assessment Notice No. SP-DST-96-00020-2000, the CIR correctly assessed the sum of ₱6,400,693.62 for documentary stamp tax, ₱3,999,793.44 in interests and ₱25,000.00 as compromise penalty, for a total of ₱10,425,487.06. Alongside the sum of ₱4,050,599.62 for documentary stamp tax, the CIR similarly assessed ₱1,721,099.78 in interests and ₱25,000.00 as compromise penalty in Assessment Notice No. SP-DST-97-00021-2000 or a total of ₱5,796,699.40. The imposition of deficiency interest is justified under Sec. 249 (a) and (b) of the NIRC which authorizes the assessment of the same "at the rate of twenty percent (20%), or such higher rate as may be prescribed by regulations," from the date prescribed for the payment of the unpaid amount of tax until full payment.[68] The imposition of the compromise penalty is, in turn, warranted under Sec. 250[69] of the NIRC which prescribes the imposition thereof "in case of each failure to file an information or return, statement or list, or keep any record or supply any information required" on the date prescribed therefor.

To our mind, no reversible error can, finally, be imputed against both the CTA and the CA for invalidating the Assessment

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[68] Sec. 248. Interest. (a) In general.— There shall be assessed and collected on any unpaid tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(b) Deficiency Interest.— Any deficiency in the tax due as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

[69] Sec. 250. Failure to File Certain Information Returns.— In the case of each failure to file an information return, statement or list, or keep any record, or supply any information required by this Code or by the Commissioner on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the Commissioner, be paid by the person failing to file, keep or supply the same, One thousand pesos (₱1,000) for each such failure: ***Provided, however***, That the aggregate amount to be imposed for all such failures during a calendar year shall not exceed Twenty-five thousand pesos (₱25,000).

Notice issued by the CIR for the deficiency income taxes FDC is supposed to have incurred as a consequence of the dilution of its shares in FAC. Anent FDC's Shareholders' Agreement with RHPL, the record shows that the parties were in agreement about the following factual antecedents narrated in the 14 February 2001 Stipulation of Facts, Documents and Issues they submitted before the CTA,[70] *viz.*:

"1.11. On November 15, 1996, FDC entered into a Shareholders' Agreement ('SA') with Reco Herrera Pte. Ltd. ('RHPL') for the formation of a joint venture company named Filinvest Asia Corporation ('FAC') which is based in Singapore (pars. 1.01 and 6.11, Petition, pars. 1 and 7, Answer).

1.12. FAC, the joint venture company formed by FDC and RHPL, is tasked to develop and manage the 50% ownership interest of FDC in its PBCom Office Tower Project ('Project') with the Philippine Bank of Communications (par. 6.12, Petition; par. 7, Answer).

1.13. Pursuant to the SA between FDC and RHPL, the equity participation of FDC and RHPL in FAC was 60% and 40% respectively.

1.14. In accordance with the terms of the SA, FDC subscribed to ₱500.7 million worth of shares of stock representing a 60% equity participation in FAC. In turn, RHPL subscribed to ₱433.8 million worth of shares of stock of FAC representing a 40% equity participation in FAC.

1.15. In payment of its subscription in FAC, FDC executed a Deed of Assignment transferring to FAC a portion of FDC's right and interests in the Project to the extent of ₱500.7 million.

1.16. FDC reported a net loss of ₱190,695,061.00 in its Annual Income Tax Return for the taxable year 1996."[71]

Alongside the principle that tax revenues are not intended to be liberally construed,[72] the rule is settled that the findings and conclusions of the CTA are accorded great respect and are

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[70] *Rollo*, (G.R. No. 167689), pp. 218-240.

[71] *Id.* at 223-224.

[72] *Commissioner of Internal Revenue v. Acosta*, G.R. No. 154068, 3 August 2007, 529 SCRA 177, 186.

generally upheld by this Court, unless there is a clear showing of a reversible error or an improvident exercise of authority.[73] Absent showing of such error here, we find no strong and cogent reasons to depart from said rule with respect to the CTA's finding that no deficiency income tax can be assessed on the gain on the supposed dilution and/or increase in the value of FDC's shareholdings in FAC which the CIR, at any rate, failed to establish. Bearing in mind the meaning of "gross income" as above discussed, it cannot be gainsaid, even then, that a mere increase or appreciation in the value of said shares cannot be considered income for taxation purposes. Since "a mere advance in the value of the property of a person or corporation in no sense constitute the 'income' specified in the revenue law," it has been held in the early case of *Fisher vs. Trinidad*,[74] that it "constitutes and can be treated merely as an increase of capital." Hence, the CIR has no factual and legal basis in assessing income tax on the increase in the value of FDC's shareholdings in FAC until the same is actually sold at a profit.

WHEREFORE, premises considered, the CIR's petition for review on *certiorari* in G.R. No. 163653 is *DENIED* for lack of merit and the CA's 16 December 2003 Decision in G.R. No. 72992 is *AFFIRMED in toto.* The CIR's petition in G.R. No. 167689 is *PARTIALLY GRANTED* and the CA's 26 January 2005 Decision in CA-G.R. SP No. 74510 is *MODIFIED.*

Accordingly, Assessment Notices Nos. SP-DST-96-00020-2000 and SP-DST-97-00021-2000 issued for deficiency documentary stamp taxes due on the instructional letters as well as journal and cash vouchers evidencing the advances FDC extended to its affiliates are declared valid.

The cancellation of Assessment Notices Nos. SP-INC-96-00018-2000, SP-INC-97-00019-2000 and SP-INC-97-0027-2000 issued for deficiency income assessed on (a) the "arms-length" interest from said advances; (b) the gain from FDC's Deed of

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[73] *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*, G.R. No. 178759, 11 August 2008, 561 SCRA 710, 742.

[74] 43 Phil. 973, 981 (1922).

Exchange with FAI and FLI; and (c) income from the dilution resulting from FDC's Shareholders' Agreement with RHPL is, however, upheld.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., and *Mendoza, JJ.,* concur.

Leonardo-de Castro, J., with separate concurring opinion.

Sereno,[*] *J.,* on leave.

CONCURRING OPINION

***LEONARDO-DE CASTRO, J.*:**

I concur that the property-for-shares exchange between Filinvest Development Corporation (FDC) and Filinvest Alabang, Inc. (FAI), on one hand, and Filinvest Land, Inc. (FLI), on the other, was tax-free under Section 34(C)(2) of the National Internal Revenue Code (NIRC) of 1993.

Section 34(C)(2) of the NIRC of 1993 provided:

Sec. 34. *Determination of amount of and recognition of gain or loss.* –

xxx xxx xxx

(c) *Exchange of property.* –

xxx xxx xxx

(2) *Exception.* – No gain or loss shall be recognized if in pursuance of a plan of merger or consolidation (a) a corporation which is a party to a merger or consolidation exchanges property solely for stock in a corporation which is a party to the merger or consolidation, (b) a shareholder exchanges stock in a corporation which is a party to the merger or consolidation solely for the stock of another corporation also a party to the merger or consolidation, or (c) a security holder of a corporation which is a party to the merger or consolidation exchanges his securities in such corporation

[*] Associate Justice Maria Lourdes P. A. Sereno is on Special Leave from 16-30 July 2011 under the Court's Wellness Program.

solely for stock or securities in another corporation, a party to the merger or consolidation. **No gain or loss shall be also be recognized if property is transferred to a corporation by a person in exchange for stock in such a corporation of which as a result of such exchange said person, alone or with others, not exceeding four persons, gains control of said corporation.** *Provided*, That stocks issued for services shall not be considered as issued in return for property. (Emphasis ours.)

Control was defined as "ownership of stocks in a corporation possessing at least fifty-one per cent of the total voting power of all classes of stock entitled to vote."[1]

When FDC and FAI transferred real property to FLI, they respectively acquired, in return, 61.03% and 9.96% of the outstanding capital stock of FLI. Together, FDC and FAI held 70.99% of the outstanding capital stock of FLI after the exchange, thus, gaining control of FLI.

There is no basis for the argument of the Commissioner of Internal Revenue (CIR) that the foregoing property-for-shares exchange was not tax-free because as a result of the same, the shareholding of FDC in FLI actually decreased from 67.42% to 61.03%. Even with such decrease, the shareholding of FDC in FLI after the exchange was still beyond 51%, hence, FDC still had control of FLI within the meaning of Section 34(C)(2) of the NIRC of 1993. Control by FDC over FLI after the exchange is even more evident when the shareholdings of FDC in FLI are combined with that of FAI. It is also significant to note that FDC owns 80% of FAI.

Section 34(C)(2) of the NIRC of 1993 is clear. Therefore, no statutory construction or interpretation is needed. Neither can conditions or limitations be introduced where none is provided for. Rewriting the law is a forbidden ground that only Congress may tread upon. The Court may not construe a statute that is free from doubt. Where the law speaks in clear and categorical language, there is no room for interpretation. There is only

[1] Section 34, Definitions (c) of the NIRC of 1993.

room for application. The Court has no choice but to see to it that its mandate is obeyed.[2]

I likewise agree that any increase in the value of the shareholdings of FDC in Filinvest Asia Corporation (FAC) is not yet taxable income for it remains unrealized until said shareholdings are sold or disposed of. Income in tax law is "an amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment."[3] It means cash or its equivalent. It is gain derived and severed from capital, from labor, or from both combined.[4] Income should be reported at the time of the actual gain. For income tax purposes, income is an actual gain or an actual increase of wealth.[5] In this case, FDC will only enjoy actual gain if it is able to sell its shareholdings in FAC at a price higher than the cost of acquiring the same. In fact, as long as FDC holds on to its shareholdings in FAC, FDC is at risk of suffering loss should the value of its shareholdings in FAC decrease in the future.

Although I am also in accord with the majority opinion that the CIR may not impute interest income on the cash advances FDC extended to its affiliates, I have a different basis for my vote.

Section 43 of the NIRC of 1993 grants the CIR specific authority over controlled taxpayers, *viz*:

> Sec. 43. *Allocation of income and deductions*. – In any case of two or more organizations, trades or businesses (whether or not incorporated and whether or not organized in the Philippines) owned or controlled directly or indirectly by the same interests, the Commissioner of Internal Revenue is authorized to distribute, apportion or allocate gross income or deductions between or among

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[2] *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, 500 Phil. 586, 608 (2005).

[3] *Commissioner of Internal Revenue v. Court of Appeals*, 361 Phil. 103, 120 (1999).

[4] *Id*.

[5] *Bañas, Jr. v. Court of Appeals*, 382 Phil. 144, 159 (2000).

such organizations, trades or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organizations, trades or businesses.

The majority opinion acknowledged that the situation sought to be addressed by Section 43 of the NIRC of 1993 seemingly exists considering FDC and its affiliates are controlled taxpayers; and FDC extended substantial sums of money as cash advances to its affiliates as financial assistance for the operational and capital expenditures of the latter. The majority opinion further conceded that the power of the CIR to distribute, apportion, or allocate gross income or deductions between or among controlled taxpayers may be exercised whether or not fraud inheres in the transaction/s under scrutiny; and for as long as the controlled taxpayer's taxable income is not reflective of that which it would have realized had it been dealing at arm's length with an uncontrolled taxpayer, the CIR can make the necessary rectifications in order to prevent evasion of taxes.

Nonetheless, the majority opinion held that the CIR cannot impute interest income on the cash advances extended by FDC to its affiliates because: (1) there was no evidence that the cash advances extended by FDC to its affiliates were sourced from the loans obtained by FDC from commercial banks and for which FDC claimed deductions of interest expense from its gross income; (2) there was no proof of actual or probable receipt or realization by FDC of interest income from the cash advances; and (3) there was no express stipulation in writing that interest would be due on the cash advances as required under Article 1956 of the Civil Code.

I believe, however, that the CIR need not establish that the cash advances extended by FDC to its affiliates were sourced from the loans obtained by FDC from commercial banks. The source of the cash advances is irrelevant. What the CIR is seeking to tax herein is the interest income FDC should have earned from the cash advances it extended to its affiliates; the theory being that FDC would have imposed and collected said

interest had it been dealing at arm's length with an uncontrolled company.

It is just as unnecessary for the CIR to present proof of actual or probable receipt by FDC of interest income from the cash advances it extended to its affiliates. Section 43 of the NIRC of 1993 should be appreciated as an exception to the general rules on income taxation as it addresses a very specific situation: controlled taxpayers dealing with each other not at arm's length. To exercise his authority under said provision, it is already sufficient for the CIR to establish that the income reported by the controlled taxpayer from the transaction amongst themselves fall below the arm's length standard; in which case, the CIR may already impute such arm's length income on the transaction, and accordingly distribute, apportion, or allocate the same among the controlled taxpayers who participated in said transaction. To require the CIR to still submit proof of the actual or probable income received by the controlled taxpayers from the transaction, and limit the income which the CIR may distribute, apportion, or allocate to that which was thus proved, would not only severely limit the authority of the CIR under Section 43 of the NIRC of 1993, but would also render the arm's length standard useless and superfluous.

Even more alarming is the statement in the majority opinion that for the CIR to exercise its authority to attribute interest income on the cash advances FDC extended to its affiliates under Section 43 of the NIRC of 1993, there must be an express stipulation in writing that such interest was due on the transaction in accordance with Article 1956 of the Civil Code. Section 43 of the NIRC of 1993 prevails over Article 1956 of the Civil Code. *Lex specialis derogat generali*. General legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable. In other words, where two statutes are of equal theoretical application to a particular case, the one specially designed therefore should prevail.[6]

[6] *Roque, Jr. v. Commission on Elections*, G.R. No. 188456, September 10, 2009, 599 SCRA 69, 196.

As for loans and advances among controlled taxpayers, tax evasion may be committed by (1) charging interest thereon but not at arm's length rate; or (2) not charging any interest at all. Expectedly, in the latter case, there would be no express stipulation in writing that interest is due on the loans or advances. Are we saying that the CIR may impute arm's length interest in the former case, but is totally powerless to impute any interest in the latter case? This will render the latter a completely effective means of tax evasion. Controlled taxpayers can just do away with any written stipulation of interest on the loans or advances altogether, and even when such absence of interest is contrary to the arm's length standard, the CIR will be unable to exercise its authority under Section 43 of the NIRC of 1993.

I submit that the CIR cannot impute any interest income on the cash advances FDC extended to its affiliates for the simple reason that Revenue Memorandum Order (RMO) No. 63-99, which sets down the guidelines for the determination of taxable income on inter-company loans or advances, applying what is now Section 50 of the NIRC of 1997, was issued only on July 19, 1999. Pertinent provisions of RMO No. 63-99 reads:

2. *Coverage:*

   This paper applies to all forms of bona fide indebtedness and includes:

   2.1 Loans or advances of money or other consideration (whether or not evidence by a written instrument);

   2.2 Indebtedness arising in the ordinary course of business out of sales, leases, or the rendition of services by or between members of the group, or any other similar extension;

   2.3 But does not apply to alleged indebtedness which was in fact a contribution of capital or a distribution by a corporation with respect to its shares.

   xxx xxx xxx

4. *Determination of Taxable Income on Inter-company Loans or Advances:*

4.1 *In general.* Where one member of a group of controlled entities makes a loan or advances directly or indirectly, or otherwise becomes a creditor of another member of such group, and charges no interest, or charges interest at a rate which is not equal to an arm's-length rate as defined in subparagraph (2) of this paragraph, the Commissioner may make appropriate allocations to reflect an arm's length interest rate for the use of such loan or advance.

4.1.1 If payments are made to parties under common control according to a legally enforceable contract, the contract may still be recognized as valid. However, for purposes of determining the true taxable income of the parties involved, the interest rate charged may be subjected to reallocation.

4.1.2 Section 50 does not apply only to taxable entities. Reallocation may also apply to tax-exempt organizations.

4.2 *Arm's Length interest rate.*

4.2.1 *In general.* For purposes of this Order, the arm's length interest rate shall be the rate of interest which was charged or would have been charged at the time the indebtedness arose in independent transaction with or between unrelated parties under similar circumstances. All relevant factors will be considered, including the amount and duration of the loan, the security involved, the credit standing of the borrower, and the interest rate prevailing at the situs of the lender or creditor for comparable loans.

4.2.2 For purposes of determining the arm's length rate in domestic transactions, the interest rate to be used is the Bank Reference Rate (BRR) prescribed by the Bangko Sentral ng Pilipinas (BSP).

4.2.3. The fact that the interest rate actually charged on a loan or advance is expressly indicated on a written instrument does not preclude the

application of Section 50 to such loan or advance.

5. *Interest Period*

5.1 The interest period shall commence at the date the indebtedness arises, except that with respect to indebtedness arising in the ordinary course of business out of sales, leases, or supply of goods and services which are generally considered as trade accounts receivables or payables, the interest period shall not commence if the taxpayer is able to establish that the normal trade practice in a given industry is to allow balances, in the case of similar transactions with unrelated parties, to remain outstanding for a longer period without charging interest.

5.2 For purposes of determining the period of time for which a balance is outstanding, payments of credits shall be applied against the earliest balance outstanding. The taxpayer may, in accordance with an agreement, apply such payments or credits in some other order in its books only after establishing that the arrangement is customary for parties in that particular business.

FDC extended the cash advances to its affiliates in 1996 and 1997, when there was yet no clear regulation as to the tax treatment of loans and advances among controlled taxpayers that would have accordingly guided the concerned taxpayers and the Bureau of Internal Revenue (BIR) officials. RMO No. 63-99 cannot be applied retroactively to FDC and its affiliates as Section 246 of the NIRC of 1997 expressly proscribes the same, to wit:

SEC. 246. *Non-Retroactivity of Rulings.* – Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification, or

reversal will be prejudicial to the taxpayers, except in the following cases:

(a) where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) where the taxpayer acted in bad faith.

Finally, I join the majority opinion in classifying the instructional letters, journals, and cash vouchers evidencing the advances FDC extended to its affiliates as loan agreements, upon which documentary stamp taxes (DST) may be imposed. Regardless of whether or not the CIR may impute interest on the cash advances, there is no dispute that said advances were in the nature of loans, which were extended by FDC to its affiliates as financial assistance for the latter's operational and capital expenditures, and which were repaid by the affiliates to FDC within the duration of one week to three months.

For the foregoing reasons, I join the majority in (1) dismissing for lack of merit the Petition of the CIR in G.R. No. 163653 and affirming the Decision dated December 16, 2003 of the Court of Appeals in CA-G.R. SP No. 72992; and (2) partially granting the Petition of the CIR in G.R. No. 167869 and affirming the Decision dated January 26, 2005 of the Court of Appeals in CA-G.R. SP No. 74510 with the modification that Assessment Notice Nos. SP-DST-96-00020-2000 and SP-DST-97-00021-2000 for deficiency DST on the instructional letters, journals, and cash vouchers, evidencing the cash advances FDC extended to its affiliates, are declared valid.

EN BANC

[G.R. No. 193007. July 19, 2011]

RENATO V. DIAZ and AURORA MA. F. TIMBOL, *petitioners, vs.* **THE SECRETARY OF FINANCE and THE COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; THE PETITION FOR DECLARATORY RELIEF MAY BE TREATED AS ONE FOR PROHIBITION IF THE CASE HAS FAR-REACHING IMPLICATIONS AND RAISES QUESTIONS THAT NEED TO BE RESOLVED FOR THE PUBLIC GOOD.— But there are precedents for treating a petition for declaratory relief as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good. The Court has also held that a petition for prohibition is a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority. Here, the imposition of VAT on toll fees has far-reaching implications. Its imposition would impact, not only on the more than half a million motorists who use the tollways everyday, but more so on the government's effort to raise revenue for funding various projects and for reducing budgetary deficits. To dismiss the petition and resolve the issues later, after the challenged VAT has been imposed, could cause more mischief both to the tax-paying public and the government. A belated declaration of nullity of the BIR action would make any attempt to refund to the motorists what they paid an administrative nightmare with no solution. Consequently, it is not only the right, but the duty of the Court to take cognizance of and resolve the issues that the petition raises.

2. ID.; ID.; PROHIBITION; FAILURE TO STRICTLY COMPLY WITH THE REQUIREMENTS IS NOT FATAL; TECHNICAL REQUIREMENTS MAY BE WAIVED WHEN THE LEGAL QUESTIONS TO BE RESOLVED ARE OF

GREAT IMPORTANCE TO THE PUBLIC.— Although the petition does not strictly comply with the requirements of Rule 65, the Court has ample power to waive such technical requirements when the legal questions to be resolved are of great importance to the public. The same may be said of the requirement of *locus standi* which is a mere procedural requisite.

3. TAXATION; VALUE ADDED TAX; IMPOSED ON ALL KINDS OF SERVICES RENDERED IN THE PHILIPPINES FOR A FEE; PHRASE "ALL KINDS OF SERVICES," CONSTRUED.— The relevant law in this case is Section 108 of the NIRC, as amended. VAT is levied, assessed, and collected, according to Section 108, on the gross receipts derived from the sale or exchange of services as well as from the use or lease of properties. The third paragraph of Section 108 defines "sale or exchange of services" x x x. It is plain from the above that the law imposes VAT on "all kinds of services" rendered in the Philippines for a fee, including those specified in the list. The enumeration of affected services is not exclusive. By qualifying "services" with the words "all kinds," Congress has given the term "services" an all-encompassing meaning. The listing of specific services are intended to illustrate how pervasive and broad is the VAT's reach rather than establish concrete limits to its application. Thus, every activity that can be imagined as a form of "service" rendered for a fee should be deemed included unless some provision of law especially excludes it.

4. ID.; ID.; ID.; TOLL FEE COLLECTED FROM A MOTORIST IS FOR THE USE OF THE TOLLWAY FACILITIES OVER WHICH THE TOLLWAY OPERATOR ENJOYS PRIVATE PROPRIETARY RIGHTS.— [D]o tollway operators render services for a fee? Presidential Decree (P.D.) 1112 or the Toll Operation Decree establishes the legal basis for the services that tollway operators render. Essentially, tollway operators construct, maintain, and operate expressways, also called tollways, at the operators' expense. Tollways serve as alternatives to regular public highways that meander through populated areas and branch out to local roads. Traffic in the regular public highways is for this reason slow-moving. In consideration for constructing tollways at their expense, the operators are allowed to collect government-approved fees

from motorists using the tollways until such operators could fully recover their expenses and earn reasonable returns from their investments. When a tollway operator takes a toll fee from a motorist, the fee is in effect for the latter's use of the tollway facilities over which the operator enjoys private proprietary rights that its contract and the law recognize.

5. ID.; ID.; ID.; FOR "SERVICES" TO BE SUBJECT TO VALUE ADDED TAX, THE SAME NEED NOT FALL UNDER THE TRADITIONAL CONCEPT OF SERVICES, THE PERSONAL OR PROFESSIONAL KINDS THAT REQUIRE THE USE OF HUMAN KNOWLEGE AND SKILLS.— It does not help petitioners' cause that Section 108 subjects to VAT "all kinds of services" rendered for a fee "regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties." This means that "services" to be subject to VAT need not fall under the traditional concept of services, the personal or professional kinds that require the use of human knowledge and skills.

6. ID.; ID.; ID.; TOLLWAY OPERATORS ARE FRANCHISE GRANTEES SUBJECT TO VALUE ADDED TAX.— And not only do tollway operators come under the broad term "all kinds of services," they also come under the specific class described in Section 108 as "all other franchise grantees" who are subject to VAT, "except those under Section 119 of this Code." Tollway operators are franchise grantees and they do not belong to exceptions (the low-income radio and/or television broadcasting companies with gross annual incomes of less than ₱10 million and gas and water utilities) that Section 119 spares from the payment of VAT. The word "franchise" broadly covers government grants of a special right to do an act or series of acts of public concern.

7. ID.; ID.; ID.; ID.; TERM "FRANCHISE," CONSTRUED; FRANCHISES CONFERED BY LOCAL AUTHORITIES, AS AGENTS OF THE STATE, CONSTITUTE AS MUCH A LEGISLATIVE FRANCHISE AS THOUGH THE GRANT HAD BEEN MADE BY THE CONGRESS ITSELF.— Petitioners of course contend that tollway operators cannot be considered "franchise grantees" under Section 108 since they do not hold legislative franchises. But nothing in Section 108 indicates that the "franchise grantees" it speaks of are

those who hold legislative franchises. Petitioners give no reason, and the Court cannot surmise any, for making a distinction between franchises granted by Congress and franchises granted by some other government agency. The latter, properly constituted, may grant franchises. Indeed, franchises conferred or granted by local authorities, as agents of the state, constitute as much a legislative franchise as though the grant had been made by Congress itself. The term "franchise" has been broadly construed as referring, not only to authorizations that Congress directly issues in the form of a special law, but also to those granted by administrative agencies to which the power to grant franchises has been delegated by Congress. Tollway operators are, owing to the nature and object of their business, "franchise grantees." The construction, operation, and maintenance of toll facilities on public improvements are activities of public consequence that necessarily require a special grant of authority from the state. Indeed, Congress granted special franchise for the operation of tollways to the Philippine National Construction Company, the former tollway concessionaire for the North and South Luzon Expressways. Apart from Congress, tollway franchises may also be granted by the TRB, pursuant to the exercise of its delegated powers under P.D. 1112. The franchise in this case is evidenced by a "Toll Operation Certificate."

8. ID.; ID.; ID.; ID.; BUSINESSES OF A PUBLIC NATURE SUCH AS PUBLIC UTILITIES AND THE COLLECTION OF TOLLS OR CHARGES FOR ITS USE OR SERVICE IS A FRANCHISE.— Petitioners contend that the public nature of the services rendered by tollway operators excludes such services from the term "sale of services" under Section 108 of the Code. But, again, nothing in Section 108 supports this contention. The reverse is true. In specifically including by way of example electric utilities, telephone, telegraph, and broadcasting companies in its list of VAT-covered businesses, Section 108 opens other companies rendering public service for a fee to the imposition of VAT. Businesses of a public nature such as public utilities and the collection of tolls or charges for its use or service is a franchise.

9. STATUTORY CONSTRUCTION; STATUTES; STATEMENTS MADE BY INDIVIDUAL MEMBERS OF CONGRESS IN THE CONSIDERATION OF A BILL ARE NOT

CONTROLLING IN THE INTERPRETATION OF LAW.— Nor can petitioners cite as binding on the Court statements made by certain lawmakers in the course of congressional deliberations of the would-be law. As the Court said in *South African Airways v. Commissioner of Internal Revenue*, "statements made by individual members of Congress in the consideration of a bill do not necessarily reflect the sense of that body and are, consequently, not controlling in the interpretation of law." The congressional will is ultimately determined by the language of the law that the lawmakers voted on. Consequently, the meaning and intention of the law must first be sought "in the words of the statute itself, read and considered in their natural, ordinary, commonly accepted and most obvious significations, according to good and approved usage and without resorting to forced or subtle construction."

10. TAXATION; TAX DISTINGUISHED FROM TOLL FEES.— [F]ees paid by the public to tollway operators for use of the tollways, are not taxes in any sense. A tax is imposed under the taxing power of the government principally for the purpose of raising revenues to fund public expenditures. Toll fees, on the other hand, are collected by private tollway operators as reimbursement for the costs and expenses incurred in the construction, maintenance and operation of the tollways, as well as to assure them a reasonable margin of income. Although toll fees are charged for the use of public facilities, therefore, they are not government exactions that can be properly treated as a tax. Taxes may be imposed only by the government under its sovereign authority, toll fees may be demanded by either the government or private individuals or entities, as an attribute of ownership.

11. ID.; VALUE ADDED TAX; AN INDIRECT TAX; VALUE ADDED TAX ON TOLLWAY OPERATIONS IS A TAX ON THE TOLLWAY OPERATOR NOT ON THE TOLLWAY USER; EXPLAINED.— [V]AT on tollway operations cannot be deemed a tax on tax due to the nature of VAT as an indirect tax. In indirect taxation, a distinction is made between the liability for the tax and burden of the tax. The seller who is liable for the VAT may shift or pass on the amount of VAT it paid on goods, properties or services to the buyer. In such a case, what is transferred is not the seller's liability but merely the burden of the VAT. Thus, the seller remains directly and

legally liable for payment of the VAT, but the buyer bears its burden since the amount of VAT paid by the former is added to the selling price. Once shifted, the VAT ceases to be a tax and simply becomes part of the cost that the buyer must pay in order to purchase the good, property or service. Consequently, VAT on tollway operations is not really a tax on the tollway user, but on the tollway operator. Under Section 105 of the Code, VAT is imposed on any person who, in the course of trade or business, sells or renders services for a fee. In other words, the seller of services, who in this case is the tollway operator, is the person liable for VAT. The latter merely shifts the burden of VAT to the tollway user as part of the toll fees. For this reason, VAT on tollway operations cannot be a tax on tax even if toll fees were deemed as a "user's tax." VAT is assessed against the tollway operator's gross receipts and not necessarily on the toll fees. Although the tollway operator may shift the VAT burden to the tollway user, it will not make the latter directly liable for the VAT. The shifted VAT burden simply becomes part of the toll fees that one has to pay in order to use the tollways.

12. ID.; ID.; REGULAR USER OF TOLLWAYS HAS NO PERSONALITY TO INVOKE THE NON-IMPAIRMENT OF CONTRACT CLAUSE, ON BEHALF OF PRIVATE INVESTORS IN THE TOLLWAY PROJECTS, TO STOP THE IMPOSITION OF VALUE ADDED TAX ON TOLLWAY OPERATIONS.— Petitioner Timbol has no personality to invoke the non-impairment of contract clause on behalf of private investors in the tollway projects. She will neither be prejudiced by nor be affected by the alleged diminution in return of investments that may result from the VAT imposition. She has no interest at all in the profits to be earned under the TOAs. The interest in and right to recover investments solely belongs to the private tollway investors.

13. ID.; ID.; THE COURT CANNOT PROHIBIT THE STATE FROM EXERCISING ITS SOVEREIGN TAXING POWER BASED ON UNCERTAIN, PROPHETIC GROUNDS.— Besides, her allegation that the private investors' rate of recovery will be adversely affected by imposing VAT on tollway operations is purely speculative. Equally presumptuous is her assertion that a stipulation in the TOAs known as the Material Adverse Grantor Action will be activated if VAT is thus imposed. The

Court cannot rule on matters that are manifestly conjectural. Neither can it prohibit the State from exercising its sovereign taxing power based on uncertain, prophetic grounds.

14. ID.; CANONS OF A SOUND TAX SYSTEM; ADMINISTRATIVE FEASIBILITY, EXPLAINED; NON-OBSERVANCE OF THE CANON WILL NOT RENDER A TAX IMPOSITION INVALID EXCEPT TO THE EXTENT THAT SPECIFIC CONSTITUTIONAL OR STATUTORY LIMITATIONS ARE IMPAIRED; ABSENT CLEAR VIOLATION OF THE LAW OR THE CONSTITUTION, THE COURT WILL NOT PREEMPT THE DISCRETION OF THE BUREAU OF INTERNAL REVENUE ON HOW TO IMPLEMENT TAX LAWS.— Administrative feasibility is one of the canons of a sound tax system. It simply means that the tax system should be capable of being effectively administered and enforced with the least inconvenience to the taxpayer. Non-observance of the canon, however, will not render a tax imposition invalid "except to the extent that specific constitutional or statutory limitations are impaired." Thus, even if the imposition of VAT on tollway operations may seem burdensome to implement, it is not necessarily invalid unless some aspect of it is shown to violate any law or the Constitution. Here, it remains to be seen how the taxing authority will actually implement the VAT on tollway operations. Any declaration by the Court that the manner of its implementation is illegal or unconstitutional would be premature. Although the transcript of the August 12, 2010 Senate hearing provides some clue as to how the BIR intends to go about it, the facts pertaining to the matter are not sufficiently established for the Court to pass judgment on. Besides, any concern about how the VAT on tollway operations will be enforced must first be addressed to the BIR on whom the task of implementing tax laws primarily and exclusively rests. The Court cannot preempt the BIR's discretion on the matter, absent any clear violation of law or the Constitution.

15. ID.; VALUE ADDED TAX; RULING ON THE LEGALITY OF BIR RMC 63-2010 STILL PREMATURE.— For the same reason, the Court cannot prematurely declare as illegal, BIR RMC 63-2010 which directs toll companies to record an accumulated input VAT of zero balance in their books as of August 16, 2010, the date when the VAT imposition was supposed to take effect. The issuance allegedly violates Section

111(A) of the Code which grants first time VAT payers a transitional input VAT of 2% on beginning inventory. In this connection, the BIR explained that BIR RMC 63-2010 is actually the product of negotiations with tollway operators who have been assessed VAT as early as 2005, but failed to charge VAT-inclusive toll fees which by now can no longer be collected. The tollway operators agreed to waive the 2% transitional input VAT, in exchange for cancellation of their past due VAT liabilities. Notably, the right to claim the 2% transitional input VAT belongs to the tollway operators who have not questioned the circular's validity. They are thus the ones who have a right to challenge the circular in a direct and proper action brought for the purpose.

16. ID.; ID.; TOLLWAY OPERATORS ARE NEITHER SUBJECT TO FRANCHISE TAX NOR THEIR SERVICES VAT-EXEMPT TRANSACTIONS.— [T]he Commissioner of Internal Revenue did not usurp legislative prerogative or expand the VAT law's coverage when she sought to impose VAT on tollway operations. Section 108(A) of the Code clearly states that services of all other franchise grantees are subject to VAT, except as may be provided under Section 119 of the Code. Tollway operators are not among the franchise grantees subject to franchise tax under the latter provision. Neither are their services among the VAT-exempt transactions under Section 109 of the Code.

17. ID.; TAX EXEMPTIONS; MUST BE JUSTIFIED BY CLEAR STATUTORY GRANT AND BASED ON LANGUAGE IN THE LAW TOO PLAIN TO BE MISTAKEN; NO VAT EXEMPTION FOR TOLLWAY OPERATORS.— If the legislative intent was to exempt tollway operations from VAT, as petitioners so strongly allege, then it would have been well for the law to clearly say so. Tax exemptions must be justified by clear statutory grant and based on language in the law too plain to be mistaken. But as the law is written, no such exemption obtains for tollway operators. The Court is thus duty-bound to simply apply the law as it is found.

18. ID.; ID.; GRANT OF TAX EXEMPTION IS A MATTER OF LEGISLATIVE POLICY THAT IS WITHIN THE EXCLUSIVE PREROGATIVE OF CONGRESS.— The grant of tax exemption is a matter of legislative policy that is within

the exclusive prerogative of Congress. The Court's role is to merely uphold this legislative policy, as reflected first and foremost in the language of the tax statute. Thus, any unwarranted burden that may be perceived to result from enforcing such policy must be properly referred to Congress. The Court has no discretion on the matter but simply applies the law.

19. ID.; THE EXPANDED VALUE-ADDED TAX LAW (R.A. 7716); THE EXECUTIVE EXERCISES EXCLUSIVE DISCRETION IN MATTERS PERTAINING TO THE IMPLEMENTATION AND EXECUTION OF TAX LAWS.— The VAT on franchise grantees has been in the statute books since 1994 when R.A. 7716 or the Expanded Value-Added Tax law was passed. It is only now, however, that the executive has earnestly pursued the VAT imposition against tollway operators. The executive exercises exclusive discretion in matters pertaining to the implementation and execution of tax laws. Consequently, the executive is more properly suited to deal with the immediate and practical consequences of the VAT imposition.

APPEARANCES OF COUNSEL

Ma. Rica A. Gatchalian for petitioners.
The Solicitor General for respondents.

D E C I S I O N

ABAD, *J.*:

May toll fees collected by tollway operators be subjected to value- added tax?

The Facts and the Case

Petitioners Renato V. Diaz and Aurora Ma. F. Timbol (petitioners) filed this petition for declaratory relief[1] assailing the validity of the impending imposition of value-added tax (VAT) by the Bureau of Internal Revenue (BIR) on the collections of

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

tollway operators.

Petitioners claim that, since the VAT would result in increased toll fees, they have an interest as regular users of tollways in stopping the BIR action. Additionally, Diaz claims that he sponsored the approval of Republic Act 7716 (the 1994 Expanded VAT Law or EVAT Law) and Republic Act 8424 (the 1997 National Internal Revenue Code or the NIRC) at the House of Representatives. Timbol, on the other hand, claims that she served as Assistant Secretary of the Department of Trade and Industry and consultant of the Toll Regulatory Board (TRB) in the past administration.

Petitioners allege that the BIR attempted during the administration of President Gloria Macapagal-Arroyo to impose VAT on toll fees. The imposition was deferred, however, in view of the consistent opposition of Diaz and other sectors to such move. But, upon President Benigno C. Aquino III's assumption of office in 2010, the BIR revived the idea and would impose the challenged tax on toll fees beginning August 16, 2010 unless judicially enjoined.

Petitioners hold the view that Congress did not, when it enacted the NIRC, intend to include toll fees within the meaning of "sale of services" that are subject to VAT; that a toll fee is a "user's tax," not a sale of services; that to impose VAT on toll fees would amount to a tax on public service; and that, since VAT was never factored into the formula for computing toll fees, its imposition would violate the non-impairment clause of the constitution.

On August 13, 2010 the Court issued a temporary restraining order (TRO), enjoining the implementation of the VAT. The Court required the government, represented by respondents Cesar V. Purisima, Secretary of the Department of Finance, and Kim S. Jacinto-Henares, Commissioner of Internal Revenue, to comment on the petition within 10 days from notice.[2] Later, the Court issued another resolution treating the petition as one

[2] *Id.* at 63-64.

for prohibition.[3]

On August 23, 2010 the Office of the Solicitor General filed the government's comment.[4] The government avers that the NIRC imposes VAT on all kinds of services of franchise grantees, including tollway operations, except where the law provides otherwise; that the Court should seek the meaning and intent of the law from the words used in the statute; and that the imposition of VAT on tollway operations has been the subject as early as 2003 of several BIR rulings and circulars.[5]

The government also argues that petitioners have no right to invoke the non-impairment of contracts clause since they clearly have no personal interest in existing toll operating agreements (TOAs) between the government and tollway operators. At any rate, the non-impairment clause cannot limit the State's sovereign taxing power which is generally read into contracts.

Finally, the government contends that the non-inclusion of VAT in the parametric formula for computing toll rates cannot exempt tollway operators from VAT. In any event, it cannot be claimed that the rights of tollway operators to a reasonable rate of return will be impaired by the VAT since this is imposed on top of the toll rate. Further, the imposition of VAT on toll fees would have very minimal effect on motorists using the tollways.

In their reply[6] to the government's comment, petitioners point out that tollway operators cannot be regarded as franchise grantees under the NIRC since they do not hold legislative franchises.

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[3] *Id.* at 143-144.

[4] *Id.* at 73-135.

[5] The OSG cites VAT Ruling 045-03 (October 13, 2003) issued by then Deputy Commissioner Jose Mario Bunag in response to a query by the Philippine National Construction Corporation (PNCC) on its VAT liability as operator of the South and North Luzon expressways. PNCC was informed "that with the promulgation of R.A. 7716 restructuring the VAT system, **services of all franchise grantees,** x x x are already subject to VAT." The ruling was apparently clarified and reiterated in BIR Revenue Memorandum Circulars 52-2005 (September 28, 2005), 72-2009 (December 21, 2009) and 30-2010 (March 26, 2010).

[6] *Rollo*, pp. 153-201.

Further, the BIR intends to collect the VAT by rounding off the toll rate and putting any excess collection in an escrow account. But this would be illegal since only the Congress can modify VAT rates and authorize its disbursement. Finally, BIR Revenue Memorandum Circular 63-2010 (BIR RMC 63-2010), which directs toll companies to record an accumulated input VAT of zero balance in their books as of August 16, 2010, contravenes Section 111 of the NIRC which grants entities that first become liable to VAT a transitional input tax credit of 2% on beginning inventory. For this reason, the VAT on toll fees cannot be implemented.

The Issues Presented

The case presents two procedural issues:

1. Whether or not the Court may treat the petition for declaratory relief as one for prohibition; and

2. Whether or not petitioners Diaz and Timbol have legal standing to file the action.

The case also presents two substantive issues:

1. Whether or not the government is unlawfully expanding VAT coverage by including tollway operators and tollway operations in the terms "franchise grantees" and "sale of services" under Section 108 of the Code; and

2. Whether or not the imposition of VAT on tollway operators a) amounts to a tax on tax and not a tax on services; b) will impair the tollway operators' right to a reasonable return of investment under their TOAs; and c) is not administratively feasible and cannot be implemented.

The Court's Rulings

A. On the Procedural Issues:

On August 24, 2010 the Court issued a resolution, treating the petition as one for prohibition rather than one for declaratory relief, the characterization that petitioners Diaz and Timbol gave their action. The government has sought reconsideration of the

Court's resolution,[7] however, arguing that petitioners' allegations clearly made out a case for declaratory relief, an action over which the Court has no original jurisdiction. The government adds, moreover, that the petition does not meet the requirements of Rule 65 for actions for prohibition since the BIR did not exercise judicial, quasi-judicial, or ministerial functions when it sought to impose VAT on toll fees. Besides, petitioners Diaz and Timbol has a plain, speedy, and adequate remedy in the ordinary course of law against the BIR action in the form of an appeal to the Secretary of Finance.

But there are precedents for treating a petition for declaratory relief as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good.[8] The Court has also held that a petition for prohibition is a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority.[9]

Here, the imposition of VAT on toll fees has far-reaching implications. Its imposition would impact, not only on the more than half a million motorists who use the tollways everyday, but more so on the government's effort to raise revenue for funding various projects and for reducing budgetary deficits.

To dismiss the petition and resolve the issues later, after the challenged VAT has been imposed, could cause more mischief both to the tax-paying public and the government. A belated declaration of nullity of the BIR action would make any attempt to refund to the motorists what they paid an administrative nightmare with no solution. Consequently, it is not only the right, but the duty of the Court to take cognizance of and resolve the issues that the petition raises.

Although the petition does not strictly comply with the requirements of Rule 65, the Court has ample power to waive

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[7] *Id.* at 457-476.

[8] *Macasiano v. National Housing Authority*, G.R. No. 107921, July 1, 1993, 224 SCRA 236, 243.

[9] See *Ernesto B. Francisco, Jr. and Jose Ma. O. Hizon v. Toll Regulatory Board*, G.R. No. 166910, October 19, 2010.

such technical requirements when the legal questions to be resolved are of great importance to the public. The same may be said of the requirement of *locus standi* which is a mere procedural requisite.[10]

B. On the Substantive Issues:

One. The relevant law in this case is Section 108 of the NIRC, as amended. VAT is levied, assessed, and collected, according to Section 108, on the gross receipts derived from the sale or exchange of services as well as from the use or lease of properties. The third paragraph of Section 108 defines "sale or exchange of services" as follows:

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether

[10] *Id.*

or not the performance thereof calls for the exercise or use of the physical or mental faculties. (Underscoring supplied)

It is plain from the above that the law imposes VAT on "all kinds of services" rendered in the Philippines for a fee, including those specified in the list. The enumeration of affected services is not exclusive.[11] By qualifying "services" with the words "all kinds," Congress has given the term "services" an all-encompassing meaning. The listing of specific services are intended to illustrate how pervasive and broad is the VAT's reach rather than establish concrete limits to its application. Thus, every activity that can be imagined as a form of "service" rendered for a fee should be deemed included unless some provision of law especially excludes it.

Now, do tollway operators render services for a fee? Presidential Decree (P.D.) 1112 or the Toll Operation Decree establishes the legal basis for the services that tollway operators render. Essentially, tollway operators construct, maintain, and operate expressways, also called tollways, at the operators' expense. Tollways serve as alternatives to regular public highways that meander through populated areas and branch out to local roads. Traffic in the regular public highways is for this reason slow-moving. In consideration for constructing tollways at their expense, the operators are allowed to collect government-approved fees from motorists using the tollways until such operators could fully recover their expenses and earn reasonable returns from their investments.

When a tollway operator takes a toll fee from a motorist, the fee is in effect for the latter's use of the tollway facilities over which the operator enjoys private proprietary rights[12] that its contract and the law recognize. In this sense, the tollway operator is no different from the following service providers under Section 108 who allow others to use their properties or facilities for a fee:

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[11] *Commissioner of Internal Revenue v. SM Primeholdings, Inc.*, G.R. No. 183505, February 26, 2010, 613 SCRA 774, 788.

[12] See *North Negros Sugar Co. v. Hidalgo*, 63 Phil. 664, 690 (1936).

1. Lessors of property, whether personal or real;

2. Warehousing service operators;

3. Lessors or distributors of cinematographic films;

4. Proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts;

5. Lending investors (for use of money);

6. Transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; and

7. Common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines.

It does not help petitioners' cause that Section 108 subjects to VAT "all kinds of services" rendered for a fee "regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties." This means that "services" to be subject to VAT need not fall under the traditional concept of services, the personal or professional kinds that require the use of human knowledge and skills.

And not only do tollway operators come under the broad term "all kinds of services," they also come under the specific class described in Section 108 as "all other franchise grantees" who are subject to VAT, "except those under Section 119 of this Code."

Tollway operators are franchise grantees and they do not belong to exceptions (the low-income radio and/or television broadcasting companies with gross annual incomes of less than ₱10 million and gas and water utilities) that Section 119[13] spares

[13] SEC. 119. Tax on Franchises. – Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises on radio and/or television broadcasting companies whose annual gross receipts of the preceding year do not exceed Ten million pesos (₱10,000,000), subject to Section 236 of this Code, a tax of three percent (3%) and on electric, gas and water utilities, a tax of two percent (2%) on

from the payment of VAT. The word "franchise" broadly covers government grants of a special right to do an act or series of acts of public concern.[14]

Petitioners of course contend that tollway operators cannot be considered "franchise grantees" under Section 108 since they do not hold legislative franchises. But nothing in Section 108 indicates that the "franchise grantees" it speaks of are those who hold legislative franchises. Petitioners give no reason, and the Court cannot surmise any, for making a distinction between franchises granted by Congress and franchises granted by some other government agency. The latter, properly constituted, may grant franchises. Indeed, franchises conferred or granted by local authorities, as agents of the state, constitute as much a legislative franchise as though the grant had been made by Congress itself.[15] The term "franchise" has been broadly construed as referring, not only to authorizations that Congress directly issues in the form of a special law, but also to those granted by administrative agencies to which the power to grant franchises has been delegated by Congress.[16]

Tollway operators are, owing to the nature and object of their business, "franchise grantees." The construction, operation, and maintenance of toll facilities on public improvements are activities of public consequence that necessarily require a special grant of authority from the state. Indeed, Congress granted special franchise for the operation of tollways to the Philippine National Construction Company, the former tollway

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the gross receipts derived from the business covered by the law granting the franchise: Provided, however, That radio and television broadcasting companies referred to in this Section shall have an option to be registered as a value-added taxpayer and pay the tax due thereon; Provided, further, That once the option is exercised, said option shall be irrevocable.

[14] *Associated Communications & Wireless Services v. National Telecommunications Commission*, 445 Phil. 621, 641 (2003).

[15] *Philippine Airlines, Inc. v. Civil Aeronautics Board*, 337 Phil. 254, 265 (1997).

[16] *Metropolitan Cebu Water District v. Adala*, G.R. No. 168914, July 4, 2007, 526 SCRA 465, 476.

concessionaire for the North and South Luzon Expressways. Apart from Congress, tollway franchises may also be granted by the TRB, pursuant to the exercise of its delegated powers under P.D. 1112.[17] The franchise in this case is evidenced by a "Toll Operation Certificate."[18]

Petitioners contend that the public nature of the services rendered by tollway operators excludes such services from the term "sale of services" under Section 108 of the Code. But, again, nothing in Section 108 supports this contention. The reverse is true. In specifically including by way of example electric utilities, telephone, telegraph, and broadcasting companies in its list of VAT-covered businesses, Section 108 opens other companies rendering public service for a fee to the imposition of VAT. Businesses of a public nature such as public utilities and the collection of tolls or charges for its use or service is a franchise.[19]

Nor can petitioners cite as binding on the Court statements made by certain lawmakers in the course of congressional deliberations of the would-be law. As the Court said in *South African Airways v. Commissioner of Internal Revenue*,[20] "statements made by individual members of Congress in the consideration of a bill do not necessarily reflect the sense of that body and are, consequently, not controlling in the interpretation of law." The congressional will is ultimately determined by the language of the law that the lawmakers voted on. Consequently, the meaning and intention of the law must first be sought "in the words of the statute itself, read and considered in their natural, ordinary, commonly accepted and most obvious significations, according to good and approved usage and without resorting to forced or subtle construction."

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[17] *Supra* note 9.

[18] Section 3(e), P.D. 1112.

[19] 36 Am Jur 2d S3.

[20] G.R. No. 180356, February 16, 2010, 612 SCRA 665, 676.

Two. Petitioners argue that a toll fee is a "user's tax" and to impose VAT on toll fees is tantamount to taxing a tax.[21] Actually, petitioners base this argument on the following discussion in *Manila International Airport Authority (MIAA) v. Court of Appeals*:[22]

> **No one can dispute that properties of public dominion mentioned in Article 420 of the Civil Code, like *"roads, canals, rivers, torrents, ports and bridges constructed by the State,"* are owned by the State. The term "ports" includes seaports and airports. The MIAA Airport Lands and Buildings constitute a "port" constructed by the State. Under Article 420 of the Civil Code, the MIAA Airport Lands and Buildings are properties of public dominion and thus owned by the State or the Republic of the Philippines.**
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> **x x x The operation by the government of a tollway does not change the character of the road as one for public use. Someone must pay for the maintenance of the road, either the public indirectly through the taxes they pay the government, or only those among the public who actually use the road through the toll fees they pay upon using the road. The tollway system is even a more efficient and equitable manner of taxing the public for the maintenance of public roads.**
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> **The charging of fees to the public does not determine the character of the property whether it is for public dominion or not. Article 420 of the Civil Code defines property of public dominion as "one intended for public use." Even if the government collects toll fees, the road is still "intended for public use" if anyone can use the road under the same terms and conditions as the rest of the public. The charging of fees, the limitation on the kind of vehicles that can use the road, the speed restrictions and other conditions for the use of the road do not affect the public character of the road.**
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> **The terminal fees MIAA charges to passengers, as well as the landing fees MIAA charges to airlines, constitute the bulk of the income that maintains the operations of MIAA. The collection of such fees does not change the character of MIAA**

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[21] *Rollo*, p. 517.

[22] G.R. No. 155650, July 20, 2006, 495 SCRA 591.

as an airport for public use. Such fees are often termed user's tax. This means taxing those among the public who actually use a public facility instead of taxing all the public including those who never use the particular public facility. A user's tax is more equitable – a principle of taxation mandated in the 1987 Constitution."[23] (Underscoring supplied)

Petitioners assume that what the Court said above, equating terminal fees to a "user's tax" must also pertain to tollway fees. But the main issue in the *MIAA* case was whether or not Parañaque City could sell airport lands and buildings under MIAA administration at public auction to satisfy unpaid real estate taxes. Since local governments have no power to tax the national government, the Court held that the City could not proceed with the auction sale. MIAA forms part of the national government although not integrated in the department framework."[24] Thus, its airport lands and buildings are properties of public dominion beyond the commerce of man under Article 420(1)[25] of the Civil Code and could not be sold at public auction.

As can be seen, the discussion in the *MIAA* case on toll roads and toll fees was made, not to establish a rule that tollway fees are user's tax, but to make the point that airport lands and buildings are properties of public dominion and that the collection of terminal fees for their use does not make them private properties. Tollway fees are not taxes. Indeed, they are not assessed and collected by the BIR and do not go to the general coffers of the government.

It would of course be another matter if Congress enacts a law imposing a user's tax, collectible from motorists, for the construction and maintenance of certain roadways. The tax in

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[23] *Id.* at 622-623.

[24] *Id.* at 618.

[25] Art. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

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such a case goes directly to the government for the replenishment of resources it spends for the roadways. This is not the case here. What the government seeks to tax here are fees collected from tollways that are constructed, maintained, and operated by private tollway operators at their own expense under the build, operate, and transfer scheme that the government has adopted for expressways.[26] Except for a fraction given to the government, the toll fees essentially end up as earnings of the tollway operators.

In sum, fees paid by the public to tollway operators for use of the tollways, are not taxes in any sense. A tax is imposed under the taxing power of the government principally for the purpose of raising revenues to fund public expenditures.[27] Toll fees, on the other hand, are collected by private tollway operators as reimbursement for the costs and expenses incurred in the construction, maintenance and operation of the tollways, as well as to assure them a reasonable margin of income. Although toll fees are charged for the use of public facilities, therefore, they are not government exactions that can be properly treated as a tax. Taxes may be imposed only by the government under its sovereign authority, toll fees may be demanded by either the government or private individuals or entities, as an attribute of ownership.[28]

Parenthetically, VAT on tollway operations cannot be deemed a tax on tax due to the nature of VAT as an indirect tax. In indirect taxation, a distinction is made between the liability for the tax and burden of the tax. The seller who is liable for the VAT may shift or pass on the amount of VAT it paid on goods, properties or services to the buyer. In such a case, what is transferred is not the seller's liability but merely the burden of the VAT.[29]

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[26] *See* first and third "Whereas Clause" of P.D. 1112.

[27] See *Law of Basic Taxation in the Philippines (Revised Ed.)*, Benjamin B. Aban, p. 14.

[28] See *The Fundamentals of Taxation (2004 Ed.)*, Hector S. De Leon and Hector M. De Leon, Jr., p. 16.

[29] *Contex Corporation v. Commissioner of Internal Revenue*, G.R. No. 151135, July 2, 2004, 433 SCRA 376, 384-385.

Thus, the seller remains directly and legally liable for payment of the VAT, but the buyer bears its burden since the amount of VAT paid by the former is added to the selling price. Once shifted, the VAT ceases to be a tax[30] and simply becomes part of the cost that the buyer must pay in order to purchase the good, property or service.

Consequently, VAT on tollway operations is not really a tax on the tollway user, but on the tollway operator. Under Section 105 of the Code, [31] VAT is imposed on any person who, in the course of trade or business, sells or renders services for a fee. In other words, the seller of services, who in this case is the tollway operator, is the person liable for VAT. The latter merely shifts the burden of VAT to the tollway user as part of the toll fees.

For this reason, VAT on tollway operations cannot be a tax on tax even if toll fees were deemed as a "user's tax." VAT is assessed against the tollway operator's gross receipts and not necessarily on the toll fees. Although the tollway operator may shift the VAT burden to the tollway user, it will not make the latter directly liable for the VAT. The shifted VAT burden simply becomes part of the toll fees that one has to pay in order to use the tollways.[32]

Three. Petitioner Timbol has no personality to invoke the non-impairment of contract clause on behalf of private investors

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[30] *The National Internal Revenue Code Annotated, Eighth Ed. (Vol. II),* Hector S. De Leon and Hector M. De Leon, Jr., p. 3.

[31] SEC. 105. Persons Liable. Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, rendered services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

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The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income) and whether or not it sells exclusively to members or their guests), or government entity.

[32] *Supra* note 27, at 24-25.

in the tollway projects. She will neither be prejudiced by nor be affected by the alleged diminution in return of investments that may result from the VAT imposition. She has no interest at all in the profits to be earned under the TOAs. The interest in and right to recover investments solely belongs to the private tollway investors.

Besides, her allegation that the private investors' rate of recovery will be adversely affected by imposing VAT on tollway operations is purely speculative. Equally presumptuous is her assertion that a stipulation in the TOAs known as the Material Adverse Grantor Action will be activated if VAT is thus imposed. The Court cannot rule on matters that are manifestly conjectural. Neither can it prohibit the State from exercising its sovereign taxing power based on uncertain, prophetic grounds.

Four. Finally, petitioners assert that the substantiation requirements for claiming input VAT make the VAT on tollway operations impractical and incapable of implementation. They cite the fact that, in order to claim input VAT, the name, address and tax identification number of the tollway user must be indicated in the VAT receipt or invoice. The manner by which the BIR intends to implement the VAT – by rounding off the toll rate and putting any excess collection in an escrow account – is also illegal, while the alternative of giving "change" to thousands of motorists in order to meet the exact toll rate would be a logistical nightmare. Thus, according to them, the VAT on tollway operations is not administratively feasible.[33]

Administrative feasibility is one of the canons of a sound tax system. It simply means that the tax system should be capable of being effectively administered and enforced with the least inconvenience to the taxpayer. Non-observance of the canon, however, will not render a tax imposition invalid "except to the extent that specific constitutional or statutory limitations are impaired."[34] Thus, even if the imposition of VAT on tollway

[33] *Rollo*, p. 540.

[34] *Tax Law and Jurisprudence, Third Edition (2006)*, Justice Jose C. Vitug and Justice Ernesto D. Acosta, pp. 2-3.

operations may seem burdensome to implement, it is not necessarily invalid unless some aspect of it is shown to violate any law or the Constitution.

Here, it remains to be seen how the taxing authority will actually implement the VAT on tollway operations. Any declaration by the Court that the manner of its implementation is illegal or unconstitutional would be premature. Although the transcript of the August 12, 2010 Senate hearing provides some clue as to how the BIR intends to go about it,[35] the facts pertaining to the matter are not sufficiently established for the Court to pass judgment on. Besides, any concern about how the VAT on tollway operations will be enforced must first be addressed to the BIR on whom the task of implementing tax laws primarily and exclusively rests. The Court cannot preempt the BIR's discretion on the matter, absent any clear violation of law or the Constitution.

For the same reason, the Court cannot prematurely declare as illegal, BIR RMC 63-2010 which directs toll companies to record an accumulated input VAT of zero balance in their books as of August 16, 2010, the date when the VAT imposition was supposed to take effect. The issuance allegedly violates Section 111(A)[36] of the Code which grants first time VAT payers a transitional input VAT of 2% on beginning inventory.

In this connection, the BIR explained that BIR RMC 63-2010 is actually the product of negotiations with tollway operators who have been assessed VAT as early as 2005, but failed to charge VAT-inclusive toll fees which by now can no longer be

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[35] *Rollo*, pp. 246-254.

[36] SEC. 111. Transitional/Presumptive Input Tax credits.—

(A) Transitional Input Tax Credits.- A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials, and supplies, whichever is higher, which shall be creditable against the output tax.

collected. The tollway operators agreed to waive the 2% transitional input VAT, in exchange for cancellation of their past due VAT liabilities. Notably, the right to claim the 2% transitional input VAT belongs to the tollway operators who have not questioned the circular's validity. They are thus the ones who have a right to challenge the circular in a direct and proper action brought for the purpose.

Conclusion

In fine, the Commissioner of Internal Revenue did not usurp legislative prerogative or expand the VAT law's coverage when she sought to impose VAT on tollway operations. Section 108(A) of the Code clearly states that services of all other franchise grantees are subject to VAT, except as may be provided under Section 119 of the Code. Tollway operators are not among the franchise grantees subject to franchise tax under the latter provision. Neither are their services among the VAT-exempt transactions under Section 109 of the Code.

If the legislative intent was to exempt tollway operations from VAT, as petitioners so strongly allege, then it would have been well for the law to clearly say so. Tax exemptions must be justified by clear statutory grant and based on language in the law too plain to be mistaken.[37] But as the law is written, no such exemption obtains for tollway operators. The Court is thus duty-bound to simply apply the law as it is found.

Lastly, the grant of tax exemption is a matter of legislative policy that is within the exclusive prerogative of Congress. The Court's role is to merely uphold this legislative policy, as reflected first and foremost in the language of the tax statute. Thus, any unwarranted burden that may be perceived to result from enforcing such policy must be properly referred to Congress. The Court has no discretion on the matter but simply applies the law.

The VAT on franchise grantees has been in the statute books since 1994 when R.A. 7716 or the Expanded Value-Added Tax law was passed. It is only now, however, that the executive

[37] *Supra* note 27, at 119.

has earnestly pursued the VAT imposition against tollway operators. The executive exercises exclusive discretion in matters pertaining to the implementation and execution of tax laws. Consequently, the executive is more properly suited to deal with the immediate and practical consequences of the VAT imposition.

WHEREFORE, the Court *DENIES* respondents Secretary of Finance and Commissioner of Internal Revenue's motion for reconsideration of its August 24, 2010 resolution, *DISMISSES* the petitioners Renato V. Diaz and Aurora Ma. F. Timbol's petition for lack of merit, and *SETS ASIDE* the Court's temporary restraining order dated August 13, 2010.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Villarama Jr., Perez, and *Mendoza, JJ.,* concur.

Bersamin, J., on leave.

Sereno, J., on official leave.

SECOND DIVISION

[G.R. No. 164050. July 20, 2011]

MERCURY DRUG CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; TAX CREDIT; THE TWENTY PERCENT (20%) DISCOUNTS GRANTED TO THE SENIOR CITIZENS ON THE PURCHASE OF MEDICINES SHALL BE CLAIMED BY THE PRIVATE ESTABLISHMENT AS A TAX CREDIT AND NOT MERELY AS A TAX DEDUCTION FROM GROSS SALES OR GROSS INCOME.— [R]epublic Act No. 7432 is a piece of social legislation aimed to grant benefits and privileges to senior citizens. Among the highlights of this Act is the grant of sales discounts on the purchase of medicines to senior citizens. Section 4(a) of Republic Act No. 7432 reads: SEC. 4. Privileges for the Senior Citizens. — The senior citizens shall be entitled to the following: a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of transportation services, hotels and similar lodging establishments, restaurants and recreation centers and purchase of medicines anywhere in the country: Provided, That private establishments may claim the cost as tax credit; The burden imposed on private establishments amounts to the taking of private property for public use with just compensation in the form of a tax credit. The foregoing *proviso* specifically allows the 20% senior citizens' discount to be claimed by the private establishment as a tax credit and not merely as a tax deduction from gross sales or gross income. The law however is silent as to how the "cost of the discount" as tax credit should be construed.

2. ID.; ID.; ID.; THE "COST OF THE DISCOUNT" IS THE ACTUAL 20% SALES DISCOUNT GRANTED TO QUALIFIED SENIOR CITIZENS; APPLICATION.— The most recent case in point is *M.E. Holding Corporation* which bears a strikingly similar set of facts and issues with the case at bar. x x x. The Court of Tax Appeals in *M.E. Holding* concedes that the 20% sales discount granted to qualified senior citizens should be treated as tax credit but it placed reliance on the Court of Appeals' decision in *Commissioner of Internal Revenue v. Elmas Drug Corporation* where the term "cost of the discount" was interpreted to mean only the direct acquisition cost, excluding administrative and other incremental costs. This was the very same case relied upon by the Court of Appeals in the present case. We finally affirmed in *M.E. Holding* that

the tax credit should be equivalent to the actual 20% sales discount granted to qualified senior citizens. x x x. Based on the foregoing, we sustain petitioner's argument that the cost of discount should be computed on the actual amount of the discount extended to senior citizens. However, we give full accord to the factual findings of the Court of Tax Appeals with respect to the actual amount of the 20% sales discount, *i.e.*, the sum of ₱3,522,123.25 for the year 1993 and ₱34,211,769.45 for the year 1994. Therefore, petitioner is entitled to a tax credit equivalent to the actual amounts of the 20% sales discount as determined by the Court of Tax Appeals.

3. ID.; ID.; ID.; REPUBLIC ACT NO. 7432 (THE SENIOR CITIZEN'S ACT OF 1992) APPLIES TO THE CASE AT BAR.— It is worthy to mention that Republic Act No. 7432 had undergone two (2) amendments; first in 2003 by Republic Act No. 9257 and most recently in 2010 by Republic Act No. 9994. The 20% sales discount granted by establishments to qualified senior citizens is now treated as tax deduction and not as tax credit. As we have likewise declared in *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, this case covers the taxable years 1993 and 1994, thus, Republic Act No. 7432 applies.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioner.

The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

This petition for review on *certiorari* calls for an interpretation of the term "cost" as used in Section 4(a) of Republic Act No. 7432, otherwise known as "*An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes*."

A rundown of the pertinent facts is presented below.

Pursuant to Republic Act No. 7432, petitioner Mercury Drug Corporation (petitioner), a retailer of pharmaceutical products, granted a 20% sales discount to qualified senior citizens on their purchases of medicines. For the taxable year April to December 1993 and January to December 1994, the amounts representing the 20% sales discount totalled ₱3,719,287.68[1] and ₱35,500,593.44[2] respectively, which petitioner claimed as deductions from its gross income.

Realizing that Republic Act No. 7432 allows a tax credit for sales discounts granted to senior citizens, petitioner filed with the Commissioner of Internal Revenue (CIR) claims for refund in the amount of ₱2,417,536.00 for the year 1993 and ₱23,075,386.00 for the year 1994. Petitioner presented a computation[3] of its overpayment of income tax, thus:

TAXABLE YEAR 1993

SALES, Net		₱10,228,518,335.00
Add: Cost of 20% Discount to Senior Citizen		3,719,288.00
SALES, Gross		₱10,232,237,623.00
COST OF SALES		
Merchandise Inventory, Beg.	₱ 2,427,972,150.00	
Purchases	8,717,393,710.00	
Goods Available for Sales	₱11,145,365,860.00	
Merchandise Inventory, End	2,458,743,127.00	8,686,622,733.00
GROSS PROFIT		₱1,545,614,890.00
Add: Miscellaneous Income		58,247,973.00
TOTAL INCOME		₱1,603,862,863.00
OPERATING EXPENSES		1,226,816,343.00
NET INCOME BEFORE TAX		₱ 377,046,520.00
Less: Income subjected to final income tax		20,966,602.00
NET TAXABLE INCOME	₱ 356,079,918.00	
INCOME TAX PAYABLE	₱ 124,627,972.00	

[1] The amount was rounded off to read as ₱3,719,288.00.

[2] The amount was rounded off to read as ₱35,500,594.00.

[3] *Rollo*, pp. 51-52.

LESS: TAX CREDIT (20% Sales Discount to Senior Citizens)	₱ 3,719,288.00	
TAX ACTUALLY PAID	123,326,220.00	127,045,508.00
TAX REFUNDABLE		₱ 2,417,536.00

xxx xxx xxx

TAXABLE YEAR 1994

SALES, Net	₱ 11,671,366,402.00	
Add: Cost of 20% Sales Discount to Senior Citizens	35,500,594.00	
SALES, Gross	₱ 11,706,866,996.00	
COST OF SALES		
Merchandise Inventory, Beg.	₱ 2,458,743,127.00	
Purchases	10,316,941,308.00	
Goods Available for Sales	₱ 12,775,684,435.00	
Less: Merchandise Inventory, End	2,928,397,228.00	9,847,287,207.00
GROSS PROFIT		₱1,859,579,789.00
Add: Miscellaneous Income		68,809,864.00
TOTAL INCOME		₱1,928,389,653.00
OPERATING EXPENSES		1,499,422,645.00
NET INCOME BEFORE TAX		428,967,008.00
Less: Income subjected to final Income tax		25,591,586.00
NET TAXABLE INCOME		₱ 403,375,422.00
INCOME TAX PAYABLE		₱ 141,181,398.00
LESS: TAX CREDIT (Cost of 20% Discount to Senior Citizens)	₱ 35,500,594.00	
TAX ACTUALLY PAID	128,756,190.00	164,256,784.00
TAX REFUNDABLE		₱ 23,075,386.00

When the CIR failed to act upon petitioner's claims, the latter filed a petition for review with the Court of Tax Appeals. On 6 September 2000, the Court of Tax Appeals rendered the following judgment:[4]

[4] Penned by Associate Justice Ramon O. De Veyra with Associate Justices Ernesto D. Acosta and Amancio Q. Saga, concurring. *Id.* at 49-62.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, Revenue Regulations No. 2-94 of the Respondent is declared null and void insofar as it treats the 20% discount given by private establishments as a deduction from gross sales. Respondent is hereby ORDERED to GRANT A REFUND OR ISSUE A TAX CREDIT CERTIFICATE to Petitioner in the reduced amount of ₱1,688,178.43 representing the latter's overpaid income tax for the taxable year 1993. However, the claim for refund for taxable year 1994 is denied for lack of merit.[5]

The Court of Tax Appeals favored petitioner by declaring that the 20% sales discount should be treated as tax credit rather than a mere deduction from gross income. The Court of Tax Appeals however found some discrepancies and irregularities in the cash slips submitted by petitioner as basis for the tax refund. Hence, it disallowed the claim for taxable year 1994 and some portion of the amount claimed for 1993 by petitioner, *viz*:

So, contrary to the allegation of Petitioner that it granted 20% sales discounts to senior citizens in the total amount of ₱3,719,888.00 for taxable year 1993 and ₱35,500,554.00 for taxable year 1994, this Court's study and evaluation of the evidence show that for taxable year 1993 only the amounts of ₱3,522,123.25 and for 1994, the amount of ₱8,789,792.27 were properly substantiated. The amount of ₱3,522,123.25 corresponding to 1993 will be further reduced to ₱2,989,930.43 as this Court's computation is based on the cost of the 20% discount and not on the total amount of the 20% discount based on the decision of the Court of Appeals in *Commissioner of Internal Revenue v. Elmas Drug Corporation*, CA-SP No. 49946 promulgated on October 19, 1999, where it ruled:

> "Thus the cost of the 20% discount represents the actual amount spent by drug corporations in complying with the mandate of RA 7432. Working on this premise, it could not have been the intention of the lawmakers to grant these companies the full amount of the 20% discount as this could be extending to them more than what they actually sacrificed when they gave the 20% discount to senior citizens." (Underscoring supplied).

[5] *Id.* at 61-62.

Similarly the amount of ₱8,789,792.27 corresponding to taxable year 1994 will be reduced to ₱7,393,094.28 based on the aforequoted Court of Appeals decision. These reductions are illustrated as follows:

TAXABLE YEAR 1993

Cost of Sales	₱ 8,686,622,733.00
Divided by Gross Sales	10,232,237,623.00
Cost of Sales Percentage	84.89%
Adjusted Amount of 20% Discount given to Senior Citizens	3,522,123.25
Multiply by	84.89%
Allowable Tax Credit	₱ 2,989,930.43

TAXABLE YEAR 1994

Cost of Sales	₱ 9,847,287,207.00
Divided by Gross Sales	11,706,866,996.00
Cost of Sales Percentage	84.11%
Adjusted Amount of 20% Discount given to Senior Citizens	₱ 8,789,792.27
Multiply by	84.11%
Allowable Tax Credit	₱ 7,393,094.28

With the foregoing changes in the amount of discounts granted by Petitioner in 1993 and 1994, it necessarily follows that adjustments have to be made in the computation of the refundable amount which is entirely different from the computation presented by the Petitioner. This Court's conclusion is that Petitioner is only entitled to a tax credit of ₱1,688,178.43 for taxable year 1993 detailed as follows:

TAXABLE YEAR 1993

Sales, Net	₱10,228,518,335.00	
Add: Cost of 20% Discount given to Senior Citizens	3,719,288.00	
SALES, Gross	₱10,232,237,623.00	
COST OF SALES		
Merchandise Inventory, Beg.	₱2,427,972,150.00	
Add: Purchases	8,717,393,710.00	
Total goods available for sale	₱1,145,365,860.00	
Less: Merchandise Inventory, End	2,458,743,127.00	8,686,622,733.00

GROSS PROFIT		₱ 1,545,614,890.00
Add: Miscellaneous Income		58,247,973.00
TOTAL INCOME		₱ 1,603,862,863.00
OPERATING EXPENSES		1,226,816,343.00
NET INCOME BEFORE TAX		₱ 377,046,520.00
Less: Income subjected to final income tax		20,966,602.00
NET TAXABLE INCOME		₱ 356,079,918.00
INCOME TAX PAYABLE		₱ 124,627,972.00
LESS: TAX CREDIT (20% Sales Discount given to Senior Citizens)	₱ 2,989,930.43	
TAX ACTUALLY PAID	123,326,220.00	126,316,150.43
TAX REFUNDABLE		₱ 1,688,178.43

and no refund or tax credit for taxable year 1994 as the computation below shows that Petitioner, instead of having a tax credit of ₱23,075,386.00 as claimed in the Petition, still has a tax due of ₱5,032,113.72 detailed as follows:

TAXABLE YEAR 1994

SALES, Net			₱11,671,366,402.00
Add: Cost of 20% Sales Discount given to Senior Citizens			35,500,594.00
SALES, Gross		11,706,866,996.00	
COST OF SALES			
Merchandise Inventory, Beg.	₱2,458,743,127.00		
Add: Purchases	10,316,941,308.00		
Total goods available for sale	12,775,684,435.00		
Less: Merchandise Inventory, End	2,928,397,228.00		9,847,287,207.00
GROSS PROFIT		₱ 1,859,579,789.00	
Add: Miscellaneous Income		68,809,864.00	
TOTAL INCOME		₱ 1,928,389,653.00	
OPERATING EXPENSES		1,499,422,645.00	
NET INCOME BEFORE TAX		₱ 428,967,008.00	
Less: Income subjected to final income Tax		25,591,586.00	

NET TAXABLE INCOME		₱ 403,375,422.00
INCOME TAX PAYABLE	₱ 141,181,398.00	
LESS: TAX CREDIT (Cost of 20% Discount given to Senior Citizens)	₱7,393,094.28	
TAX ACTUALLY PAID	128,756,190.00	136,149,284.28
TAX STILL DUE		₱ 5,032,113.72

The conclusion of tax liability instead of tax overpayment pertaining to taxable year 1994 has the effect of negating the tax refund of Petitioner because the basis of such refund is the fact that there is tax credit. Under the circumstances, instead to tax credit, Petitioner has a tax liability of ₱5,032,113.72, hence the refund for the period must fail.[6]

Moreover, the Court of Tax Appeals stated that the claim for tax credit must be based on the actual cost of the medicine and not the whole amount of the 20% senior citizens discount. It applied the formula: cost of sales/gross sales x amount of 20% sales discount.

Petitioner moved for partial reconsideration. In a Resolution dated 20 December 2000, the Court of Tax Appeals modified its earlier ruling by increasing the creditable tax amount to ₱18,038,489.71, inclusive of the taxable years 1993 and 1994. The Court of Tax Appeals finally granted the claim for refund for the taxable year 1994 on the basis of the cash slips submitted by petitioner, in the sum of ₱16,350,311.28, thus:

TAXABLE YEAR 1994

a) Computation of adjusted amount of 20% discount given to senior citizens:

Sales discount to be considered as basis for disallowance		₱35,414,211.68
Less: Disallowances		
a) Sales discount without supporting documents	₱224,269.15	
b) Sales discounts twice recorded	7,462.66	
c) Overstatement of sales discount	648,988.28	880,720.09
Adjusted amount of 20% sales discount		₱34,211,769.45

[6] *Id.* at 59-61.

b) Computation of the allowable tax credit on the 20% sales discount:

Cost of Sales	₱ 9,847,287,207.00	
Divided by Gross Sales	11,706,866,996.00	
Cost of Sales Percentage		84.11%
Adjusted Amount of 20% discount given to Senior Citizens	₱34,211,769.45	
Multiply by	84.11%	
	₱28,775,519.28	

c) Computation of the refundable amount:

SALES, Net		₱11,671,366,402.00
Add: Cost of 20% Sales discount given to Senior Citizens		35,500,594.00
SALES, Gross		₱11,706,866,996.00
COST OF SALES		9,847,287,207.00
GROSS PROFIT		₱ 1,859,579,789.00
Add: Miscellaneous Income		68,809,864.00
TOTAL INCOME		₱ 1,928,389,653.00
OPERATING EXPENSES		1,499,422,645.00
NET INCOME BEFORE TAX		428,967,008.00
Less: Income subjected to final income tax		25,591,586.00
NET TAXABLE INCOME		₱ 403,375,422.00
INCOME TAX PAYABLE		₱ 141,181,398.00
LESS: TAX CREDIT (Cost of 20% Discount given to Senior Citizens)	₱ 28,775,519.28	
TAX ACTUALLY PAID	128,756,190.00	157,531,709.28
AMOUNT REFUNDABLE FOR TAXABLE YEAR 1994		₱ 16,350,311.28[7]

Petitioner elevated the case to the Court of Appeals *via* a Petition for Review under Rule 43. Petitioner sought a partial modification of the above resolution raising as legal issue the basis of the computation of tax credit. Petitioner contended

[7] *Id.* at 91-92.

that the actual discount granted to the senior citizens, rather than the acquisition cost of the item availed by senior citizens, should be the basis for computation of tax credit.

On 20 October 2003, the Court of Appeals rendered a Decision[8] sustaining the Court of Tax Appeals and dismissing the petition. Citing the Court of Appeals cases of *Commissioner of Internal Revenue v. Elmas Drug Corporation* and *Trinity Franchising and Management Corp. v. Commissioner of Internal Revenue*, the appellate court interpreted the term "cost" as used in Section 4(a) of Republic Act No. 7432 to mean the acquisition cost of the medicines sold to senior citizens. Therefore, it upheld the computation provided by the Court of Tax Appeals in its 20 December 2000 Resolution.

Petitioner filed a motion for partial reconsideration which the Court of Appeals denied in a Resolution[9] dated 23 June 2004. This prompted petitioner to file the instant petition for review. Petitioner raises the following legal grounds for the allowance of its petition:

I.

LIMITING THE TAX CREDIT ON THE ACQUISITION COST OF THE MEDICINES SOLD AMOUNTS TO A TAKING OF PROPERTY FOR PUBLIC USE WITHOUT JUST COMPENSATION.

II.

FORCING PETITIONER TO GRANT 20% DISCOUNT ON SALE OF MEDICINE TO SENIOR CITIZENS WITHOUT FULLY REIMBURSING IT FOR THE AMOUNT OF DISCOUNT GRANTED VIOLATES THE DUE PROCESS CLAUSE FOR BEING OPPRESSIVE, UNREASONABLE, CONFISCATORY, AND AN UNDUE RESTRAINT OF TRADE.

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[8] Penned by Associate Justice Rosmari D. Carandang with Associate Justices Eugenio S. Labitoria and Mercedes Gozo-Dadole, concurring. *Id.* at 128-136.

[9] *Id.* at 153-154.

III.

EVEN THE COURT OF APPEALS HAD AN INTERPRETATION OF THE TERM "COST" THAT IS DIFFERENT FROM, AND BROADER THAN THE INTERPRETATION OF THE COURT OF TAX APPEALS. YET, THE COURT OF APPEALS AFFIRMED *IN TOTO* THE COURT OF TAX APPEALS' DECISION.

IV.

THE COURT MAY CONSIDER THE SPIRIT AND REASON OF THE LAW WHERE A LITERAL MEANING WOULD LEAD TO INJUSTICE OR DEFEAT THE CLEAR INTENT OF THE LAWMAKERS.

V.

RESPONDENT MUST ACCORD PETITIONER THE SAME TREATMENT AS MAR-TESS DRUG IN ACCORDANCE WITH THE PRINCIPLE OF EQUAL PROTECTION OF LAWS.[10]

Petitioner adopts a two-tiered approach towards defending its thesis. *First*, petitioner explains that in addition to the direct expenses incurred in acquiring the medicine intended for re-sale to senior citizens, operating expenses or administrative overhead are likewise incurred. Limiting the tax credit on the acquisition cost of the medicines sold amounts to a taking of property for public use without just compensation, petitioner argues. Moreover, petitioner contends that to compel it to grant 20% discount on sale of medicine to senior citizens without fully reimbursing it for the amount of discount granted violates the due process clause for being oppressive, unreasonable, confiscatory and an undue restraint of trade. In the *second* tier, petitioner maintains that the term "cost" should at least include all business expenses directly incurred to produce the merchandise and to bring them to their present location and use. Petitioner alleges that while the Court of Appeals subscribes to the above interpretation, it nevertheless affirmed *in toto* the Court of Tax Appeals' erroneous decision.

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[10] *Id.* at 16-31.

In lieu of its Comment, the Office of the Solicitor General (OSG) filed a Manifestation and Motion supporting petitioner's theory that the amount of tax credit should be computed based on sales discounts properly substantiated by petitioner. The OSG adverted to the case of *Bicolandia Drug Corporation (Formerly Elmas Drug Corporation) v. Commissioner of Internal Revenue*[11] wherein we held that the term "cost" refers to the amount of the 20% discount extended by a private establishment to senior citizens in their purchase of medicines, which amount should be applied as a tax credit. The OSG opines that the allowance of claim for additional tax credits should be based on sales discounts properly substantiated before the Court of Appeals.

The main thrust of the petition is to determine whether the claim for tax credit should be based on the full amount of the 20% senior citizens' discount or the acquisition cost of the merchandise sold.

Preliminarily, Republic Act No. 7432 is a piece of social legislation aimed to grant benefits and privileges to senior citizens. Among the highlights of this Act is the grant of sales discounts on the purchase of medicines to senior citizens. Section 4(a) of Republic Act No. 7432 reads:

> SEC. 4. Privileges for the Senior Citizens. — The senior citizens shall be entitled to the following:
>
> a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of transportation services, hotels and similar lodging establishments, restaurants and recreation centers and purchase of medicines anywhere in the country: Provided, That private establishments may claim the cost as tax credit;

The burden imposed on private establishments amounts to the taking of private property for public use with just compensation in the form of a tax credit.[12]

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[11] G.R. No. 142299, 22 June 2006, 492 SCRA 159.

[12] See *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, G.R. No. 159647, 15 April 2005, 456 SCRA 414, 443-444; *City of Cebu v. Spouses Dedam*o, 431 Phil. 524, 532 (2002).

The foregoing *proviso* specifically allows the 20% senior citizens' discount to be claimed by the private establishment as a tax credit and not merely as a tax deduction from gross sales or gross income. The law however is silent as to how the "cost of the discount" as tax credit should be construed.

Indeed, there is nothing novel in the issues raised in this petition. Our rulings in *Bicolandia Drug Corporation (Formerly Elmas Drug Corporation) v. Commissioner of Internal Revenue*,[13] *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*,[14] and *M.E. Holding Corporation v. Court of Appeals*[15] operate as *stare decisis*[16] with respect to this legal question.

In *Bicolandia*, we construed the term "cost" as referring to the amount of the 20% discount extended by a private establishment to senior citizens in their purchase of medicines.[17] The Court of Appeals' decision in *Commissioner of Internal Revenue v. Elmas Drug Corporation* dated 19 October 1999 was relied upon by the Court of Appeals as basis for its interpretation of the term "cost" when it decided the instant case in 20 October 2003. As correctly pointed out by the OSG, said case had been elevated to this Court and had been eventually resolved with finality on 22 June 2006 in the case entitled *Bicolandia Drug Corporation v. Commissioner of Internal Revenue.*

We reiterated this ruling in the 2008 case of *Cagayan Valley Drug* by holding that petitioner therein is entitled to a tax credit for the full 20% sales discounts it extended to qualified senior

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[13] *Supra* note 11.

[14] G.R. No. 151413, 13 February 2008, 545 SCRA 10.

[15] G.R. No. 160193, 3 March 2008, 547 SCRA 389.

[16] Once a case has been decided one way, the rule is settled that any other case involving exactly the same point at issue should be decided in the same manner under the principle *stare decisis et non quieta movere*. See *Petron Corporation v. Commissioner of Internal Revenue*, G.R. No. 180385, 28 July 2010, 626 SCRA 100, 122 citing *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R. No. 149834, 2 May 2006, 488 SCRA 538, 545.

[17] *Supra* note 11 at 168.

citizens. This holds true despite the fact that petitioner suffered a net loss for that taxable year.[18]

The most recent case in point is *M.E. Holding Corporation* which bears a strikingly similar set of facts and issues with the case at bar. Both petitioners filed their respective income tax return initially treating the 20% sales discount to senior citizens as deductions from its gross income. When advised that the discount should be treated as tax credit, they both filed a claim for overpayment. The Bureau of Internal Revenue on both occasions failed to act timely on the claims, hence they appealed before the Court of Tax Appeals. The Court of Tax Appeals in *M.E. Holding* concedes that the 20% sales discount granted to qualified senior citizens should be treated as tax credit but it placed reliance on the Court of Appeals' decision in *Commissioner of Internal Revenue v. Elmas Drug Corporation* where the term "cost of the discount" was interpreted to mean only the direct acquisition cost, excluding administrative and other incremental costs. This was the very same case relied upon by the Court of Appeals in the present case. We finally affirmed in *M.E. Holding* that the tax credit should be equivalent to the actual 20% sales discount granted to qualified senior citizens.

It is worthy to mention that Republic Act No. 7432 had undergone two (2) amendments; first in 2003 by Republic Act No. 9257 and most recently in 2010 by Republic Act No. 9994. The 20% sales discount granted by establishments to qualified senior citizens is now treated as tax deduction and not as tax credit. As we have likewise declared in *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,[19] this case covers the taxable years 1993 and 1994, thus, Republic Act No. 7432 applies.

Based on the foregoing, we sustain petitioner's argument that the cost of discount should be computed on the actual amount of the discount extended to senior citizens. However, we give full accord to the factual findings of the Court of Tax Appeals

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[18] *Supra* note 14 at 21-22.

[19] G.R. No. 159647, 15 April 2005, 456 SCRA 414.

with respect to the actual amount of the 20% sales discount, *i.e.*, the sum of ₱3,522,123.25 for the year 1993 and ₱34,211,769.45 for the year 1994. Therefore, petitioner is entitled to a tax credit equivalent to the actual amounts of the 20% sales discount as determined by the Court of Tax Appeals. A new computation for tax refund is in order, to wit:

TAXABLE YEAR 1993

SALES, Net		₱10,228,518,335.00
Add: Cost of 20% Discount to Senior Citizens		3,522,123.25
SALES, Gross		₱10,232,040,458.25
COST OF SALES		
Merchandise Inventory, Beg.	₱ 2,427,972,150.00	
Purchases	8,717,393,710.00	
Goods Available for Sales	₱11,145,365,860.00	
Merchandise Inventory, End	2,458,743,127.00	8,686,622,733.00
GROSS PROFIT		₱1,545,417,725.25
Add: Miscellaneous Income		58,247,973.00
TOTAL INCOME		₱1,603,665,698.25
OPERATING EXPENSES		1,226,816,343.00
NET INCOME BEFORE TAX		₱ 376,849,349.25
Less: Income subjected to final income tax		20,966,602.00
NET TAXABLE INCOME		₱ 355,882,747.25
INCOME TAX PAYABLE		₱ 124,558,961.54
LESS: TAX CREDIT (20% Sales Discount to Senior Citizens)	₱ 3,522,123.25	
TAX ACTUALLY PAID	123,326,220.00	126,848,343.25
TAX REFUNDABLE		**₱ 2,289,381.71**

TAXABLE YEAR 1994

SALES, Net	₱ 11,671,366,402.00
Add: Cost of 20% Sales Discount to Senior Citizens	34,211,769.45
SALES, Gross	₱11,705,578,171.45

COST OF SALES		
Merchandise Inventory, Beg.	₱ 2,458,743,127.00	
Purchases	10,316,941,308.00	
Goods Available for Sales	₱12,775,684,435.00	
Less: Merchandise Inventory, End	2,928,397,228.00	9,847,287,207.00
GROSS PROFIT		₱1,858,290,964.45
Add: Miscellaneous Income		68,809,864.00
TOTAL INCOME		₱1,927,100,828.45
OPERATING EXPENSES		1,499,422,645.00
NET INCOME BEFORE TAX		427,678,183.45
Less: Income subjected to final Income tax		25,591,586.00
NET TAXABLE INCOME		₱ 402,086,597.45
INCOME TAX PAYABLE		₱ 140,730,309.11
LESS: TAX CREDIT (Cost of 20% Discount to Senior Citizens)	₱ 34,211,769.45	
TAX ACTUALLY PAID	128,756,190.00	162,967,959.45
TAX REFUNDABLE		**₱ 22,237,650.34**

WHEREFORE, the petition is *GRANTED*. The assailed Decision and Resolution of the Court of Appeals are *REVERSED* and *SET ASIDE*. Respondent Commissioner of Internal Revenue is *ORDERED* to issue tax credit certificates in favor of petitioner in the amounts of ₱2,289,381.71 and ₱22,237,650.34.

SO ORDERED.

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

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[*] Per Special Order No. 1006.

[**] Per Special Order No. 1040.

SECOND DIVISION

[G.R. No. 166863. July 20, 2011]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **JUM ANGEL,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PRESIDENTIAL DECREE NO. 626 OTHERWISE KNOWN AS EMPLOYEES' COMPENSATION AND STATE INSURANCE FUND; INJURY AND THE RESULTING DISABILITY OR DEATH, WHEN COMPENSABLE; REQUISITES.— For the injury and the resulting death to be compensable, the law provides: Implementing Rules of P.D. 626, RULE III – COMPENSABILITY, Section 1. Grounds. (a) For the injury and the resulting disability or death to be compensable, the injury must be the result of accident arising out of and in the course of the employment. Pertinent jurisprudence outline that the injury must be the result of an employment accident satisfying all of the following: 1) the employee must have been injured at the place where his work requires him to be; 2) the employee must have been performing his official functions; and 3) if the injury is sustained elsewhere, the employee must have been executing an order for the employer. It is important to note, however, that the requirement that the injury must arise out of and in the course of employment proceeds from the limiting premise that the injury must be the result of an accident.

2. ID.; ID.; ID.; ID.; TERM "ACCIDENT," DEFINED AND EXPLAINED.— The term accident has been defined in an insurance case. We find the definition applicable to the present case. Thus: The words "accident" and "accidental" have never acquired any technical signification in law, and when used in an insurance contract are to be construed and considered according to the ordinary understanding and common usage and speech of people generally. In substance, the courts are practically agreed that the words "accident" and "accidental" mean that which happens by chance or fortuitously, without intention or design, and which is unexpected, unusual, and

unforeseen. The definition that has usually been adopted by the courts is that an accident is an event that takes place without one's foresight or expectation – an event that proceeds from an unknown cause, or is an unusual effect of a known case, and therefore not expected. An accident is an event which happens without any human agency or, if happening through human agency, an event which, under the circumstances, is unusual to and not expected by the person to whom it happens. It has also been defined as an injury which happens by reason of some violence or casualty to the insured without his design, consent, or voluntary cooperation. Significantly, an accident excludes that which happens with intention or design, with one's foresight or expectation or that which under the circumstances is expected by the person to whom it happens. The exclusion of an intentional or designed act which exclusion refines the definition of accident that we find applicable to the provisions of the implementing rules of the law is specifically provided for in Article 172 of the law, Presidential Decree No. 626.

3. ID.; ID.; ID.; ID.; FINDING OF THE MILITARY AUTHORITIES THAT THE EMPLOYEE DIED WHILE IN THE LINE OF DUTY IS NOT BINDING ON THE EMPLOYEES' COMPENSATION COMMISSION (ECC); DEATH IN LINE OF DUTY IS NOT EQUIVALENT TO A FINDING THAT THE DEATH RESULTED FROM AN ACCIDENT AND WAS NOT OCCASIONED BY THE EMPLOYEE'S WILLFUL INTENTION TO KILL HIMSELF.— The finding of the military authorities that Sgt. Angel died while in the line of duty is not binding on the ECC. This is not a new ECC doctrine. Apropos is the case of *Government Service Insurance System v. Court of Appeals*, even if the case concerns the PNP and not the AFP. Thus: x x x the proceedings before the PNP Board and the ECC are separate and distinct, treating of two (2) totally different subjects; moreover, the PNP Board's conclusions here may not be used as basis to find that private respondent is entitled to compensation under P.D. No. 626, as amended. The presumption afforded by the Order relied upon by the PNP Board concerns itself merely with the query as to whether one died in the line of duty, while P.D. No. 626 addressed the issue of whether a causal relation existed between a claimant's ailment and his working conditions. Plainly, these are different issues calling for differing forms of proof or evidence, thus accounting

for the existence of a favorable presumption in favor of a claimant under the Defense Department Order, but not under P.D. No. 626 when the disease is not listed under Annex 'A' of the Amended Rules on Employees' Compensation. Paraphrasing the above ruling, we find that the proceedings before the Philippine Army which finally resulted in the issuance by the Chief of Staff of General Order No. 270 that the death of Sgt. Angel was "in line of duty status" may not be used as basis for the finding that the widow of Sgt. Angel is entitled to compensation under Presidential Decree No. 626, as amended. Death in line of duty is not equivalent to a finding that the death resulted from an accident and was not occasioned by the sergeant's willful intention to kill himself. It is not enough, as erroneously pointed out by the Court of Appeals, that there is evidence to support the conclusion that the sergeant died while in the performance of his duties since he was not arrested but was merely invited to shed light on the investigation which was "part of xxx official duties to cooperate with the inquiry being conducted by the Philippine Army." There must be evidence that the sergeant did not take his own life considering the fact that he was "found hanging inside his cell with an electric cord tied around his neck."

4. ID.; ID.; ID.; ID.; THE TRUST FUND, NOT THE EMPLOYER, SUFFERS WHEN BENEFITS ARE PAID TO CLAIMANTS WHO ARE NOT ENTITLED UNDER THE LAW.— We are not unmindful of the fact that liberality of the law in favor of the working man and woman prevails in light of the Constitution and social justice. But, as stated in *Government Service Insurance System v. Court of Appeals*, it is now the trust fund and not the employer which suffers if benefits are paid to claimants who are not entitled under the law. There is now an intention to restore a sensible equilibrium between the employer's obligation to pay workmen's compensation and the employee's right to receive separation for work connected death or disability. There is a competing, yet equally vital interest to heed in passing upon undeserving claims for compensation. It is well to remember that if diseases or death not intended by the law to be compensated are inadvertently or recklessly included, the integrity of the State Insurance Fund is endangered. Compassion for the victims of diseases not covered by the law ignores the need to show a greater concern for the trust

fund to which the tens of millions of workers and their families look to for compensation whenever covered accidents, diseases and deaths occur. This Court sympathizes with the sad predicament of respondent, the widow of Sgt. Angel. Such, however has already been considered in fixing the equilibrium between obligation and right in employees' compensation cases. It can no longer tilt the balance in respondent's favor.

APPEARANCES OF COUNSEL

GSIS Legal Services Group for petitioner.
Leopoldo M. Dingsalan for respondent.

D E C I S I O N

PEREZ, *J.*:

On appeal by *certiorari*[1] from the Decision[2] of the First Division of the Court of Appeals in CA-G.R. SP No. 61304 dated 31 May 2004, granting the Petition of Jum Angel (respondent) to **REVERSE** and **SET ASIDE** the Decision[3] and Order of the Employees' Compensation Commission (ECC) denying payment of death benefits due to private respondent as widow of Sergeant Benjamin Angel (Sgt. Angel) under Presidential Decree No. 626 otherwise known as "Employees' Compensation and State Insurance Fund."

The relevant factual antecedents of the case, as gathered by the court, are the following:

The late Sgt. Angel started his military training on 1 July 1974. On 7 October 1977, he was admitted into active service. He was later promoted to the rank of Corporal in December

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

[2] Penned by Presiding Justice Cancio C. Garcia (former Supreme Court Associate Justice) with Associate Justices Andres B. Reyes, Jr. and Lucas P. Bersamin (now a member of this Court), concurring. *Rollo*, pp. 57-63.

[3] Dated 13 April 2000.

1982 and to the rank of Sergeant in July 1986. He was in active service until his death on 3 March 1998.

On 3 March 1998, Sgt. Angel was "fetched/invited" from his post by a certain Capt. Fabie M. Lamerez (Capt. Lamerez) of the Intelligence Service Group of the Philippine Army to shed light on his alleged involvement in a "pilferage/gunrunning" case being investigated by the Philippine Army.[4]

On or about 2 p.m. of the same day, he was placed inside a detention cell to await further investigation.

The following day, the lifeless body of Sgt. Angel was found hanging inside his cell with an electric cord tied around his neck. According to the Autopsy Report conducted by the Crime Laboratory of the Philippine National Police (PNP), the cause of death was *asphyxia* by strangulation.

Respondent, the wife of the late Sgt. Angel, filed a complaint before the PNP Criminal Investigation Command, alleging that her husband was murdered and named the "elements of Intelligence Service Group" led by Capt. Lamerez as suspects.

On 8 April 1998, upon investigation, the Office of the Provost Marshal reported that Sgt. Angel died under suspicious circumstance while in line of duty. The Provost Marshal found it incredible that Sgt. Angel would take his life, in view of his impending retirement and being a father to four (4) children. The Provost Marshal concluded that foul play may have been committed against Sgt. Angel and recommended that the case be tried by a court martial.

On 25 April 1998, the Inspector General, upon referral of the case, held that there is no evidence suggesting foul play in the death of Sgt. Angel and maintained that the detention of Sgt. Angel could have triggered a mental block that caused him to hang himself.

The case was referred to a Judge Advocate General, to determine whether or not Sgt. Angel died while in line of duty.

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[4] Decision of the Court of Appeals. *Rollo*, pp. 57-58.

On 3 December 1999, Judge Advocate General Honorio Capulong in his report recommended that Sgt. Angel be declared to have died in line of duty.

On 15 March 2000, the Philippine Army through Chief of Staff Brig. General Pedro V. Atienza, Jr., issued General Order No. 270 declaring the line of duty status in favor of Sgt. Angel. Section 1 of the Order states:

> I. Declaration of in Line of Duty Status – the death of the late Sgt. Benjamin R. Angel 633863, Philippine Army formerly assigned with SBTM, ASCOM who died on March 3, 1998 at ISG, Fort Bonifacio, Makati is declared IN LINE OF DUTY STATUS.[5] (Emphasis ours)

By reason thereof, respondent, as widow of Sgt. Angel, filed a claim for death benefits with the Government Service Insurance System (GSIS) under Presidential Decree No. 626, as amended.

On 29 September 1999, the GSIS denied the respondent's claim on the ground that Sgt. Angel's death did not arise out of and in the course of employment. A motion for reconsideration was filed but the same was denied by the GSIS.

On appeal before the ECC, the ECC in its Decision[6] dated 13 April 2000 likewise denied the claim for want of merit. The relevant portion of the decision states that:

> After careful deliberation of the facts attendant to this case, this Commission believes that the death benefits prayed for under P.D. 626, as amended, cannot be granted. It has been stressed time and again that the thrust of Employees' Compensation Law is to secure adequate and prompt benefits to the employee and his dependents in the event of a work-related disability or death. In this connection, Rule III, Section 1(a) of the Implementing Rules of PD 626, as amended, defines when an injury or death is considered compensable, to wit: "For the injury and the resulting disability or death to be compensable, the injury must be the result of accident arising out of and in the course of employment." The circumstances

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[5] *Id.* at 59.

[6] *Id.* at 60.

surrounding this case do not meet the aforementioned conditions. Clearly, the deceased was not performing his official duties at the time of the incident. On the contrary, he was being investigated regarding his alleged involvement on a pilferage/gunrunning case when he was found dead in his cell, an activity which is foreign and unrelated to his employment as a soldier. Thus, the protective mantle of the law cannot be extended to him as the documents appear bereft of any showing to justify a casual connection between his death and his employment.

WHEREFORE, premises considered, the decision of the respondent System appealed from is hereby AFFIRMED, and this case DISMISSED for want of merit.[7]

Respondent appealed the case before the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. Before the appellate court, she raised the issue that the ECC erred:

1. In declaring that the death benefits prayed for under P.D. 626, as amended, cannot be granted, as the deceased was not performing his official duties at the time of the incident.
2. In declaring that the subject matter of the investigation, during which he was found dead in his cell, is foreign and unrelated to his employment as a soldier.
3. In declaring that the mantle of the law cannot be extended to the deceased as the documents appear bereft of any showing to justify a causal connection between his death and his employment.[8]

On 31 May 2004, the Court of Appeals reversed the ECC ruling. The dispositive portion of the decision reads:

WHEREFORE, the instant petition is **GRANTED.** Accordingly, the **assailed decision dated April 13, 2000** of respondent ECC is hereby **REVERSED** and **SET ASIDE** and the GSIS [is] **ORDERED** to pay the death benefits due the petitioner as widow of Sgt. Angel under Presidential Decree No. 626, as amended.[9]

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[7] Decision of the ECC. *Id.* at 70-71.

[8] Decision of the Court of Appeals. *Id.* at 61.

[9] *Id.* at 63.

The appellate court in its decision pointed out that Sgt. Angel was manning his post at the Army Support Command when "invited" by Capt. Lamerez of the Intelligence Service Group to undergo an investigation concerning a gunrunning/pilferage case in the Philippine Army. Sgt. Angel was never arrested; he went with Capt. Lamerez to shed light on the investigation.[10] It was never shown that Sgt. Angel's subsequent detention was a punishment for any wrong doing.[11] Furthermore, the appellate court recognized the peculiar nature of a soldier's job as decided by the Supreme Court. To quote:

> x x x a soldier on active duty status is really on a 24 hours a day official duty status and is subject to military discipline and military law 24 hours a day. He is subject to call and to the orders of his superior officers at all times, seven (7) days a week, except, of course, when he is on vacation leave status. Thus, a soldier should be presumed to be on official duty unless he is shown to have clearly and unequivocally put aside that status or condition temporarily by going on an approved vacation leave.[12]

Hence, this Petition for Review on *Certiorari*.

Petitioner GSIS raises the issue whether or not the Court of Appeals disregarded the law and jurisprudence when it set aside the ECC Decision dated 13 April 2000 that for the injury and the resulting disability or death to be compensable, the injury must be the result of accident arising out of and in the course of employment.

Court's Ruling

GSIS contends that the death of Sgt. Angel did not arise out of in the course of employment as provided by Section 1, Rule III of the Implementing Rules of Presidential Decree No. 626, otherwise known as the "Employees' Compensation and State Insurance Fund." The widow, on the other hand, counters that

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[10] *Id.* at 61.

[11] *Id.* at 62.

[12] *Nitura v. Employees' Compensation Commission,* G.R. No. 89217, 4 September 1991, 201 SCRA 278, 284.

her husband died in line of duty so that such death is compensable under the Fund.

The contentions bring out the issue whether or not the declaration by the Philippine Army that the death of Sgt. Angel was "in line of duty status" confers compensability under the provisions of Presidential Decree No. 626 otherwise known as "*Employees' Compensation and State Insurance Fund*."

We rule in favor of petitioner GSIS.

For the injury and the resulting death to be compensable, the law provides:

> Implementing Rules of P.D. 626,[13] RULE III – COMPENSABILITY, Section 1. Grounds.
>
> (a) For the injury and the resulting disability or death to be compensable, the injury must be the result of accident arising out of and in the course of the employment. (Underscoring supplied)

Pertinent jurisprudence outline that the injury must be the result of an employment accident satisfying all of the following: 1) the employee must have been injured at the place where his work requires him to be; 2) the employee must have been performing his official functions; and 3) if the injury is sustained elsewhere, the employee must have been executing an order for the employer.[14]

It is important to note, however, that the requirement that the injury must arise out of and in the course of employment proceeds from the limiting premise that the injury must be the result of an accident.

The term accident has been defined in an insurance case.[15] We find the definition applicable to the present case. Thus:

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[13] ECC Resolution No. 2799, 25 July 1984.

[14] *Government Service Insurance System v. Mecayer*, G.R. No. 156182, 13 April 2007, 521 SCRA 100, 108.

[15] *Sun Insurance Office, Ltd. v. Court of Appeals*, G.R. No. 92383, 17 July 1992, 211 SCRA 554, 556 citing 43 Am. Jur. 2d 267.

The words "accident" and "accidental" have never acquired any technical signification in law, and when used in an insurance contract are to be construed and considered according to the ordinary understanding and common usage and speech of people generally. In substance, the courts are practically agreed that the words "accident" and "accidental" mean that which happens by chance or fortuitously, without intention or design, and which is unexpected, unusual, and unforeseen. The definition that has usually been adopted by the courts is that an accident is an event that takes place without one's foresight or expectation – an event that proceeds from an unknown cause, or is an unusual effect of a known case, and therefore not expected.

An accident is an event which happens without any human agency or, if happening through human agency, an event which, under the circumstances, is unusual to and not expected by the person to whom it happens. It has also been defined as an injury which happens by reason of some violence or casualty to the insured without his design, consent, or voluntary cooperation.

Significantly, an accident excludes that which happens with intention or design, with one's foresight or expectation or that which under the circumstances is expected by the person to whom it happens.

The exclusion of an intentional or designed act which exclusion refines the definition of accident that we find applicable to the provisions of the implementing rules of the law is specifically provided for in Article 172 of the law, Presidential Decree No. 626. Thus:

Art. 172. Limitation of liability. – The State Insurance Fund shall be liable for compensation to the employee or his dependents, except when the disability or death was occasioned by the employee's intoxication, willful intention to injure or kill himself or another, notorious negligence or otherwise provided under this title. (Underscoring supplied)

The factual foundation of respondent's claim is that on the day following Sgt. Angel's detention for investigation of his alleged involvement in a pilferage/gunrunning case, his lifeless body was found hanging inside his cell with an electric cord

tied around his neck. The autopsy report stated that the cause of death as *asphyxia* by strangulation.

With the law upon the facts, we conclude that the death of Sgt. Angel did not result from an accident which is compensable under Presidential Decree No. 626. It was on the contrary occasioned by an intentional or designed act which removes the resulting death from the coverage of the State Insurance Fund. It is unexpected that the discussion below by the GSIS, the ECC and the Court of Appeals, veered away from the indispensible antecedent that the death must be caused by accident and, instead, focused on the requirement that the death must arise out of or in the course of employment. Such that, the ECC denied compensability because:

> Clearly the deceased was not performing his official duties at the time of the incident. On the contrary, he was being investigated regarding his alleged involvement on a pilferage/gunrunning case when he was found dead in his cell, an activity which is foreign and unrelated to his employment as a soldier. Thus, the protective mantle of the law cannot be extended to him as the documents appear bereft of any showing to justify causal connection between his death and his employment.[16]

Led into a confined debate, the Court of Appeals merely met the ECC's reasons and said that even during the investigation, Sgt. Angel was still in the performance of his duties. The Court of Appeals alluded to the ruling that a soldier is on active duty status 24-hours a day and concluded that the ECC should not have ignored the official findings of the military that the deceased sergeant died while in the performance of his duties.

We should undo the reversal by the Court of Appeals of the ECC ruling.

1. The finding of the military authorities that Sgt. Angel died while in the line of duty is not binding on the ECC. This is not a new ECC doctrine. Apropos is the case of *Government*

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[16] *Rollo*, pp. 70-71.

Service Insurance System v. Court of Appeals,[17] even if the case concerns the PNP and not the AFP. Thus:

> x x x the proceedings before the PNP Board and the ECC are separate and distinct, treating of two (2) totally different subjects; moreover, the PNP Board's conclusions here may not be used as basis to find that private respondent is entitled to compensation under P.D. No. 626, as amended. The presumption afforded by the Order relied upon by the PNP Board concerns itself merely with the query as to whether one died in the line of duty, while P.D. No. 626 addressed the issue of whether a causal relation existed between a claimant's ailment and his working conditions. Plainly, these are different issues calling for differing forms of proof or evidence, thus accounting for the existence of a favorable presumption in favor of a claimant under the Defense Department Order, but not under P.D. No. 626 when the disease is not listed under Annex 'A' of the Amended Rules on Employees' Compensation.

Paraphrasing the above ruling, we find that the proceedings before the Philippine Army which finally resulted in the issuance by the Chief of Staff of General Order No. 270 that the death of Sgt. Angel was "in line of duty status" may not be used as basis for the finding that the widow of Sgt. Angel is entitled to compensation under Presidential Decree No. 626, as amended. Death in line of duty is not equivalent to a finding that the death resulted from an accident and was not occasioned by the sergeant's willful intention to kill himself. It is not enough, as erroneously pointed out by the Court of Appeals, that there is evidence to support the conclusion that the sergeant died while in the performance of his duties since he was not arrested but was merely invited to shed light on the investigation which was "part of xxx official duties to cooperate with the inquiry being conducted by the Philippine Army." There must be evidence that the sergeant did not take his own life considering the fact that he was "found hanging inside his cell with an electric cord tied around his neck."

2. The scene and setting of apparent suicide was contested by herein respondent, wife of the sergeant through a complaint

[17] G.R. No. 128523, 25 September 1998, 296 SCRA 514, 534-535.

before the PNP Criminal Investigation Command alleging that her husband was murdered and named the elements of Intelligence Service Group led by Capt. Lamerez as suspects. The alleged murder *vis-à-vis* the apparent suicide is precisely the determinant of compensability, with death "in line of duty" as a given factor. The sergeant was fetched from his post for investigation and he died in a detention cell while awaiting further investigation. The findings regarding his death provided by the Provost Marshall and the Inspector General are conflicting. The former found it incredible that the deceased would take his life in view of his impending retirement and being a father to four children and concluded that foul play may have been committed. The latter held that there was no evidence suggesting foul play maintaining that the detention of Sgt. Angel could have triggered a mental block that caused him to hang himself. The conflict was not resolved by subsequent official actions. The Judge Advocate General recommended that Sgt. Angel be declared to have died while in line of duty which declaration was done by the Chief of Staff of the Philippine Army. Noticeably, the declaration went no further than state that Sgt. Angel "died on March 3, 1998 at ISG, Fort Bonifacio, Makati." There was no mention about the cause of death. There was nothing in the declaration that would resolve the contradiction between the conclusion of foul play reached by the Provost Marshall and the finding of the Inspector General that there is no evidence suggesting foul play. The senior officers merely declared the fact that death occurred inside Fort Bonifacio.

From what is extant in the records, though, we rule in favor of the positive finding that there is no evidence of foul play over the inference that foul play may have been committed. The circumstances of Sgt. Angel's death – his lifeless body was found hanging inside his cell with an electric cord tied around his neck "taken together with the unrebutted finding that there is no evidence of foul play – negate respondent's claim of murder of her husband and of compensability of such death. It was not accidental death that is covered by Presidential Decree No. 626.

3. We are not unmindful of the fact that liberality of the law in favor of the working man and woman prevails in light of the Constitution and social justice.[18] But, as stated in *Government Service Insurance System v. Court of Appeals*, it is now the trust fund and not the employer which suffers if benefits are paid to claimants who are not entitled under the law. There is now an intention to restore a sensible equilibrium between the employer's obligation to pay workmen's compensation and the employee's right to receive separation for work connected death or disability.[19]

> There is a competing, yet equally vital interest to heed in passing upon undeserving claims for compensation. It is well to remember that if diseases or death not intended by the law to be compensated are inadvertently or recklessly included, the integrity of the State Insurance Fund is endangered. Compassion for the victims of diseases not covered by the law ignores the need to show a greater concern for the trust fund to which the tens of millions of workers and their families look to for compensation whenever covered accidents, diseases and deaths occur.[20]

This Court sympathizes with the sad predicament of respondent, the widow of Sgt. Angel. Such, however has already been considered in fixing the equilibrium between obligation and right in employees' compensation cases. It can no longer tilt the balance in respondent's favor.

WHEREFORE, the instant appeal is *GRANTED*. Accordingly, the Decision of the Court of Appeals is hereby *REVERSED*. The Decision dated 13 April 2000 of the Employees' Compensation Commission is *REINSTATED*.

No costs.

SO ORDERED.

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[18] *Id.* at 531 citing *Employees' Compensation Commission v. Court of Appeals*, G.R. No. 121545, 14 November 1996, 264 SCRA 248, 256.

[19] *Id.* citing *Tria v. Employees' Compensation Commission*, G.R. No. 96787, 8 May 1992, 280 SCRA 834, 841-842.

[20] *Government Service Insurance System v. Court of Appeals*, *supra* note 17; *Raro v. Employees' Compensation Commission*, G.R. No. 58445, 27 April 1989, 172 SCRA 845, 852.

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

SECOND DIVISION

[G.R. No. 167246. July 20, 2011]

GEORGE LEONARD S. UMALE, *petitioner, vs.* **CANOGA PARK DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; DISMISSAL; GROUNDS; *LITIS PENDENTIA*; MAY BE A GROUND FOR DISMISSAL AS IT REFERS TO A SITUATION WHERE TWO ACTIONS ARE PENDING BETWEEN THE SAME PARTIES FOR THE SAME CAUSE OF ACTION.— As a ground for the dismissal of a civil action, *litis pendentia* refers to a situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious.

2. ID.; ID.; ID.; ID.; ID.; ID.; REQUISITES.— *Litis pendentia* exists when the following requisites are present: identity of the parties in the two actions; substantial identity in the causes of action and in the reliefs sought by the parties; and the identity between the two actions should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other. xxx If an identity, or substantial identity, of the causes of action in both cases exists, then the second complaint for unlawful detainer may be dismissed on the ground of *litis pendentia.* xxx Generally, a suit may only be instituted for a single cause

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[*] Per Special Order No. 1006.

[**] Per Special Order No. 1040.

of action. If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment on the merits in any one is ground for the dismissal of the others.

3. ID.; ID.; ID.; CAUSE OF ACTION; TESTS TO DETERMINE A COMMON CAUSE OF ACTION — "SAME EVIDENCE" TEST, DEFENSE IN ONE CASE SUBSTANTIATES COMPAINT IN ANOTHER, AND EXISTENCE OF CAUSE OF ACTION IN SECOND CASE WHEN FIRST CASE IS FILED.— Several tests exist to ascertain whether the same evidence would support and sustain both the first and second causes of action (also known as the "same evidence" test), or whether the defenses in one case may be used to substantiate the complaint in the other. Also fundamental is the test of determining **whether the cause of action in the second case existed at the time of the filing of the first complaint.**

4. ID.; ID.; ID.; ID.; ID.; THE THIRD ONE IS ESPECIALLY APPLICABLE TO THE PRESENT CASE.— Of the three tests cited, the third one is especially applicable to the present case, *i.e.*, whether the cause of action in the second case existed at the time of the filing of the first complaint – and to which we answer in the negative. The facts clearly show that the filing of the first ejectment case was grounded on the petitioner's violation of stipulations in the lease contract, while the filing of the second case was based on the expiration of the lease contract. At the time the respondent filed the first ejectment complaint on October 10, 2000, the lease contract between the parties was still in effect. The lease was fixed for a period of two (2) years, from January 16, 2000, and in the absence of a renewal agreed upon by the parties, the lease remained effective until January 15, 2002. It was only at the expiration of the lease contract that the cause of action in the second ejectment complaint accrued and made available to the respondent as a ground for ejecting the petitioner. Thus, the cause of action in the second case was not yet in existence at the time of filing of the first ejectment case.

5. ID.; ID.; ID.; ID.; ID.; THE RESTATEMENT IN THE SECOND CASE OF THE CAUSE OF ACTION IN THE FIRST CASE DOES NOT RESULT IN SUBSTANTIAL IDENTITY BETWEEN THE TWO CASES.— In response to the petitioner's contention that the similarity of Civil Case Nos. 8084 and 9210

rests on the reiteration in the second case of the cause of action in the first case, we rule that the restatement does not result in substantial identity between the two cases. Even if the respondent alleged violations of the lease contract as a ground for ejectment in the second complaint, the main basis for ejecting the petitioner in the second case was the expiration of the lease contract. If not for this subsequent development, the respondent could no longer file a second complaint for unlawful detainer because an ejectment complaint may only be filed within one year after the accrual of the cause of action, which, in the second case, was the expiration of the lease contract.

6. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE MTC-BRANCH 71 DECIDED THE LATTER CASE ON THE SOLE ISSUE OF WHETHER THE LEASE CONTRACT BETWEEN THE PARTIES HAD EXPIRED.— Also, contrary to petitioner's assertion, there can be no conflict between the decisions rendered in Civil Case Nos. 8084 and 9210 because the MTC-Branch 71 decided the latter case on the sole issue of whether the lease contract between the parties had expired. Although alleged by the respondent in its complaint, the MTC-Branch 71 did not rule on the alleged violations of the lease contract committed by the petitioner. We note that the damages awarded by the MTC-Branch 71 in Civil Case No. 9210 were for those incurred after the expiration of the lease contract, not for those incurred prior thereto.

7. ID.; ID.; ID.; FORUM SHOPPING; THE TEST APPLIED IS WHETHER THE ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT; THE CA DID NOT ERR IN DECLARING THAT THE RESPONDENT COMMITTED NO FORUM SHOPPING.— Similarly, we do not find the respondent guilty of forum shopping in filing Civil Case No. 9210, the second civil case. To determine whether a party violated the rule against forum shopping, the test applied is whether the elements of *litis pendentia* are present or whether a final judgment in one case will amount to *res judicata* in another. Considering our pronouncement that not all the requisites of *litis pendentia* are present in this case, the CA did not err in declaring that the respondent committed no forum shopping.

8. ID.; ID.; ID.; ID.; EXISTENCE OF FIRST CASE TO BE DISCLOSED IN CERTIFICATION IN SECOND CASE; IN THE CASE AT BAR, THE RESPONDENT CANNOT BE

SAID TO HAVE COMMITTED A WILLFUL AND DELIBERATE FORUM SHOPING. — Also, a close reading of the Verification and Certification of Non-Forum Shopping (attached to the second ejectment complaint) shows that the respondent did disclose that it had filed a former complaint for unlawful detainer against the petitioner. Thus, the respondent cannot be said to have committed a willful and deliberate forum shopping.

APPEARANCES OF COUNSEL

Rivera Santos & Maranan for petitioner.
Pastelero Law Office for respondent.

D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari*[1] filed by George Leonard S. Umale (petitioner), challenging the August 20, 2004 Decision[2] of the Court of Appeals (*CA*) in CA-G.R. SP. No. 78836 and its subsequent February 23, 2005 Resolution[3] that denied his motion for reconsideration. The CA reversed the Decision[4] of the Regional Trial Court (*RTC*)-Branch 68, Pasig City, that dismissed Canoga Park Development Corporation's complaint for unlawful detainer on the ground of *litis pendentia*.

ANTECEDENTS

On January 4, 2000, the parties entered into a Contract of Lease[5] whereby the petitioner agreed to lease, for a period of two (2) years starting from January 16, 2000, an eight hundred

[1] *Rollo,* pp. 24-60.

[2] *Id.* at 9-19.

[3] *Id.* at 21.

[4] *Id.* at 332-336.

[5] *Id.* at 133-138.

sixty (860)-square-meter prime lot located in Ortigas Center, Pasig City owned by the respondent. The respondent acquired the subject lot from Ortigas & Co. Ltd. Partnership through a Deed of Absolute Sale, subject to the following conditions: (1) that no shopping arcades or retail stores, restaurants, *etc*. shall be allowed to be established on the property, except with the prior written consent from Ortigas & Co. Ltd. Partnership and (2) that the respondent and/or its successors-in-interest shall become member/s of the Ortigas Center Association, Inc. (*Association*), and shall abide by its rules and regulations.[6]

On October 10, 2000, before the lease contract expired, the respondent filed an unlawful detainer case against the petitioner before the Metropolitan Trial Court (*MTC*)-Branch 68, Pasig City, docketed as Civil Case No. 8084.[7] The respondent used as a ground for ejectment the petitioner's violation of stipulations in the lease contract regarding the use of the property. Under this contract, the petitioner shall use the leased lot as a parking space for light vehicles and as a site for a small drivers' canteen,[8] and may not utilize the subject premises for other purposes without the respondent's prior written consent.[9] The petitioner, however, constructed restaurant buildings and other commercial establishments on the lot, without first securing the required written consent from the respondent, and the necessary permits from the Association and the Ortigas & Co. Ltd. Partnership. The petitioner also subleased the property to various merchants-tenants in violation of the lease contract.

The MTC-Branch 68 decided the ejectment case in favor of the respondent. On appeal, the RTC-Branch 155, Pasig City affirmed *in toto* the MTC-Branch 68 decision.[10] The case, however, was re-raffled to the RTC-Branch 267, Pasig City

[6] *Id.* at 10.

[7] *Id.* at 127-131.

[8] *Id.* at 135-136.

[9] *Id.* at 136.

[10] *Id.* at 196-199.

because the Presiding Judge of the RTC-Branch 155, upon motion, inhibited himself from resolving the petitioner's motion for reconsideration.[11] The RTC-Branch 267 granted the petitioner's motion, thereby reversing and setting aside the MTC-Branch 68 decision. Accordingly, Civil Case No. 8084 was dismissed for being prematurely filed.[12] Thus, the respondent filed a petition for review with the CA on April 10, 2002.[13]

During the pendency of the petition for review, the respondent filed on May 3, 2002 another case for unlawful detainer against the petitioner before the MTC-Branch 71, Pasig City. The case was docketed as Civil Case No. 9210.[14] This time, the respondent used as a ground for ejectment the expiration of the parties' lease contract.

On December 4, 2002, the MTC-Branch 71 rendered a decision[15] in favor of the respondent, the dispositive portion of which read, as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff [referring to the respondent] and against the defendant and all persons claiming rights under him, as follows:
>
> 1. Defendant and all persons claiming rights under him are ordered to peacefully vacate the premises located at Lot 9, Block 5, San Miguel Avenue, Ortigas Center, Pasig City, covered by Transfer Certificate of Title No. 488797 of the Registry of Deeds of Pasig City and to surrender the possession thereof to the plaintiff;
>
> 2. Defendant is ordered to pay unto plaintiff the following:
>
> a. Damages for the use of the property after the expiration of the lease contract therefor in the amount of One Hundred Fifty Thousand Pesos (₱150,000.00) a month,

[11] Dated September 19, 2001.

[12] *Rollo,* pp. 222-227.

[13] *Id.* at 12.

[14] *Id.* at 337-342.

[15] *Id.* at 345-353.

beginning 16 January 2002 until he and all those claiming rights under him have vacated and peacefully turned over the subject premises to the plaintiff; and

b. One Hundred Thousand Pesos (₱100,000.00) as and for attorney's fees together with costs of suit.

3. With respect to the commercial units built by [the] defendant on the subject land, he is hereby ordered to remove the same from the subject land and to restore the subject land in the same condition as it was received unto the plaintiff, at his exclusive account, failing which the same shall be removed by the plaintiff, with expenses therefor chargeable to the defendant.

On appeal, the RTC-Branch 68 reversed and set aside the decision of the MTC-Branch 71, and dismissed Civil Case No. 9210 on the ground of *litis pendentia*.[16] The petitioner, however, was still ordered to pay rent in the amount of seventy-one thousand five hundred pesos (₱71,500.00) per month beginning January 16, 2002, which amount is the monthly rent stipulated in the lease contract.

Aggrieved by the reversal, the respondent filed a Petition for Review under Rule 42 of the Rules of Court with the CA. The respondent argued that there exists no *litis pendentia* between Civil Case Nos. 8084 and 9210 because the two cases involved different grounds for ejectment, *i.e.*, the first case was filed because of violations of the lease contract, while the second case was filed due to the expiration of the lease contract. The respondent emphasized that the second case was filed based on an event or a cause not yet in existence at the time of the filing of the first case.[17] The lease contract expired on January 15, 2002,[18] while the first case was filed on October 10, 2000.

On August 20, 2004, the CA nullified and set aside the assailed decision of the RTC-Branch 68, and ruled that there was no

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[16] *Supra* note 4.

[17] *Rollo*, p. 323.

[18] *Id.* at 649.

litis pendentia because the two civil cases have different causes of action. The decision of the MTC- Branch 71 was ordered reinstated. Subsequently, the petitioner's motion for reconsideration was denied; hence, the filing of the present petition for review on *certiorari*.

In presenting his case before this Court, the petitioner insists that *litis pendentia* exists between the two ejectment cases filed against him because of their identity with one another and that any judgment on the first case will amount to *res judicata* on the other. The petitioner argues that the respondent reiterated the ground of violations of the lease contract, with the additional ground of the expiration of the lease contract in the second ejectment case. Also, the petitioner alleges that all of the elements of *litis pendentia* are present in this case, thus, he prays for the reversal and setting aside of the assailed CA decision and resolution, and for the dismissal of the complaint in Civil Case No. 9210 on the ground of *litis pendentia* and/or forum shopping.

THE COURT'S RULING

We disagree with the petitioner and find that there is no *litis pendentia.*

As a ground for the dismissal of a civil action, *litis pendentia* refers to a situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious.[19]

Litis pendentia exists when the following requisites are present: identity of the parties in the two actions; substantial identity in the causes of action and in the reliefs sought by the parties; and the identity between the two actions should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other.[20]

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[19] *Proton Pilipinas Corporation v. Republic,* G.R. No. 165027, October 16, 2006, 504 SCRA 528, 545; and *Guaranteed Hotels, Inc. v. Baltao,* 489 Phil. 702, 707 (2005).

[20] *Dotmatrix Trading v. Legaspi,* G.R. No. 155622, October 26, 2009, 604 SCRA 431. See *Coca-Cola Bottlers (Phils.), Inc. v. Social Security Commission*, G.R. No. 159323, July 31, 2008, 560 SCRA 719, 736; *Dayot v.*

In the present case, the parties' bone of contention is whether Civil Case Nos. 8084 and 9210 involve the same cause of action. The petitioner argues that the causes of action are similar, while the respondent argues otherwise. If an identity, or substantial identity, of the causes of action in both cases exist, then the second complaint for unlawful detainer may be dismissed on the ground of *litis pendentia.*

We rule that Civil Case Nos. 8084 and 9210 involve different causes of action.

Generally, a suit may only be instituted for a single cause of action.[21] If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment on the merits in any one is ground for the dismissal of the others.[22]

Several tests exist to ascertain whether two suits relate to a single or common cause of action, such as whether the same evidence would support and sustain both the first and second causes of action[23] (also known as the "same evidence" test),[24] or whether the defenses in one case may be used to substantiate the complaint in the other.[25] Also fundamental is the test of determining **whether the cause of action in the second case existed at the time of the filing of the first complaint.**[26]

Shell Chemical Company (Phils.), Inc., G.R. No. 156542, June 26, 2007, 525 SCRA 535, 545-546; and *Abines v. Bank of the Philippine Islands*, G.R. No. 167900, February 13, 2006, 482 SCRA 421, 429.

[21] 1997 RULES OF CIVIL PROCEDURE, Section 3, Rule 2.

[22] 1997 RULES OF CIVIL PROCEDURE, Section 4, Rule 2.

[23] *Peñalosa v. Tuason*, 22 Phil. 303, 322 (1912); *Pagsisihan v. Court of Appeals*, 184 Phil. 469, 479 (1980); and *Feliciano v. Court of Appeals*, 350 Phil. 499, 506-507 (1998).

[24] See *Agustin v. Delos Santos*, G.R. No. 168139, January 20, 2009, 576 SCRA 576.

[25] *Victronics Computers, Inc. v. RTC, Branch 63, Makati*, G.R. No. 104019, January 25, 1993, 217 SCRA 517, 530.

[26] *Subic Telecommunications Company, Inc. v. Subic Bay Metropolitan Authority*, G.R. No. 185159, October 12, 2009, 603 SCRA 470.

Of the three tests cited, the third one is especially applicable to the present case, *i.e.*, whether the cause of action in the second case existed at the time of the filing of the first complaint – and to which we answer in the negative. The facts clearly show that the filing of the first ejectment case was grounded on the petitioner's violation of stipulations in the lease contract, while the filing of the second case was based on the expiration of the lease contract. At the time the respondent filed the first ejectment complaint on October 10, 2000, the lease contract between the parties was still in effect. The lease was fixed for a period of two (2) years, from January 16, 2000, and in the absence of a renewal agreed upon by the parties, the lease remained effective until January 15, 2002. It was only at the expiration of the lease contract that the cause of action in the second ejectment complaint accrued and made available to the respondent as a ground for ejecting the petitioner. Thus, the cause of action in the second case was not yet in existence at the time of filing of the first ejectment case.

In response to the petitioner's contention that the similarity of Civil Case Nos. 8084 and 9210 rests on the reiteration in the second case of the cause of action in the first case, we rule that the restatement does not result in substantial identity between the two cases. Even if the respondent alleged violations of the lease contract as a ground for ejectment in the second complaint, the main basis for ejecting the petitioner in the second case was the expiration of the lease contract. If not for this subsequent development, the respondent could no longer file a second complaint for unlawful detainer because an ejectment complaint may only be filed within one year after the accrual of the cause of action,[27] which, in the second case, was the expiration of the lease contract.

Also, contrary to petitioner's assertion, there can be no conflict between the decisions rendered in Civil Case Nos. 8084 and 9210 because the MTC-Branch 71 decided the latter case on the sole issue of whether the lease contract between the parties had expired. Although alleged by the respondent in its complaint,

[27] 1997 RULES OF CIVIL PROCEDURE, Section 1, Rule 70.

the MTC-Branch 71 did not rule on the alleged violations of the lease contract committed by the petitioner. We note that the damages awarded by the MTC-Branch 71 in Civil Case No. 9210 were for those incurred after the expiration of the lease contract,[28] not for those incurred prior thereto.

Similarly, we do not find the respondent guilty of forum shopping in filing Civil Case No. 9210, the second civil case. To determine whether a party violated the rule against forum shopping, the test applied is whether the elements of *litis pendentia* are present or whether a final judgment in one case will amount to *res judicata* in another.[29] Considering our pronouncement that not all the requisites of *litis pendentia* are present in this case, the CA did not err in declaring that the respondent committed no forum shopping. Also, a close reading of the Verification and Certification of Non-Forum Shopping[30] (attached to the second ejectment complaint) shows that the respondent did disclose that it had filed a former complaint for unlawful detainer against the petitioner. Thus, the respondent cannot be said to have committed a willful and deliberate forum shopping.

WHEREFORE, the instant petition is *DENIED*. The assailed Decision dated August 20, 2004 and Resolution dated February 23, 2005 of the Court of Appeals in CA-G.R. SP. No. 78836 are *AFFIRMED*.

SO ORDERED.

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

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[28] *Rollo,* p. 352.

[29] *Solid Homes, Inc. v. Court of Appeals*, 337 Phil. 605, 615 (1997).

[30] *Rollo,* pp. 343-344.

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

[**] Designated as Acting Member of the Second Division per Special Order No. 1040 dated July 6, 2011, Vice Associate Justice Maria Lourdes P.A. Sereno, on official leave.

THIRD DIVISION

[G.R. No. 169594. July 20, 2011]

BIENVENIDO BARRIENTOS, *petitioner, vs.* **MARIO RAPAL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; EJECTMENT CASES ARE SUMMARY PROCEEDINGS DESIGNED TO PROVIDE EXPEDITIOUS MEANS TO PROTECT ACTUAL POSSESSION OR THE RIGHT TO POSSESSION OF THE PROPERTY INVOLVED.— Ejectment cases – forcible entry and unlawful detainer – are summary proceedings designed to provide expeditious means to protect actual possession or the right to possession of the property involved. The only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable. In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property. The adjudication is, however, merely provisional and would not bar or prejudice an action between the same parties involving title to the property.

2. ID.; ID.; ID.; ID.; PRONOUNCEMENTS MADE ON QUESTIONS OF OWNERSHIP ARE PROVISIONAL IN NATURE; CASE AT BAR.— It should be stressed that unlawful detainer and forcible entry suits, under Rule 70 of the Rules of Court, are designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings. These actions are intended to avoid disruption of public order by those who would take the law in

their hands purportedly to enforce their claimed right of possession. In these cases, the issue is pure physical or *de facto* possession, and pronouncements made on questions of ownership are provisional in nature. The provisional determination of ownership in the ejectment case cannot be clothed with finality. x x x In the case at bar, both petitioner and respondent were claiming ownership over the subject property. Hence, the CA correctly touched upon the issue of ownership only to determine who between the parties has the right to possess the subject property. True, as found by the CA, both petitioner and respondent presented weak evidence of ownership. Respondent on his part based his claim of ownership over the subject property on the strength of a notarized Deed of Transfer of Possessory Right from a certain Antonio Natavio. The subject land, however, was said to be a portion of the estate of the late Don Mariano San Pedro *y* Esteban covered by *Titulo de Propriedad* No. 4136, which this Court has declared null and void in the case of *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals* as such, respondent could not derive any right therefrom. Petitioner, on the other hand, anchored his contention that he has a better right to possess the property on the fact the he is in actual possession of the property and that he was awarded a Certificate of Project Qualification by the Office of the President through the Housing and Urban Development Coordinating Council. However, although petitioner claimed ownership over the subject lot, he failed to adduce sufficient evidence therefor, or even sufficient reason on the manner by which he acquired ownership. Having settled the issue of ownership, it was but just and proper for the CA to have reminded the courts *a quo* to have settled the case by restricting their resolution to the basic issue of possession.

3. ID.; ID.; ID.; ID.; ID.; UNLAWFUL DETAINER, A PROPER REMEDY, SINCE PETITIONER'S OCCUPATION OF THE PROPERTY WAS BY MERE TOLERANCE; CASE AT BAR. — From the various evidence submitted by the respondent, it can be clearly inferred that respondent is entitled to the possession of the subject lot. x x x Thus, based on the evidence presented by the respondent, it can be deduced that petitioner's occupation of the subject lot was by mere tolerance only. Petitioner was initially permitted by respondent to occupy the

lot as a caretaker. Petitioner even admitted this fact in his Beneficiary Evaluation and Qualification Form. Moreover, all other supporting evidence, such as the Census Survey Certificate and construction material receipts, bolster the fact that respondent was in prior possession of the property before petitioner entered the same by mere tolerance of the respondent. Perusing respondent's complaint, respondent clearly makes out a case for unlawful detainer, since petitioner's occupation of the subject property was by mere tolerance. A person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate the same upon demand, failing which a summary action for ejectment is the proper remedy against them.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Orfanel Alambra Limwan & Solis Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the Decision[1] dated April 29, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 68482, and the Resolution[2] dated September 1, 2005 denying petitioner's motion for reconsideration.

The procedural and factual antecedents are as follows:

On April 15, 1988, respondent Mario Rapal acquired a 235 square meter parcel of land located at No. 2 Misamis St., Luzviminda Village, Barangay Batasan Hills, Quezon City, from one Antonio Natavio *via* a notarized Deed of Transfer of

[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Noel G. Tijam and Mariflor P. Punzalan Castillo, concurring; *rollo*, pp. 42-51.

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

Possessory Right. The said parcel of land was said to be a portion of the estate of the late Don Mariano San Pedro *y* Esteban covered by Original Certificate of Title (OCT) No. 4136. Thereafter, respondent constructed a semi-concrete house on the lot and took actual possession of the property by himself and through his caretaker, Benjamin Tamayo.

Sometime in 1993, respondent allowed petitioner Bienvenido Barrientos and his family to stay on the subject property as caretakers on the condition that petitioner shall vacate the premises when respondent would need the property. However, when respondent demanded petitioner to vacate the subject property, the last of which was made on July 14, 1997, petitioner refused to leave the lot. The parties later underwent *barangay* conciliations, but to no avail.

Thus, on April 13, 1998, respondent filed a case for Unlawful Detainer against the petitioner before the Metropolitan Trial Court (MeTC) of Quezon City. The case was docketed as Civil Case No. 19889.

On February 21, 2000, after submission of the parties' respective position papers, the trial court rendered a Decision[3] in favor of the respondent, the decretal portion of which reads:

WHEREFORE, in view of the foregoing considerations, this Court finds in favor of the plaintiff entitled to the prayer sought and hereby orders defendant to:

1. vacate and all persons claiming under him that house structure located at No. 2 Misamis Street, Luzviminda Village, Barangay Batasan Hills, Quezon City;

2. pay plaintiff the sum of ₱3,000.00 per month, as compensation for the use of said house structure beginning July 14, 1997 until he vacated the place; and

3. pay plaintiff the sum of ₱10,000.00 as attorney's fee plus cost of suit.

SO ORDERED.[4]

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[3] *Rollo*, pp. 24-26.

[4] *Id.* at 25-26.

On appeal, the Regional Trial Court (RTC) reversed the Decision of the MeTC and resolved in favor of petitioner, reasoning that respondent has not shown any prior lawful possession of the property in question.[5] The dispositive portion of which reads:

> WHEREFORE, the foregoing premises considered, the decision of the lower court is reversed and set aside. The court finds no basis to award any counterclaim.[6]

Aggrieved, respondent sought recourse before the CA assigning the following errors committed by the RTC, to wit:

> 1. That the Lower Court has grievously erred in concluding that the petitioner has not shown any prior lawful possession of the property in question.
>
> 2. That the Lower Court has grievously erred in concluding that the respondent and his family who were merely invited to live in the house out of Christian charity and human compassion, has possessory rights over the same lot and house.
>
> 3. That the Lower Court has grievously erred in injecting the issue of ownership over the lot.
>
> 4. That the Lower Court has grievously erred in concluding that the petitioner has propositioned himself as an awardee-grantee of the property in question.[7]

On April 29, 2005, the CA rendered the assailed Decision[8] reversing the decision of the RTC and reinstating the decision of the MeTC, the decretal portion of which reads:

> WHEREFORE, in view of the foregoing, the extant Petition is hereby **GIVEN DUE COURSE**. The assailed Decision of the Regional Trial Court, Branch 92-Quezon City is **REVERSED** and **SET ASIDE** and a new one entered **REINSTATING** the Decision of the Metropolitan Trial Court of Metro Manila, Branch 39-Quezon City.

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[5] Decision dated July 10, 2001; *id.* at 27-28.

[6] *Id.* at 28.

[7] CA *rollo*, p. 4.

[8] *Rollo*, pp. 42-51.

SO ORDERED.[9]

In ruling in favor of the respondent, the CA touched upon the issue of ownership since both claimed ownership over the disputed property. The CA found that both parties presented weak evidence of ownership. Hence, the CA determined who between the parties was first in possession and concluded that respondent was, indeed, first in possession of the lot.

Petitioner then filed a motion for reconsideration,[10] but it was denied in the Resolution[11] dated September 1, 2005.

Hence, the petition assigning the following errors:

I

WHETHER THE ISSUE OF OWNERSHIP CAN BE INITIALLY RESOLVED FOR THE PURPOSE OF DETERMINING THE ISSUE OF POSSESSION.

II

WHETHER THE RESPONDENT'S DOCUMENT PURPORTING TO BE A TRANSFER OF POSSESSORY RIGHT CAN PREVAIL OVER THE PETITIONER'S CLAIM OF OWNERSHIP AND THE LATTER'S ACTUAL POSSESSORY RIGHT OVER THE PROPERTY.[12]

Petitioner maintains that he has a better right over the subject property as against the respondent. Petitioner insists that even assuming *arguendo* that the subject property was registered in the name of the Rapal family and occupied by him as caretaker, this only bolsters his claim that he has been in actual occupation of the property. Moreover, petitioner contends that since respondent's claim of ownership was derived from a void title, he did not have a better right to possess the property as opposed to by the petitioner who actually occupied the same.

Petitioner points out that he was even awarded a Certificate of Project Qualification by the Office of the President through

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[9] *Id.* at 50.

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

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

[12] *Id.* at 116.

the Housing and Urban Development Coordinating Council. Petitioner argues that since the property in controversy is a government property, it is the government through the National Government Center (NGC) that can award the same to qualified beneficiaries pursuant to Republic Act No. 9207, or the *National Government Center Housing and Land Utilization Act of 2003*, which it in fact did when he was given a Certificate of Project Qualification.

On his part, respondent argues that the CA did not commit any reversible error by ruling in his favor, considering that the CA initially looked into the issue of ownership only for the purpose of determining who between the parties has a better right to possess the subject property. In addition, petitioner failed to substantiate that he has a better right to possess the subject property.

The petition is without merit.

Ejectment cases – forcible entry and unlawful detainer – are summary proceedings designed to provide expeditious means to protect actual possession or the right to possession of the property involved. The only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable.[13] In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property. The adjudication is, however, merely provisional and would not bar or prejudice an action between the same parties involving title to the property.[14]

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[13] *Carbonilla v. Abiera*, G.R. No. 177637, July 26, 2010, 625 SCRA 461, 469.

[14] *Spouses Marcos R. Esmaquel and Victoria Sordevilla v. Coprada*, G.R. No. 152423, December 15, 2010.

In the case at bar, both petitioner and respondent were claiming ownership over the subject property. Hence, the CA correctly touched upon the issue of ownership only to determine who between the parties has the right to possess the subject property.

True, as found by the CA, both petitioner and respondent presented weak evidence of ownership. Respondent on his part based his claim of ownership over the subject property on the strength of a notarized Deed of Transfer of Possessory Right from a certain Antonio Natavio. The subject land, however, was said to be a portion of the estate of the late Don Mariano San Pedro *y* Esteban covered by *Titulo de Propriedad* No. 4136, which this Court has declared null and void in the case of *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals*[15] as such, respondent could not derive any right therefrom.

Petitioner, on the other hand, anchored his contention that he has a better right to possess the property on the fact the he is in actual possession of the property and that he was awarded a Certificate of Project Qualification by the Office of the President through the Housing and Urban Development Coordinating Council. However, although petitioner claimed ownership over the subject lot, he failed to adduce sufficient evidence therefor, or even sufficient reason on the manner by which he acquired ownership.

Having settled the issue of ownership, it was but just and proper for the CA to have reminded the courts *a quo* to have settled the case by restricting their resolution to the basic issue of possession.

From the various evidence submitted by the respondent, it can be clearly inferred that respondent is entitled to the possession of the subject lot. As aptly found by the CA:

To recall, in its (sic) Answer, respondent (defendant herein) alleged:

> 4. That defendant also DENIES the allegations in paragraphs 6 and 7 of complaint, the truth of the matter being that defendant

[15] 333 Phil. 597 (1996).

> is the exclusive occupant of said lot since 1989 and that he built thereon a residential house from his own ***resources as a consequence of which he has been registered as the qualified beneficiary of the property as is (sic) indicated in the Beneficiary Evaluation and Qualification Form issued by the National Government Center – Housing Project on August 18, 1997***, copy attached as ANNEX "C" hereof. (Answer, p. 2; Records, p. 167) (Emphasis supplied)

Going over Annex "C" (records, p. 24) or the Beneficiary Evaluation and Qualification Form which bears TAG NO. 94-02-01787-1, Our attention was caught by the words "CARETAKER" written on the top of the entry BIENVENIDO/GLORIA BARRIENTOS.

We also find, appended to petitioner's Reply to Answer with Special Defense and Counterclaim (records p. 50), a Census Survey Certificate that bears TAG NO. 94-02-01787-1 with a notation "Registered to Rapal family."

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But considering Our preceeding (sic) findings and the fact that the Beneficiary Evaluation and Qualification Form submitted by the respondent himself bears no indication that it was tampered, We are inclined to believe the version maintained by the petitioner. The mark "CARETAKER" purports what it explicitly states; that is, Bienvenido C. Barrientos was only a caretaker of the subject lot.

Consequently, and taking into consideration the great number of affidavits and evidence in favor of the petitioner, We find that the petitioner was, indeed, first in possession of the lot.[16]

Thus, based on the evidence presented by the respondent, it can be deduced that petitioner's occupation of the subject lot was by mere tolerance only. Petitioner was initially permitted by respondent to occupy the lot as a caretaker. Petitioner even admitted this fact in his Beneficiary Evaluation and Qualification Form. Moreover, all other supporting evidence, such as the Census Survey Certificate[17] and construction material receipts,[18] bolster the fact that respondent was in prior possession of the

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

[17] Records, p. 69.

[18] *Id.* at 74-75.

property before petitioner entered the same by mere tolerance of the respondent.

Perusing respondent's complaint, respondent clearly makes out a case for unlawful detainer, since petitioner's occupation of the subject property was by mere tolerance. A person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate the same upon demand, failing which a summary action for ejectment is the proper remedy against them.[19]

It should be stressed that unlawful detainer and forcible entry suits, under Rule 70 of the Rules of Court, are designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings. These actions are intended to avoid disruption of public order by those who would take the law in their hands purportedly to enforce their claimed right of possession. In these cases, the issue is pure physical or *de facto* possession, and pronouncements made on questions of ownership are provisional in nature. The provisional determination of ownership in the ejectment case cannot be clothed with finality.[20]

WHEREFORE, premises considered, the petition is *DENIED*. The Decision of the Court of Appeals, dated April 29, 2005 and the Resolution dated September 1, 2005, in CA-G.R. SP No. 68482, are *AFFIRMED*.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Abad,* and *Mendoza, JJ.,* concur.

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[19] *Beltran v. Nieves*, G.R. No. 175561, October 20, 2010, 634 SCRA 242, 249.

[20] *Samonte v. Century Savings Bank*, G.R. No. 176413, November 25, 2009, 605 SCRA 478, 486.

[*] Designated additional member per Special Order No. 1042 dated July 6, 2011.

SECOND DIVISION

[G.R. No. 181919. July 20, 2011]

JONES INTERNATIONAL MANPOWER SERVICES, INC., represented by its President, EDWARD G. CUE, *petitioner, vs.* **BELLA AGCAOILI-BARIT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; SUPREME COURT; COURT IS BOUND BY THE FINDINGS OF COURT OF APPEALS; EXCEPTION; CASE AT BAR.— The Court, as a rule, is bound by the factual findings of the CA, but has the discretion to reexamine the evidence in a case when a basic conflict exists between the CA's findings of fact and those of the NLRC. In this case, such conflict exists and we need to reexamine their findings to determine: (1) whether Barit had been underpaid and/or had not been paid her wages during her employment in Saudi Arabia; and (2) whether the agency is solidarily liable with the foreign employer if Barit is indeed entitled to her money claims.

2. LABOR LAW AND SOCIAL LEGISLATION; LABOR STANDARDS; SALARIES; OVERSEAS FOREIGN WORKERS; SITUATION WHERE OFW LEAVES FOREIGN EMPLOYER'S RESIDENCE; IN THE CASE AT BAR, RESPONDENT BARIT ABRUPTLY LEFT HER EMPLOYER, NOT BECAUSE SHE WAS BEING EXPLOITED WITH RESPECT TO HER WAGES, BUT FOR A PERSONAL REASON— SHE LEFT IN ORDER TO LIVE WITH HER BOYFRIEND AMBROSIO.— Under the circumstances of Barit's employment in Saudi Arabia, we wonder how she could have and why she remained in the service of the same employer for a considerable period of time if she had been underpaid her salaries or had not been paid at all, and why she had kept silent about her salary situation. Nowhere in the records does it appear that Barit complained about the alleged underpayment and non-payment of her wages with the Philippine labor or consular representatives in Saudi Arabia, or even with the Saudi authorities themselves. Neither is there any showing too that she ever objected to or protested her

iniquitous work situation directly with Hameed, if that had really been the case, nor that Barit identified or spoke of any problem that could have prevented her from seeking relief in Saudi Arabia, as the NLRC noted. Barit abruptly left her employer, not because she was being exploited with respect to her wages, but for a personal reason — she left in order to live with her boyfriend Ambrosio. As a consequence of what she did, she ran afoul of the law of Saudi Arabia.

3. ID.; ID.; ID.; ID.; ID.; ID.; WITH RESPECT TO RESPONDENT BARIT'S RECEIPT OF HER FULL SALARIES FOR THE ENTIRE DURATION OF HER ORIGINAL CONTRACT, IN THE CONTEXT OF THE REALITIES OF DOMESTIC SERVICE, IT IS, THEREFORE, UNDERSTANDABLE THAT NO PAYSLIP OR PAYROLL COULD BE PRESENTED BY RESPONDENT AGENCY.— This analysis leads us to conclude that the NLRC's conclusion is not without basis; substantial basis exists to believe that Barit received her full salaries for the entire duration of her original contract, or from July 23, 1999 to July 23, 2001. The NLRC further opined that to make the agency liable for Barit's alleged unpaid and underpaid wages on the sole ground that it failed to submit copies of payslips and payrolls is unfair as the agency appears to have taken all available means to secure the necessary documents from Barit's employer to dispute her claims. The NLRC stressed that the labor arbiter should have considered other factors in resolving the case. xxx The argument that absent the payslips or payrolls, the agency failed to present proof of payment of Barit's claim should be viewed in the context of the realities of domestic service. The relationship between Hameed and his family, on the one hand, and Barit, on the other hand, was largely confined within Hameed's household. It was not as structured as the relationship obtaining in an office or in an industrial plant. There was very little or no paperwork at all, even on wage payments. As the NLRC opined: "Just like our local domestic house helpers who receive their wages directly from their employers without any payslip or voucher to acknowledge payment and receipt, we do not expect the case of herein complainant x x x to be any different. It is, therefore, understandable that no payslip or payroll could be presented by respondent agency."

4. ID.; ID.; ID.; ID.; ID.; ID.; IN LIGHT OF THIS EXCHANGE BETWEEN THE AGENCY AND HAMEED, AND THE REAL REASON WHY RESPONDENT BARIT LEFT HAMEED'S EMPLOY. WE ARE AS CONVINCED THAT SHE HAD BEEN PAID HER SALARIES IN FULL FOR HER FIRST EMPLOYMENT CONTRACT, FROM JULY 23, 1999 TO JULY 23, 2001.— The records support the NLRC's appreciation of the merits of Barit's claim. As early as September 28, 2002, the agency inquired with Barit's employer how she was faring in Saudi Arabia, in relation particularly to the case brought against her by the Saudi authorities and to her unpaid salaries. The inquiry was prompted by Barit's mother's inquiry about her situation in Saudi Arabia. On October 3, 2002, the agency received an answer from Hameed advising the agency's President, Edward G. Cue, that Barit had left his residence and was discovered by the Saudi police to be living with Ambrosio and that Hameed could not intervene as she committed "a crime related to martial (sic) affair." Hameed also informed Cue that Barit's passport and air ticket, and the balance of the money due her were handed over to the authorities, pursuant to the law of Saudi Arabia. Additionally, Hameed intimated that if necessary, the agency could seek verification from the Philippine Embassy in Saudi Arabia about what he reported to Cue. On November 15, 2003, the agency received another letter from Hameed in response to Cue's overseas call regarding Barit's unpaid salary. Hameed again informed Cue that "[t]here is no more pending salary with us, all her personal belongings were turned over to the police as this is the law here in Saudi Arabia." Hameed also told Cue that Barit finished her two-year contract and she could not have signed another contract with him if she had not been paid her past salaries. On November 21, 2004, Hameed again wrote Cue informing the agency official that as he said in his previous letters, "everything has been paid to her" and that the Saudi authorities will not release her from jail unless everything is settled, for the Saudi government is very strict when it comes to unpaid salaries. In light of this exchange between the agency and Hameed, and the real reason why Barit left Hameed's employ, we are as convinced as the NLRC that she had been paid her salaries in full for her first employment contract (which the agency facilitated), from July 23, 1999 to July 23, 2001.

APPEARANCES OF COUNSEL

Jose C. Lachica, Jr. for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

BRION, *J.*:

We pass upon the present petition for review on *certiorari*[1] seeking the reversal of the January 23, 2008 Decision[2] and the February 27, 2008 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 101069.[4]

The Antecedents

Summarized below are the relevant facts on record.

On November 21, 2003, respondent Bella Agcaoili-Barit filed a complaint[5] for non-payment of salaries and refund of transportation fare against the petitioner Jones International Manpower Services, Inc. (*agency*), owned and managed by Edward G. Cue.

Barit alleged that she entered into a two-year employment contract (July 23, 1999 to July 23, 2001) with the agency, for its foreign principal in the Kingdom of Saudi Arabia, Mohamad Hameed Al-Naimi (*Hameed*), as a domestic helper with a salary of US$200.00 a month. She did her job diligently and with dedication, but was paid only US$100.00 a month and, starting January 2001, was not paid any salary at all. She extended her employment for another 10 months upon Hameed's request as

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

[2] *Id.* at 16-25; penned by Associate Justice Myrna Dimaranan Vidal, and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr.

[3] *Id.* at 27.

[4] Entitled "*Bella Agcaoili Barit v. NLRC and Jones International Manpower Services, Inc.*"

[5] *Rollo,* p. 161.

her replacement had not yet been deployed by the agency. Hameed refused to pay her salaries even during the extension.

Fed up with her situation, she left Hameed on May 29, 2002 and had a live-in relationship with another Filipino overseas worker, Thomas Ambrosio, allegedly her boyfriend. As the law of Saudi Arabia prohibits such a relationship, she was arrested and imprisoned for more than a year. She claimed that she embraced the Islam religion and was exonerated of the charges against her. She was released from prison on October 14, 2003 and immediately left for home, arriving in the Philippines on October 15, 2003. She demanded payment of her salaries for one year and four months, payment of wage differentials from July 1999 to December 2000, and the refund of her airfare to the Philippines.

In defense, the agency argued that Barit's contract of employment expired on July 23, 2001, without any complaint from her. Her contract was extended for another two years with her consent. It alleged that Barit left her employer without permission. She was then reported missing to the Saudi police who found her staying with Ambrosio. She was subsequently arrested and imprisoned. Hameed was helpless in providing Barit assistance because she violated marital law and the offense was non-employment related. Her passport, air ticket and the balance of her unpaid salaries were turned over to the Saudi authorities pursuant to Saudi law.

The agency denied liability for Barit's alleged unpaid salaries beginning July 2001 as her employment contract, which it facilitated, was only for two years. The contract expired on July 23, 2001. It maintained it had no involvement or participation in the alleged extension of Barit's employment with Hameed. It also argued that it had no liability for the refund of her airfare to the Philippines.

The agency argued further that it was not also liable for Barit's alleged wage differentials from July 1999 to December 2000 and unpaid wages from January 2001 to July 23, 2001. It pointed out that all wages due her were paid in full, while the final wages due her before she left her employment were turned

over to the Saudi government. It stressed that it was highly illogical for Barit to agree to an extension of her employment contract with the same employer who, she claimed, had not paid her salaries and underpaid her wages in the past two years of her contract.

The Compulsory Arbitration Rulings

On March 31, 2004, Labor Arbiter Nieves Vivar-de Castro found Barit's money claims meritorious.[6] She directed the agency and its foreign principal to pay Barit salary differentials from July 23, 1999 to December 31, 2000 and her unpaid salaries from January 2001 to July 23, 2001. The labor arbiter, however, absolved the agency of liability for Barit's alleged unpaid benefits during her second or extended employment as it did not participate or intervene in securing this extended posting.

The agency appealed to the National Labor Relations Commission (*NLRC*). In its decision dated August 28, 2006,[7] the NLRC granted the appeal. It set aside the labor arbiter's ruling and dismissed the complaint, but awarded Barit financial assistance of ₱10,000.00 "for reasons of equity." In the main, the labor arbitration body rejected Barit's submission that she was compelled to leave Hameed because he had been underpaying and was not paying her salaries. The NLRC did not believe that she would agree to continue working for the same employer for another ten (10) months, when the employer had not been paying her salaries before and during her extended employment.

Barit moved for reconsideration, but the NLRC denied the motion in a resolution dated March 30, 2007.[8] She then sought relief from the *CA* through a petition for *certiorari*, charging the NLRC with grave abuse of discretion in setting aside the labor arbiter's decision, and in holding that the agency is not solidarily liable with her employer for the underpayment and non-payment of her wages.

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[6] *Id.* at 262-266.

[7] *Id.* at 125-133.

[8] *Id.* at 139-140.

The CA Decision

In its decision of January 23, 2008,[9] the CA found that the NLRC committed grave abuse of discretion in setting aside the labor arbiter's decision. It upheld the labor arbiter's award to Barit of salary differentials from July 23, 1999 to December 31, 2000 and unpaid salaries from January 2001 to July 23, 2001, to be paid solidarily by the agency and its foreign principal. It brushed aside Hameed's defense, through his letters dated November 15, 2003,[10] January 21, 2004[11] and February 28, 2004,[12] that he had fully paid Barit's salaries since day one of her employment. It declared that absent any evidence, such as payrolls, payslips or acknowledgment receipts, Hameed is deemed to have failed to discharge the *onus probandi* of payment.

Its motion for reconsideration turned down by the CA,[13] the agency now appeals to the Court by way of the present petition for review on *certiorari*.

The Petitioner's Case

Aside from the petition itself,[14] the agency submitted a memorandum,[15] as required by the Court,[16] and a reply[17] to Barit's comment.

Through these submissions, the agency asks for a reversal of the CA decision on the ground that the appellate court erred in (1) affirming the labor arbiter's award to Barit of salary differentials from July 23, 1999 to December 31, 2000 despite

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[9] *Supra* note 2.

[10] *Rollo*, p. 190.

[11] *Id.* at 191.

[12] *Id.* at 298.

[13] *Supra* note 3.

[14] *Supra* note 1.

[15] *Rollo*, pp. 64-76; dated October 16, 2008.

[16] *Id.* at 62-63; Resolution dated August 11, 2008.

[17] *Id.* at 55-60.

the non-inclusion of the claim for underpayment of wages in the complaint, in violation of the NLRC Rules of Procedure; and (2) disregarding the "other similar documents" the agency submitted to the labor arbiter to prove that Barit was fully paid of her wages.

On the first issue, the agency cites Section 7(b) and (d), Rule V of the 2005 Revised Rules of Procedure of the NLRC, as follows:

> b) The position papers of the parties shall cover only those claims and causes of action raised in the complaint or amended complaint excluding those that may have been amicably settled, and accompanied by all supporting documents, including the affidavits of witnesses, which shall take the place of their direct testimony.
>
> d) In their position papers and replies, the parties shall not be allowed to allege facts, or present evidence to prove facts and any cause or causes of action not referred to or included in the original or amended complaint or petition.

The agency argues that the labor arbiter ignored these rules when she took cognizance of Barit's claim for wage underpayment which was mentioned only in the latter's position paper. It points out that in the complaint[18] Barit filed with the NLRC, she underlined only (1) non-payment of wages and (2) refund of transportation fare as her only causes of action. It posits that the labor arbiter and the CA both erred in ignoring the rules.

On a different plane, the agency contends that the award of salary differentials to Barit has no legal basis as she herself admitted that she received a monthly salary of SR600 that, if converted to US dollars in 1999-2000, was equivalent to US$200.00, thus negating the claim of underpayment of wages.

The agency insists that Barit's wages had been paid in full as evidenced by the letters[19] of Hameed which show that all the salaries and other benefits due Barit, including her passport and other belongings, were paid and given to her before she

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[18] *Supra* note 5.

[19] *Supra* notes 10, 11, and 12.

was released from jail and repatriated to the Philippines, in accordance with the laws of Saudi Arabia. The agency bewails the CA's failure to give due consideration to what took place after Barit left her employer in May 2002. Barit was then apprehended by the authorities of Saudi Arabia for living-in with a man who was not her husband. She was imprisoned for having committed a marital offense and was discharged only after she served out her sentence, not exonerated by the court as she claimed. It further contends that the CA failed to give consideration to the policy of the government of Saudi Arabia not to allow the release of foreign workers from prison without their employers paying all their salaries and other benefits, as well as releasing all their personal belongings.

The Case for Respondent Barit

Through her comment[20] and memorandum,[21] filed on June 27, 2008 and October 22, 2008, respectively, Barit prays that the petition be denied for lack of merit.

On the first issue, she argues that the agency resorted to hairsplitting or pure semantics in denying liability for her claim of underpayment of wages. She refers particularly to the agency's contention that wage differentials should not have been awarded to her because she did not include underpayment of wages as a cause of action in her complaint. She insists that the complaint form that she accomplished shows that her cause of action was for non-payment and underpayment of wages as the two terms appear in only one box. In any event, she explains that "to underpay,"[22] means "to pay less than what is normal or required." Since she was paid only half of her wages, there was an amount that was not paid and this was the other half of her wages. There is, therefore, non-payment of this other half. She posits that in this context, she was correct in pursuing her claim of underpayment of wages.

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[20] *Rollo,* pp. 38-53.

[21] *Id.* at 192-207.

[22] As defined by the Merriam Webster Online Dictionary.

On the issue of non-payment of wages, Barit maintains that the CA committed no error in ruling that the agency failed to present substantial evidence to prove due payment of her wages while she was under the employ of Hameed. She takes offense at the agency's submission that the issuance of monthly payslips or the keeping of payrolls is seldom or rarely done in the case of domestic helpers. She argues that with this reasoning, the agency would be placing domestic helpers in a different category of workers, a distinction which is repugnant to the Constitution.

Barit further argues that the burden of proving payment of what is due the employee is upon the employer and, since she is an overseas worker, also upon the employer's recruitment agency. She contends that her employer's letters,[23] purporting to show that her salaries and other benefits had all been paid, are self-serving unofficial statements that have dubious evidentiary value. She reasons out that such letters, which were mentioned in the case cited by the agency in its submissions,[24] cannot be considered as "other documents" for nowhere in that case was the term "other documents" discussed and neither did the ruling give an example of "other similar documents that have the same force and effect as payrolls, employment records and remittances."[25] In the absence of evidence proving payment, Barit submits that her employer and the agency are solidarily liable for the award, pursuant to the law and the rules.

Finally, Barit takes exception to the agency's argument faulting the CA for disregarding other relevant circumstances in the case, such as the completion of her contract without the filing of any claim for unpaid or underpaid salaries on her part, and her supposedly voluntary act of renewing her contract and living-in with another Filipino worker which led to her imprisonment. She maintains that these circumstances, even if considered, do not change the fact that there has been gross violation of Philippine laws by her employer and by the agency, for which they should

[23] *Supra* notes 10, 11, and 12.

[24] *Villar v. NLRC*, 387 Phil. 706 (2000).

[25] *Supra* note 21, at 201.

be made solidarily liable. She explains that she was forced to act because of the long suffering inflicted on her by her employer who refused to pay her salaries in full and compelled her to extend her contract for another year.

The Court's Ruling

The Court, as a rule,[26] is bound by the factual findings of the CA, but has the discretion to reexamine the evidence in a case when a basic conflict exists between the CA's findings of fact and those of the NLRC.[27] In this case, such conflict exists and we need to reexamine their findings to determine: (1) whether Barit had been underpaid and/or had not been paid her wages during her employment in Saudi Arabia; and (2) whether the agency is solidarily liable with the foreign employer if Barit is indeed entitled to her money claims.

We find merit in the petition.

Under the circumstances of Barit's employment in Saudi Arabia, we wonder how she could have and why she remained in the service of the same employer for a considerable period of time if she had been underpaid her salaries or had not been paid at all, and why she had kept silent about her salary situation. Nowhere in the records does it appear that Barit complained about the alleged underpayment and non-payment of her wages with the Philippine labor or consular representatives in Saudi Arabia, or even with the Saudi authorities themselves. Neither is there any showing too that she ever objected to or protested her iniquitous work situation directly with Hameed, if that had really been the case, nor that Barit identified or spoke of any problem that could have prevented her from seeking relief in Saudi Arabia, as the NLRC noted.[28] Barit abruptly left her employer, not because she was being exploited with respect to her wages, but for a personal reason — she left in order to live

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[26] RULES OF COURT, Rule 45, Section 1.

[27] *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals*, 494 Phil. 697 (2005).

[28] *Supra* note 7, at 131, par. 2.

with her boyfriend Ambrosio. As a consequence of what she did, she ran afoul of the law of Saudi Arabia.

This analysis leads us to conclude that the NLRC's conclusion is not without basis; substantial basis exists to believe that Barit received her full salaries for the entire duration of her original contract, or from July 23, 1999 to July 23, 2001. The NLRC further opined that to make the agency liable for Barit's alleged unpaid and underpaid wages on the sole ground that it failed to submit copies of payslips and payrolls is unfair as the agency appears to have taken all available means to secure the necessary documents from Barit's employer to dispute her claims. The NLRC stressed that the labor arbiter should have considered other factors in resolving the case.

The records support the NLRC's appreciation of the merits of Barit's claim. As early as September 28, 2002, the agency inquired with Barit's employer how she was faring in Saudi Arabia, in relation particularly to the case brought against her by the Saudi authorities and to her unpaid salaries.[29] The inquiry was prompted by Barit's mother's inquiry about her situation in Saudi Arabia. On October 3, 2002, the agency received an answer from Hameed[30] advising the agency's President, Edward G. Cue, that Barit had left his residence and was discovered by the Saudi police to be living with Ambrosio and that Hameed could not intervene as she committed "a crime related to martial (sic) affair."[31] Hameed also informed Cue that Barit's passport and air ticket, and the balance of the money due her were handed over to the authorities, pursuant to the law of Saudi Arabia. Additionally, Hameed intimated that if necessary, the agency could seek verification from the Philippine Embassy in Saudi Arabia about what he reported to Cue.

On November 15, 2003, the agency received another letter[32] from Hameed in response to Cue's overseas call regarding Barit's

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[29] *Rollo*, p. 115.

[30] *Id.* at 189.

[31] *Ibid*.

[32] *Id.* at 190.

unpaid salary. Hameed again informed Cue that "[t]here is no more pending salary with us, all her personal belongings were turned over to the police as this is the law here in Saudi Arabia." Hameed also told Cue that Barit finished her two-year contract and she could not have signed another contract with him if she had not been paid her past salaries.

On November 21, 2004, Hameed again wrote Cue[33] informing the agency official that as he said in his previous letters, "everything has been paid to her" and that the Saudi authorities will not release her from jail unless everything is settled, for the Saudi government is very strict when it comes to unpaid salaries.

In light of this exchange between the agency and Hameed, and the real reason why Barit left Hameed's employ, we are as convinced as the NLRC that she had been paid her salaries in full for her first employment contract (which the agency facilitated), from July 23, 1999 to July 23, 2001.

The argument that absent the payslips or payrolls, the agency failed to present proof of payment of Barit's claim should be viewed in the context of the realities of domestic service. The relationship between Hameed and his family, on the one hand, and Barit, on the other hand, was largely confined within Hameed's household. It was not as structured as the relationship obtaining in an office or in an industrial plant. There was very little or no paperwork at all, even on wage payments. As the NLRC opined:

> Just like our local domestic house helpers who receive their wages directly from their employers without any payslip or voucher to acknowledge payment and receipt, we do not expect the case of herein complainant x x x to be any different. It is, therefore, understandable that no payslip or payroll could be presented by respondent agency.[34]

We find this NLRC view to be a fair and credible assessment of the employment relationship between Barit and her Saudi employer, at least, in relation to the payment of Barit's wages.

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[33] *Id.* at 191.

[34] *Supra* note 7, at 128-129.

In sum, we hold that the NLRC committed no grave abuse of discretion in dismissing the complaint. The CA thus erred in granting the petition for *certiorari.*

WHEREFORE, premises considered, the assailed Decision and Resolution of the Court of Appeals are set aside, and the Decision of the NLRC dated August 28, 2006 is *REINSTATED.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 186227. July 20, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALLEN UDTOJAN MANTALABA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; VIOLATION OF THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); SALE OF DANGEROUS DRUGS; ELEMENTS THEREOF.— What determines if there was, indeed, a sale of dangerous drugs in a buy-bust operation is proof of the concurrence of all the elements of the offense, to wit: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.

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

[**] Additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno per Special Order No. 1040 dated July 6, 2011.

2. ID.; ID.; ID.; ID.; BUY BUST OPERATION, SATISFACTORILY CONDUCTED IN CASE AT BAR.— From the above testimony of the prosecution witness, it was well established that the elements have been satisfactorily met. The seller and the poseur-buyer were properly identified. The subject dangerous drug, as well as the marked money used, were also satisfactorily presented. The testimony was also clear as to the manner in which the buy-bust operation was conducted. To corroborate the testimony of PO2 Pajo, the prosecution presented the testimony of Police Inspector Virginia Sison-Gucor, a forensic chemical officer, who confirmed that the plastic containing white crystalline substance was positive for methamphetamine hydrochloride and that the petitioner was in possession of the marked money used in the buy-bust operation. x x x The above only confirms that the buy-bust operation really occurred. Once again, this Court stresses that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors. It is often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities.

3. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF TRIAL COURT BINDING UPON THE SUPREME COURT WHEN AFFIRMED BY THE APPELLATE COURT.— The rule is that the findings of the trial court on the credibility of witnesses are entitled to great respect because trial courts have the advantage of observing the demeanor of the witnesses as they testify. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.

4. CRIMINAL LAW; VIOLATION OF THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS THEREOF, PRESENT IN CASE AT BAR.— In connection therewith, the RTC, as affirmed by the CA, was also correct in finding that the appellant is equally guilty of violation of Section 11 of RA 9165, or the illegal possession of dangerous drug. As an incident to the lawful arrest of the appellant after the consummation of the buy-bust operation, the arresting officers had the authority to search the person

of the appellant. In the said search, the appellant was caught in possession of 0.6131 grams of *shabu*. In illegal possession of dangerous drugs, the elements are: (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.

5. REMEDIAL LAW; EVIDENCE; VIOLATION OF THE DANGEROUS DRUGS ACT; DEFENSES OF DENIAL AND FRAME UP VIEWED AS A COMMON AND STANDARD DEFENSE PLOY THEREIN.— Incidentally, the defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of the Dangerous Drugs Act. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence.

6. CRIMINAL LAW; VIOLATION OF THE COMPREHENSIVE DANGEROUS ACT OF 2002 (R.A. NO. 9165); CHAIN OF CUSTODY RULE UNDER SECTION 21 THEREOF; CASE AT BAR.— Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer/team. Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In this particular case, it is undisputed that police officers Pajo and Simon were members of the buy-bust operation team. The fact that it was Inspector Ferdinand B. Dacillo who signed the letter-request for laboratory examination does not in any way affect the integrity of the items confiscated. All the requirements for the proper chain of custody had been observed. x x x As ruled by this Court, what is crucial in the chain of custody is the marking of the confiscated item which, in the present case, was complied with.

7. ID.; ID.; VIOLATION OF SECTION 5 THEREOF; EFFECT OF MINORITY IN IMPOSITION OF APPROPRIATE PENALTY THEREFOR; CASE AT BAR.— In finding the guilt beyond reasonable doubt of the appellant for violation of Section 5 of RA 9165, the RTC imposed the penalty of *reclusion perpetua* as mandated in Section 98 of the same law. A violation of Section 5 of RA 9165 merits the penalty of life imprisonment to death; however, in Section 98, it is provided that, where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided in the same law shall be *reclusion perpetua* to death. Basically, this means that the penalty can now be graduated as it has adopted the technical nomenclature of penalties provided for in the Revised Penal Code. x x x Consequently, the privileged mitigating circumstance of minority can now be appreciated in fixing the penalty that should be imposed. The RTC, as affirmed by the CA, imposed the penalty of *reclusion perpetua* without considering the minority of the appellant. Thus, applying the rules stated above, the proper penalty should be one degree lower than *reclusion perpetua*, which is *reclusion temporal*, the privileged mitigating circumstance of minority having been appreciated. Necessarily, also applying the Indeterminate Sentence Law (ISLAW), the minimum penalty should be taken from the penalty next lower in degree which is *prision mayor* and the maximum penalty shall be taken from the medium period of *reclusion temporal*, there being no other mitigating circumstance nor aggravating circumstance. The ISLAW is applicable in the present case because the penalty which has been originally an indivisible penalty (*reclusion perpetua* to death), where ISLAW is inapplicable, became a divisible penalty (*reclusion temporal*) by virtue of the presence of the privileged mitigating circumstance of minority. Therefore, a penalty of six (6) years and one (1) day of *prision mayor*, as minimum, and fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, would be the proper imposable penalty.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

For this Court's consideration is the Decision[1] dated July 31, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00240-MIN, affirming the Omnibus Judgment[2] dated September 14, 2005, of the Regional Trial Court, Branch 1, Butuan City in Criminal Case No. 10250 and Criminal Case No. 10251, finding appellant Allen Udtojan Mantalaba, guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (RA) 9165.

The facts, as culled from the records, are the following:

The Task Force Regional Anti-Crime Emergency Response (RACER) in Butuan City received a report from an informer that a certain Allen Mantalaba, who was seventeen (17) years old at the time, was selling *shabu* at Purok 4, Barangay 3, Agao District, Butuan City. Thus, a buy-bust team was organized, composed of PO1 Randy Pajo, PO1 Eric Simon and two (2) poseur-buyers who were provided with two (2) pieces of ₱100 marked bills to be used in the purchase.

Around 7 o'clock in the evening of October 1, 2003, the team, armed with the marked money, proceeded to Purok 4, Barangay 3, Agao District, Butuan City for the buy-bust operation. The two poseur-buyers approached Allen who was sitting at a corner and said to be in the act of selling *shabu*. PO1 Pajo saw the poseur-buyers and appellant talking to each other. Afterwards, the appellant handed a sachet of *shabu* to one of the poseur-buyers and the latter gave the marked money to the appellant. The poseur-buyers went back to the police officers and told them that the transaction has been completed. Police officers Pajo and Simon rushed to the place and handcuffed the appellant as he was leaving the place.

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[1] Penned by Associate Justice Ruben C. Ayson, with Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias, concurring.

[2] Penned by Judge Eduardo S. Casals.

The police officers, still in the area of operation and in the presence of *barangay* officials Richard S. Tandoy and Gresilda B. Tumala, searched the appellant and found a big sachet of *shabu*. PO1 Simon also pointed to the *barangay* officials the marked money, two pieces of ₱100 bill, thrown by the appellant on the ground.

After the operation, and in the presence of the same *barangay* officials, the police officers made an inventory of the items recovered from the appellant which are: (1) one big sachet of *shabu* which they marked as RMP-1-10-01-03; (2) one small sachet of *shabu* which they marked as RMP 2-10-01-03; and (3) two (2) pieces of one hundred pesos marked money and a fifty peso (₱50) bill. Thereafter, a letter-request was prepared by Inspector Ferdinand B. Dacillo for the laboratory examination of the two (2) sachets containing a crystalline substance, ultra-violet examination on the person of the appellant as well as the two (2) pieces of one hundred pesos marked money. The request was brought by PO1 Pajo and personally received by Police Inspector Virginia Sison-Gucor, Forensic Chemical Officer of the Regional Crime Laboratory Office XII Butuan City, who immediately conducted the examination. The laboratory examination revealed that the appellant tested positive for the presence of bright orange ultra-violet fluorescent powder; and the crystalline substance contained in two sachets, separately marked as RMP-1-10-01-03 and RMP-2-10-01-03, were positively identified as methamphetamine hydrochloride.

Thereafter, two separate Informations were filed before the RTC of Butuan City against appellant for violation of Sections 5 and 11 of RA 9165, stating the following:

Criminal Case No. 10250

That on or about the evening of October 1, 1003 at Purok 4, Barangay 3, Agao, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully, and feloniously sell zero point zero four one two (0.0412) grams of methamphetamine hydrochloride, otherwise known as *shabu* which is a dangerous drug.

CONTRARY TO LAW : (Violation of Sec. 5, Art. II of R.A. No. 9165).[3]

Criminal Case No. 10251

That on or about the evening of October 1, 2003 at Purok 4, Barangay 3, Agao, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously possess zero point six one three one (0.6131) grams of methamphetamine hydrochloride, otherwise known as *shabu*, which is a dangerous drug.

CONTRARY TO LAW: (Violation of Section 11, Art. II of R.A. No. 9165).[4]

Eventually, the cases were consolidated and tried jointly.

Appellant pleaded NOT GUILTY to the charges against him. Thereafter, trial on the merits ensued.

In its Omnibus Judgment[5] dated September 14, 2005, the RTC found the appellant guilty beyond reasonable doubt of the offense charged, the dispositive portion of which, reads:

WHEREFORE, the Court hereby finds accused Allen Mantalaba *y* Udtojan GUILTY beyond reasonable doubt in Criminal Case No. 10250 for selling *shabu*, a dangerous drug, as defined and penalized under Section 5, Article II of Republic Act No. 9165. As provided for in Sec. 98 of R.A. 9165, where the offender is a minor, the penalty for acts punishable by life imprisonment to death shall be *reclusion perpetua* to death. As such, Allen Mantalaba *y* Udtojan is hereby sentenced to *RECLUSION PERPETUA* and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

In Criminal Case No. 10251, the Court likewise finds accused Allen Mantalaba *y* Udtojan GUILTY beyond reasonable doubt for illegally possessing *shabu*, a dangerous drug, weighing 0.6131 gram as defined and penalized under Section 11, Article II of Republic Act No. 9165 and accused being a minor at the time of the commission of the offense, after applying the Indeterminate Sentence Law, he is accordingly sentenced to six (6) years and one (1) day, as minimum,

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[3] Records, Crim. Case No. 10250, pp. 1-2.

[4] Records, Crim. Case No. 10251, pp. 1-2.

[5] CA *rollo*, pp. 62-78.

to eight (8) years, as maximum of *prision mayor* and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).

SO ORDERED.[6]

The CA affirmed *in toto* the decision of the RTC. It disposed of the case as follows:

WHEREFORE, the Decision of the Regional Trial Court, Branch 1, Butuan City dated September 14, 2005 appealed from finding the accused-appellant Allen Udtojan Mantalaba guilty beyond reasonable doubt with the crime of Violation of Section 5 and Section 11, Article II of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act, is AFFIRMED *in toto*, with costs against accused-appellant.

SO ORDERED.[7]

Thus, the present appeal.

Appellant states the lone argument that the lower court gravely erred in convicting him of the crime charged despite failure of the prosecution to prove his guilt beyond reasonable doubt.

According to appellant, there was no evidence of actual sale between him and the poseur-buyer. He also argues that the chain of custody of the seized *shabu* was not established. Finally, he asserts that an accused should be presumed innocent and that the burden of proof is on the prosecution.

The petition is unmeritorious.

Appellant insists that the prosecution did not present any evidence that an actual sale took place. However, based on the testimony of PO1 Randy Pajo, there is no doubt that the buy-bust operation was successfully conducted, thus:

PROS. RUIZ:
Q: Will you explain to this Honorable Court why did you conduct and how did you conduct your buy-bust operation at the time?
A: We conducted a buy-bust operation because of the report from

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

[7] *Id.* at 122.

our civilian assets that Allen Mantalaba was engaged in drug trade and selling *shabu*. And after we evaluated this Information we informed Inspector Dacillo that we will operate this accused for possible apprehension.

Q: Before you conducted your buy-bust operation, what procedure did you take?
A: We prepared the operational plan for buy-bust against the suspect. We prepared a request for powder dusting for our marked moneys to be used for the operation.

Q: Did you use marked moneys in this case?

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Q: Then armed with these marked moneys, what steps did you take next?
A: After briefing of our team, we proceeded immediately to the area.

Q: You mentioned of poseur-buyer, what would the poseur-buyer do?
A: We made an arrangement with the poseur-buyer that during the buying of *shabu* there should be a pre-arranged signal of the poseur-buyer to the police officer.

Q: What happened when your poseur-buyer who, armed with this marked moneys, approached the guy who was selling *shabu* at that time?
A: The poseur-buyer during that time gave the marked moneys to the suspect.

Q: Where were you when this poseur-buyer gave the moneys to the suspect?
A: We positioned ourselves about 10 meters away from the area of the poseur-buyer and the suspect.

Q: You mentioned of the pre-arranged signal, what would this be?
A: This is a case-to-case basis, your Honor, in the pre-arrangement signal because in the pre-arranged signal we used a cap and a towel. (sic) In the case, of this suspect, there was no towel there was no cap at the time of giving the *shabu* and the marked moneys to the suspect and considering also that that was about 7:00 o'clock in the evening. The poseur-buyer

immediately proceeded to us and informed us that the shabu was already given by the suspect.

Q: What did you do next after that?
A: After examining the sachet of *shabu* that it was really the plastic containing white [crystalline] substance, we immediately approached the suspect.

Q: Who was with a (sic) suspect when you conducted the buy-bust operation[?] Was he alone or did he had (sic) any companion at that time?
A: He was alone.

Q: When you rushed up to the suspect what did you do?
A: We informed the suspect that we are the police officers and he has this constitutional rights and we immediately handcuffed him.

Q: Where were the marked moneys?
A: The marked moneys were thrown on the ground. After we handcuffed the suspect, we did not immediately searched in. We called the attention of the *barangay* officials to witness the search of the suspect.

Q: How many sachets of *shabu* have you taken from the suspect during the buy-bust operation?
A: We took from the possession of the suspect one big sachet of *shabu*.

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Q: What was the result of the searched (sic) for him?

A: We confiscated one big sachet of suspected *shabu* and the retrieval of 2 pieces of 100 peso bills as marked moneys.[8]

What determines if there was, indeed, a sale of dangerous drugs in a buy-bust operation is proof of the concurrence of all the elements of the offense, to wit: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[9] From the above testimony of the prosecution witness, it was well established

[8] TSN, October 27, 2004, pp. 7-9.

[9] *People v. Daria, Jr.*, G.R. No. 186138, September 11, 2009, 599 SCRA 688, 701, citing *People v. Dumlao*, 562 SCRA 762, 770 (2008).

that the elements have been satisfactorily met. The seller and the poseur-buyer were properly identified. The subject dangerous drug, as well as the marked money used, were also satisfactorily presented. The testimony was also clear as to the manner in which the buy-bust operation was conducted.

To corroborate the testimony of PO2 Pajo, the prosecution presented the testimony of Police Inspector Virginia Sison-Gucor, a forensic chemical officer, who confirmed that the plastic containing white crystalline substance was positive for methamphetamine hydrochloride and that the petitioner was in possession of the marked money used in the buy-bust operation, thus:

PROS. RUIZ:

Q: What was the result of your examination or what were your findings on the sachets of suspected *shabu*?

A: After the preliminary and confirmatory tests were conducted on the stated specimen, the result was positive for methamphetamine hydrochloride, a dangerous drug.

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Q: What were your findings when you examined the living person of the accused, as well as the marked money mentioned in this report?

A: According to my report, the findings for the living person of Allen Udtojan Mantalaba is positive to the test for the presence of bright orange ultra-violet flourescent powder. x x x[10]

The above only confirms that the buy-bust operation really occurred. Once again, this Court stresses that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors.[11] It is often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities.[12] In

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[10] TSN, March 2, 2005, pp. 7-9.

[11] *People v. Chua Uy*, 384 Phil. 70, 85 (2000).

[12] *Id*.

People v. Roa,[13] this Court had the opportunity to expound on the nature and importance of a buy-bust operation, ruling that:

In the first place, coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86[14] of Republic Act No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug-related matters," the provision does not, by so saying, make PDEA's participation a condition *sine qua non* for every buy-bust operation. After all, a buy-bust is just a form of an in *flagrante* arrest sanctioned by Section 5, Rule 113[15] of the Rules of the Court, which police authorities may rightfully resort to in

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[13] G.R. No. 186134, May 6, 2010, 620 SCRA 359.

[14] **Section 86.** *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions*. - The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves. x x x.

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Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: *Provided, however*, That when the investigation being conducted by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided, further*, **That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters**. (Emphasis supplied)

[15] **Section 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**;

(b) x x x; and

(c) x x x.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

apprehending violators of Republic Act No. 9165 in support of the PDEA.[16] A buy-bust operation is not invalidated by mere non-coordination with the PDEA.

Neither is the lack of prior surveillance fatal. The case of *People v. Lacbanes*[17] is quite instructive:

In *People v. Ganguso*,[18] it has been held that prior surveillance is not a prerequisite for the validity of an entrapment operation, especially when the buy-bust team members were accompanied to the scene by their informant. In the instant case, the arresting officers were led to the scene by the poseur-buyer. Granting that there was no surveillance conducted before the buy-bust operation, this Court held in *People v. Tranca*,[19] that there is no rigid or textbook method of conducting buy-bust operations. Flexibility is a trait of good police

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[16] Even the Implementing Rules and Regulation (IRR) of Republic Act No. 9165 does not make PDEA's participation a mandatory requirement before the other law enforcement agencies may conduct buy-bust operations. Section 86(a) of the said IRR provides:

> (a) Relationship/Coordination between PDEA and Other Agencies - The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA: ***Provided,* that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations**; *Provided, further*, that, in any case said agencies shall inform the PDEA of their anti-drug operations within twenty-four hours from the time of the actual custody of the suspects or seizure of said drugs and substances, as well as paraphernalia and transport equipment used in illegal activities involving such drugs and/or substances, and shall regularly update the PDEA on the status of the cases involving the said anti-drug operations; *Provided furthermore,* that raids, seizures, and other anti-drug operations conducted by the PNP, the NBI, and other law enforcement agencies prior to the approval of this IRR shall be valid and authorized; ***Provided, finally,* that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court**. (Emphasis supplied.)

[17] 336 Phil. 933, 941 (1997).

[18] G.R. No. 115430, November 23, 1995, 250 SCRA 268, 278-279.

[19] G.R. No. 110357, August 17, 1994, 235 SCRA 455, 463.

work. The police officers may decide that time is of the essence and dispense with the need for prior surveillance.[20]

The rule is that the findings of the trial court on the credibility of witnesses are entitled to great respect because trial courts have the advantage of observing the demeanor of the witnesses as they testify. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[21]

In connection therewith, the RTC, as affirmed by the CA, was also correct in finding that the appellant is equally guilty of violation of Section 11 of RA 9165, or the illegal possession of dangerous drug. As an incident to the lawful arrest of the appellant after the consummation of the buy-bust operation, the arresting officers had the authority to search the person of the appellant. In the said search, the appellant was caught in possession of 0.6131 grams of *shabu*. In illegal possession of dangerous drugs, the elements are: (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.[22]

As a defense, appellant denied that he owns the *shabu* and the marked money confiscated from him. However, based on his cross-examination, such denial was not convincing enough to merit reasonable doubt, thus:

PROS. RUIZ:
Q: So it is true now that when these police officers passed you by they recovered from your possession one sachet of *shabu*?
A: Yes, sir.

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[20] *People v. Roa, supra* note 13, at 368-370.

[21] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 268-269, citing *People v. Naquita*, 560 SCRA 430, 444, (2008); *People v. Concepcion*, 556 SCRA 421, 440 (2008); *People v. Santiago*, 539 SCRA 198, 217 (2007).

[22] *People v. Encila*, G.R. No. 182419, February 10, 2009, 578 SCRA 341, 361, citing *People v. Negata*, 452 Phil. 846, 853 (2003).

Q: And it is true that after you were arrested and when you were searched they also found another sachet of *shabu* also in your pocket?
A: Yes, sir.

Q: And you mentioned in your counter-affidavit marked as Exhibit H for the prosecution that no money was taken from you because you have none at that time, is it not?
A: None sir, only the ₱250.00 which Jonald Ybanoso left to me.

Q: This ₱250.00 which Jonald left to you was also confiscated from your possession?
A: Yes, sir.

Q: Were not ₱200 of the ₱250.00 was thrown to the ground during the time you were arrested by the police?
A: No, sir.

Q: It was taken from your possession?
A: Yes, sir.

Q: And when the policemen brought you to the crime laboratory and had your hands tested for ultra-violet fluorescent powder, your hands tested positively for the presence of the said powder?
A: Yes, sir.[23]

Incidentally, the defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of the Dangerous Drugs Act. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence.[24]

Another contention raised by the appellant is the failure of the prosecution to show the chain of custody of the recovered dangerous drug. According to him, while it was Inspector Ferdinand B. Dacillo who signed the request for laboratory examination, only police officers Pajo and Simon were present in the buy-bust operation.

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[23] TSN, June 3, 2005, pp. 11-12. (Emphasis supplied.)

[24] *People v. Lazaro, Jr., supra* note 21, at 269, citing *People v. Naquita, supra* note 21; *People v. Concepcion, supra* note 21; *People v. Santiago, supra* note 21.

Section 21 of RA 9165 reads:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer/team.[25] Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible.[26] 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.[27] In this particular

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[25] *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842, citing *People v. Sta. Maria*, 516 SCRA 621 (2007), citing Section 21.a. of the Implementing Rules and Regulation of Republic Act No. 9165.

Section 21. (a) *x x x 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.

[26] *Id.* at 842-843.

[27] *Id.* at 843.

case, it is undisputed that police officers Pajo and Simon were members of the buy-bust operation team. The fact that it was Inspector Ferdinand B. Dacillo who signed the letter-request for laboratory examination does not in any way affect the integrity of the items confiscated. All the requirements for the proper chain of custody had been observed. As testified to by PO2 Pajo regarding the procedure undertaken after the consummation of the buy-bust operation:

Prosecutor
Q: What did you do next after that?
A: After examining the sachet of *shabu* that it was really the plastic containing white [crystalline] in substance, we immediately approached the suspect.

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Q: When you rushed up to the suspect, what did you do?
A: We informed the suspect that we are the police officers and he has this [constitutional] rights and immediately handcuffed him.

Q: Where were the marked moneys?
A: The marked moneys were thrown on the ground. After we handcuffed the suspect, we did not immediately searched in. We called the attention of the *barangay* officials to witness the search of the suspect.

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Q: Now, before you searched the suspect you requested the presence of the *barangay* officials. Now, when these *barangay* officials were present, what did you do on the suspect?
A: We immediately searched the suspect.

Q: What was the result of the searched for him? (sic)
A: We confiscated one big sachet of suspected *shabu* and the retrieval of 2 pieces of ₱100.00 peso bills as marked moneys.

Q: You said the suspect threw the marked moneys when you searched him, where were the marked moneys?
A: On the ground.

Q: Who picked these marked moneys?
A: I was the one who picked the marked moneys.

Q: And then after you had picked the marked moneys and after you had the 2 pieces of sachets of *shabu*; one during the buy-bust and the other one during the search, what did you do [with] these 2 pieces of sachets of *shabu* and the marked moneys?
A: I recorded those items recovered, sir, during the search to the Certificate of Inventory.[28]

As ruled by this Court, what is crucial in the chain of custody is the marking of the confiscated item which, in the present case, was complied with, thus:

Crucial in proving chain of custody is the marking[29] of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus, it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.[30]

Anent the age of the appellant when he was arrested, this Court finds it appropriate to discuss the effect of his minority in his suspension of sentence. The appellant was seventeen (17) years old when the buy-bust operation took place or when the said offense was committed, but was no longer a minor at the time of the promulgation of the RTC's Decision.

It must be noted that RA 9344 took effect on May 20, 2006, while the RTC promulgated its decision on this case on September 14, 2005, when said appellant was no longer a minor. The RTC did not suspend the sentence in accordance with

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[28] TSN, October 27, 2004, pp. 9-11.

[29] In criminal procedure, "marking" means the "placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items/s seized" (*People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 164).

[30] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 357.

Article 192 of P.D. 603, *The Child and Youth Welfare Code*[31] and Section 32 of A.M. No. 02-1-18-SC, the *Rule on Juveniles in Conflict with the Law*,[32] the laws that were applicable at the time of the promulgation of judgment, because the imposable penalty for violation of Section 5 of RA 9165 is life imprisonment to death.

It may be argued that the appellant should have been entitled to a suspension of his sentence under Sections 38 and 68 of RA 9344 which provide for its retroactive application, thus:

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[31] ART. 192. *Suspension of Sentence and Commitment of Youthful Offender*. — If after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such minor to the custody or care of the Department of Social Welfare, or to any training institution operated by the government, or duly licensed agencies or any other responsible person, until he shall have reached twenty-one years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare or the agency or responsible individual under whose care he has been committed.

Upon receipt of the application of the youthful offender for suspension of his sentence, the court may require the Department of Social Welfare and Development to prepare and submit to the court a social case study report over the offender and his family.

The youthful offender shall be subject to visitation and supervision by a representative of the Department of Social Welfare and Development or any duly licensed agency or such other officer as the Court may designate subject to such conditions as it may prescribe.

The benefits of this article shall not apply to a youthful offender who has once enjoyed suspension of sentence under its provisions or to one who is convicted for an offense punishable by death or life imprisonment or to one who is convicted of an offense by the Military Tribunals. (As amended by P.D. Nos. 1179 and 1210) (Emphasis theirs).

[32] Sec. 32. *Automatic Suspension of Sentence and Disposition Orders.*– The sentence shall be suspended without need of application by the juvenile in conflict with the law. The court shall set the case for disposition conference within fifteen (15) days from the promulgation of sentence which shall be attended by the social worker of the Family Court, the juvenile, and his parents or guardian *ad litem*. It shall proceed to issue any or a combination of the following disposition measures best suited to the rehabilitation and welfare of the juvenile:

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 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.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court [Rule] on Juveniles in Conflict with the Law.

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Sec. 68. *Children Who Have Been Convicted and are Serving Sentence.* - Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time of the commission of the offense for which they were convicted and are serving sentence,

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1. Care, guidance, and supervision orders;

2. Community service orders;

3. Drug and alcohol treatment;

4. Participation in group counselling and similar activities;

5. Commitment to the Youth Rehabilitation Center of the DSWD or other centers for juveniles in conflict with the law authorized by the Secretary of the DSWD.

The Social Services and Counselling Division (SSCD) of the DSWD shall monitor the compliance by the juvenile in conflict with the law with the disposition measure and shall submit regularly to the Family Court a status and progress report on the matter. The Family Court may set a conference for the evaluation of such report in the presence, if practicable, of the juvenile, his parents or guardian, and other persons whose presence may be deemed necessary.

The benefits of suspended sentence shall not apply to a juvenile in conflict with the law who has once enjoyed suspension of sentence, or to one who is convicted of an offense punishable by death, *reclusion perpetua* or life imprisonment, or when at the time of promulgation of judgment the juvenile is already eighteen (18) years of age or over. (Emphasis theirs).

shall likewise benefit from the retroactive application of this Act. x x x

However, this Court has already ruled in *People v. Sarcia*[33] that while Section 38 of RA 9344 provides that suspension of sentence can still be applied even if the child in conflict with the law is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt, Section 40 of the same law limits the said suspension of sentence until the child reaches the maximum age of 21. The provision states:

SEC. 40. *Return of the Child in Conflict with the Law to Court.* - If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the condition of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

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.**

Hence, the appellant, who is now beyond the age of twenty-one (21) years can no longer avail of the provisions of Sections 38 and 40 of RA 9344 as to his suspension of sentence, because such is already moot and academic. It is highly noted that this would not have happened if the CA, when this case was under its jurisdiction, suspended the sentence of the appellant. The records show that the appellant filed his notice of appeal at the age of 19 (2005), hence, when RA 9344 became effective in 2006, appellant was 20 years old, and the case having been elevated to the CA, the latter should have suspended the sentence of the appellant because he was already entitled to the provisions of Section 38 of the same law, which now allows the suspension

[33] G.R. No. 169641, September 10, 2009, 599 SCRA 20, 50.

of sentence of minors regardless of the penalty imposed as opposed to the provisions of Article 192 of P.D. 603.[34]

Nevertheless, the appellant shall be entitled to appropriate disposition under Section 51 of RA No. 9344, which provides for the confinement of convicted children as follows:[35]

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 coordination with the DSWD.

In finding the guilt beyond reasonable doubt of the appellant for violation of Section 5 of RA 9165, the RTC imposed the penalty of *reclusion perpetua* as mandated in Section 98[36] of the same law. A violation of Section 5 of RA 9165 merits the penalty of life imprisonment to death; however, in Section 98, it is provided that, where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided in the same law shall be *reclusion perpetua* to death. Basically, this means that the penalty can now be graduated as it has adopted the technical nomenclature of penalties provided for in the Revised Penal Code. The said principle was enunciated by this Court in *People v. Simon*,[37] thus:

We are not unaware of cases in the past wherein it was held that, in imposing the penalty for offenses under special laws, the rules

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[34] *See* note 31.

[35] *People v. Sarcia, supra* note 33, at 50-51.

[36] Section 98. *Limited Applicability of the Revised Penal Code*. – Notwithstanding any law, rule or regulation to the contrary, the provisions of the Revised Penal Code (Act No. 3814), as amended, shall not apply to the provisions of this Act, except in the case of minor offenders. **Where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided herein shall be *reclusion perpetua* to death.** (Emphasis supplied.)

[37] G.R. No. 93028, July 29, 1994, 234 SCRA 555.

on mitigating or aggravating circumstances under the Revised Penal Code cannot and should not be applied. A review of such doctrines as applied in said cases, however, reveals that the reason therefor was because the special laws involved provided their own specific penalties for the offenses punished thereunder, and which penalties were not taken from or with reference to those in the Revised Penal Code. Since the penalties then provided by the special laws concerned did not provide for the minimum, medium or maximum periods, it would consequently be impossible to consider the aforestated modifying circumstances whose main function is to determine the period of the penalty in accordance with the rules in Article 64 of the Code.

This is also the rationale for the holding in previous cases that the provisions of the Code on the graduation of penalties by degrees could not be given supplementary application to special laws, since the penalties in the latter were not components of or contemplated in the scale of penalties provided by Article 71 of the former. The suppletory effect of the Revised Penal Code to special laws, as provided in Article 10 of the former, cannot be invoked where there is a legal or physical impossibility of, or a prohibition in the special law against, such supplementary application.

The situation, however, is different where although the offense is defined in and ostensibly punished under a special law, the penalty therefor is actually taken from the Revised Penal Code in its technical nomenclature and, necessarily, with its duration, correlation and legal effects under the system of penalties native to said Code. When, as in this case, the law involved speaks of *prision correccional*, in its technical sense under the Code, it would consequently be both illogical and absurd to posit otherwise.

xxx xxx xxx

Prefatorily, what ordinarily are involved in the graduation and consequently determine the degree of the penalty, in accordance with the rules in Article 61 of the Code as applied to the scale of penalties in Article 71, are the stage of execution of the crime and the nature of the participation of the accused. However, under paragraph 5 of Article 64, when there are two or more ordinary mitigating circumstances and no aggravating circumstance, the penalty shall be reduced by one degree. Also, **the presence of privileged mitigating circumstances, as provided in Articles 67 and 68, can reduce the penalty by one or two degrees, or even more.**

These provisions of Articles 64(5), 67 and 68 should not apply *in toto* in the determination of the proper penalty under the aforestated second paragraph of Section 20 of Republic Act No. 6425, to avoid anomalous results which could not have been contemplated by the legislature.

Thus, paragraph 5 of Article 61 provides that when the law prescribes a penalty in some manner not specially provided for in the four preceding paragraphs thereof, the courts shall proceed by analogy therewith. Hence, when the penalty prescribed for the crime consists of one or two penalties to be imposed in their full extent, the penalty next lower in degree shall likewise consist of as many penalties which follow the former in the scale in Article 71. If this rule were to be applied, and since the complex penalty in this case consists of three discrete penalties in their full extent, that is, *prision correccional, prision mayor* and *reclusion temporal*, then one degree lower would be *arresto menor, destierro* and *arresto mayor*. There could, however, be no further reduction by still one or two degrees, which must each likewise consist of three penalties, since only the penalties of fine and public censure remain in the scale.

The Court rules, therefore, that while modifying circumstances may be appreciated to determine the periods of the corresponding penalties, or even reduce the penalty by degrees, in no case should such graduation of penalties reduce the imposable penalty beyond or lower than *prision correccional*. It is for this reason that the three component penalties in the second paragraph of Section 20 shall each be considered as an independent principal penalty, and that the lowest penalty should in any event be *prision correccional* in order not to depreciate the seriousness of drug offenses. *Interpretatio fienda est ut res magis valeat quam pereat.* Such interpretation is to be adopted so that the law may continue to have efficacy rather than fail. A perfect judicial solution cannot be forged from an imperfect law, which impasse should now be the concern of and is accordingly addressed to Congress.[38]

Consequently, the privileged mitigating circumstance of minority[39] can now be appreciated in fixing the penalty that should be imposed. The RTC, as affirmed by the CA, imposed

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[38] *Id.* at 573-579. (Emphasis supplied.)

[39] SEC. 6. *Minimum Age of Criminal Responsibility.* - A child fifteen (15) years of age or under at the time of the commission of the offense shall

the penalty of *reclusion perpetua* without considering the minority of the appellant. Thus, applying the rules stated above, the proper penalty should be one degree lower than *reclusion perpetua*, which is *reclusion temporal*, the privileged mitigating circumstance of minority having been appreciated. Necessarily, also applying the Indeterminate Sentence Law (ISLAW), the minimum penalty should be taken from the penalty next lower in degree which is *prision mayor* and the maximum penalty shall be taken from the medium period of *reclusion temporal*, there being no other mitigating circumstance nor aggravating circumstance.[40] The ISLAW is applicable in the present case because the penalty which has been originally an indivisible penalty (*reclusion perpetua* to death), where ISLAW is inapplicable, became a divisible penalty (*reclusion temporal*) by virtue of the presence of the privileged mitigating circumstance of minority. Therefore, a penalty of six (6) years and one (1) day of *prision mayor*, as minimum, and fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, would be the proper imposable penalty.

WHEREFORE, the Decision dated July 31, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00240-MIN, affirming the Omnibus Judgment dated September 14, 2005 of the Regional Trial Court, Branch 1, Butuan City in Criminal Case No. 10250 and Criminal Case No. 10251, finding appellant Allen Udtojan Mantalaba, guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of RA 9165 is hereby *AFFIRMED* with the *MODIFICATION* that the penalty that should be imposed

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be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, **unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.** (Emphasis supplied.)

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

[40] *See* Revised Penal Code, Art. 64.

on appellant's conviction of violation of Section 5 of RA 9165, is six (6) years and one (1) day of *prision mayor*, as minimum, and fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Abad,* and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 187246. July 20, 2011]

EDWIN TABAO *y* PEREZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT, WHEN AFFIRMED BY THE CA, WILL NOT NORMALLY BE DISTURBED BY THE SUPREME COURT; CASE AT BAR.— As a general rule, findings of fact of the trial court, especially when affirmed by the CA, are binding and conclusive upon this Court; we will not normally disturb these factual findings unless they are palpably unsupported by the evidence on record or unless the judgment itself is based on a misapprehension of facts. After a careful review of the records, we see no reason to overturn the lower courts' factual findings that found the petitioner guilty of the crime charged.

2. CRIMINAL LAW; REVISED PENAL CODE; RECKLESS IMPRUDENCE; CONSISTS IN VOLUNTARILY, BUT

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[*] Designated additional member, per Special Order No. 1042, dated July 6, 2011.

WITHOUT MALICE, DOING OR FAILING TO DO AN ACT FROM WHICH MATERIAL DAMAGE RESULTS BY REASON OF INEXCUSABLE LACK OF PRECAUTION ON THE PART OF THE PERSON PERFORMING OR FAILING TO PERFORM SUCH ACT.— Reckless imprudence, generally defined by our penal law, consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place. Imprudence connotes a deficiency of action. It implies a failure in precaution or a failure to take the necessary precaution once the danger or peril becomes foreseen. Thus, in order for conviction to be decreed for reckless imprudence, the material damage suffered by the victim, the failure in precaution on the part of the accused, and the direct link between material damage and failure in precaution must be established beyond reasonable doubt.

3. ID.; ID.; ID.; ID.; PETITIONER FAILED TO EXERCISE PRECAUTION IN OPERATING HIS VEHICLE IN CASE AT BAR.— To our mind, the fact that the petitioner's *entire* vehicle ended up ramped on the island divider strongly indicates what actually happened in the unfortunate incident. The vehicle could not have ended up in that condition had the petitioner been driving at a reasonable speed. We are not persuaded by the petitioner's rather simplistic account that mere darkness, coupled with the traffic island's alleged newness, caused his car to veer off the traffic trajectory of Governor Forbes Street and to end up jumping on top of the traffic island intended to channel vehicular traffic going to the Nagtahan Flyover. A motorist is expected to exercise ordinary care and drive at a reasonable rate of speed commensurate with all the conditions encountered, to enable him to keep the vehicle under control and, whenever necessary, **to put the vehicle to a full stop** to avoid injury to others using the highway. x x x That the petitioner's *entire* vehicle landed on top of the traffic island — body, chassis, four wheels and all — sufficiently indicates his speed at that time. The force that propels an entire car off the street and on top of a traffic island could only have been

inordinate speed, or at least speed beyond that of a motorist coming from or going to an intersection. In short, the ramping of his vehicle demonstrably indicates to us that the petitioner failed to observe the duty to maintain a reasonable speed. We therefore believe Victor's testimony that the petitioner was speeding when he bumped the victim.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; EYEWITNESS VICTOR POSITIVELY IDENTIFIED PETITIONER AS THE PERSON WHO DROVE THE CAR THAT RAMPED ON AN ISLAND DIVIDER ALONG GOVERNOR FORBES CORNER G. TUAZON STREETS, AND HIT ROCHELLE; CASE AT BAR.— An eyewitness account established that the petitioner's vehicle actually hit Rochelle Lanete. Eyewitness identification is vital evidence, and, in most cases, decisive of the success or failure of the prosecution. One of the prosecution witnesses, Victor Soriano, unfortunately for the petitioner's cause, saw the incident in its entirety; Victor thus provided direct evidence as eyewitness to the very act of the commission of the crime. In his September 1, 1994 testimony, Victor **positively identified** the petitioner as the person who drove the car that ramped on an island divider along Governor Forbes corner G. Tuazon Street, and hit Rochelle. x x x Victor, who stood only seven meters from the incident, clearly and in a straightforward manner described how the petitioner's car had bumped the victim. x x x The positive identification in this case, coupled with the failure of the defense to impute any ill-motive on the eyewitness, to our mind, works to dispel reasonable doubt on the fact that the petitioner's car had in fact hit Rochelle. The eyewitness account provides the necessary link between the petitioner's failure to exercise precaution in operating his vehicle and Rochelle Lanete's death.

5. ID.; ID.; ID.; DISCREPANCIES BETWEEN A WITNESS' AFFIDAVIT AND TESTIMONY IN OPEN COURT DO NOT IMPAIR CREDIBILITY AS AFFIDAVITS ARE TAKEN *EX PARTE* AND ARE OFTEN INCOMPLETE; CASE AT BAR. — Discrepancies and/or inconsistencies between a witness' affidavit and testimony in open court do not impair credibility as affidavits are taken *ex parte* and are often incomplete or inaccurate for lack or absence of searching inquiries by the investigating officer. At any rate, Victor was able to sufficiently

explain the discrepancies between his affidavit and court statements. Victor reasoned out that the secretary who typed his affidavit made a mistake; and explained that he signed the affidavit despite the inaccuracies in paragraph 2 because the secretary told him, "*kasi ho magugulo ang naimakinilya na*." Accordingly, when Victor informed his lawyer during the first day of the hearing about the inaccuracy, the latter told him to state the truth regardless of what was written in his affidavit.

6. ID.; ID.; ID.; ID.; EXCEPTIONS; CASE AT BAR.— The general rule – that contradictions and discrepancies between the testimony of a witness and his statements in an affidavit do not necessarily discredit him – is not without exception, as when the omission in the affidavit refers to a very important detail of the incident that one relating the incident as an eyewitness would not be expected to fail to mention, or when the narration in the sworn statement substantially contradicts the testimony in court. In the present case, we see no substantial contradiction in Victor's affidavit and in his court statements as he declared in both that he saw the petitioner's car ramp on the island divider and bump Rochelle. As to whether the car ramped on the center island before or after it bumped the victim does not detract from the fundamental fact that **Victor saw and identified the petitioner as the driver of the car that ramped on the island divider and hit Rochelle**. As earlier discussed, Victor sufficiently explained this inconsistency during the trial.

7. ID.; ID.; EXPERT WITNESS; ALLOWING THE TESTIMONY OF AN EXPERT WITNESS ON A MATTER REQUIRING SPECIAL KNOWLEDGE, SKILL, EXPERIENCE OR TRAINING, WHICH HE IS SHOWN TO POSSESS, DOES NOT ALSO MEAN THAT COURTS ARE BOUND BY SUCH TESTIMONY; CASE AT BAR.— Section 49, Rule 130 of the Revised Rules of Court states that the opinion of a witness on a matter requiring special knowledge, skill, experience or training, which he is shown to possess, *may* be received in evidence. The use of the word "may" signifies that the use of opinion of an expert witness is permissive and not mandatory on the part of the courts. Allowing the testimony does not mean, too, that courts are bound by the testimony of the expert witness. The testimony of an expert witness must be construed to have been presented not to sway the court in favor of any

of the parties, but to assist the court in the determination of the issue before it, and is for the court to adopt or not to adopt depending on its appreciation of the attendant facts and the applicable law. x x x The petitioner likewise claims that the CA violated Section 49, Rule 130 of the Revised Rules of Court when it disregarded the testimony of defense witness Police Senior Inspector Danilo Cornelio who testified that the petitioner's car could not have bumped the victim because the latter's body was not thrown in line with the car, but on its side. The petitioner argues that P/Sr. Insp. Cornelio is highly qualified in the field of traffic accident investigation, and as such, his statements are "backed-up by [the] principles of applied physics, engineering, and mathematics." We emphasize that P/Sr. Insp. Cornelio was not an eyewitness to the incident; his testimony was merely based on the Traffic Accident Report prepared by SPO4 Edgar Reyes who himself did not witness the incident. At any rate, nowhere in P/Sr. Insp. Cornelio's testimony did he *conclusively* state that the petitioner could not have been involved in the incident.

APPEARANCES OF COUNSEL

Westwood Law for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

BRION, *J.*:

Edwin Tabao (*petitioner*) seeks reconsideration of our Resolution, dated June 8, 2009, denying his petition for review on *certiorari* for failure to show any reversible error in the assailed Court of Appeals (*CA*) decision to warrant the exercise of this Court's discretionary appellate jurisdiction, and for raising substantially factual issues.

The evidence for the prosecution reveals the following facts:

At around 10:00 p.m. of January 21, 1993, the petitioner was driving his Toyota Corolla car bearing plate number PCH-111 along Governor Forbes corner G. Tuazon Street towards Nagtahan when it suddenly ramped on an island divider, bumping Rochelle

Lanete who was crossing the street. As a result of the impact, Rochelle was thrown into the middle of the road on her back.[1] Thereafter, Leonardo Mendez' speeding blue Toyota Corona car with plate number PES-764 ran over Rochelle's body. Bystanders — armed with stones and wooden clubs — followed Mendez' car until it stopped near the Nagtahan Flyover.[2] Francisco Cielo, a newspaper delivery boy, pleaded with the bystanders not to hurt Mendez. Cielo went inside Mendez' car, sat beside him, got his driver's license, and ordered him to move the car backwards. Mendez followed his order, but his car hit the center island twice while backing up.[3] Cielo went out of the car and approached the sprawled body of Rochelle; he and the petitioner brought Rochelle's body inside Mendez' car. The three of them (the petitioner, Cielo and Mendez) brought Rochelle to the UST Hospital,[4] where she died on February 6, 1993 due to *septicemia secondary to traumatic injuries*.[5]

The defense presented a different version of the incident.

The petitioner narrated that at around 10:00 p.m. of January 21, 1993, he was driving along Governor Forbes corner G. Tuazon Street when his car ramped on an island at the foot of the Nagtahan Flyover. He tried to move the car backwards, but failed to do so. He alighted from his car and then saw that its two rear wheels had been elevated.[6] He returned inside his car to turn off its engine; he then noticed that many people were approaching his car.[7] He again alighted from his vehicle and saw a person lying on the road.[8] He looked at his left side and saw a car that was "running fast like a wind" pass by. He

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[1] TSN, September 1, 1994, pp. 12-13.

[2] *Id.* at 15-16; TSN, November 8, 1993, pp. 14-15.

[3] TSN, November 8, 1993, pp. 4-5.

[4] *Id.* at 6 and 18; TSN, January 24, 1994, p. 3.

[5] Records, p. 6.

[6] TSN, March 28, 2001, pp. 6-9.

[7] *Id.* at 10.

[8] *Id.* at 10 and 15; TSN, May 20, 2002, pp. 31-35; records, p. 282.

approached the person lying on the road, and noticed that she was still breathing and moaning. Afterwards, he saw Mendez' car backing up; he carried the victim towards that car.[9] Thereafter, he, Mendez and Cielo brought the victim to the UST Hospital.[10]

Mendez, for his part, testified that at around 9:00 to 9:30 p.m. of January 21, 1993, he left his girlfriend's house in Blumentritt, Sta. Cruz, Manila. As he was driving along Governor Forbes corner G. Tuazon Street on his way home, he saw a vehicle that had ramped on an island divider. Suddenly, another vehicle overtook his car from the right and cut his lane. He slowed down his car when he saw a rug-like object fall from the car that overtook him,[11] and stopped when he realized that what had fallen was a person's body. When he moved his car backwards to help this person, many people approached his car. He alighted from his car and inquired from them what had happened. The people replied that someone was run over; some of them pointed to him as the culprit. He denied having run over the victim when they tried to hurt him. The petitioner carried the victim and placed her inside Mendez' car. Thereafter, the two of them brought the victim to the UST Hospital.[12]

The Office of the City Prosecutor found probable cause and thereafter charged the petitioner and Mendez with reckless imprudence resulting to homicide before the Regional Trial Court (*RTC*), Branch 39, Manila.[13] The RTC, in its decision[14] dated

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[9] TSN, March 28, 2001, pp. 10-17.

[10] *Id.* at 10-11 and 18-19; TSN, May 20, 2002, pp. 39-41.

[11] TSN, September 16, 1996, pp. 4-6; TSN, February 11, 1997, p. 11.

[12] TSN, September 16, 1996, pp. 7-8.

[13] The inculpatory portion of the Information reads:

That on or about January 21, 1993, in the City of Manila, Philippines, the said accused LEONARDO MENDEZ *Y* MENDEZ, being then the driver and person in charge of a Toyota Corona Sedan with plate [*sic*] No. PES-764, and accused EDWIN TABAO *Y* PEREZ, being then the driver and person in charge of a Toyota Corolla with plate [*sic*] No. PHC-111, did then and there unlawfully and feloniously drive, manage and operate the same along Governor Forbes intersection of G. Tuazon Streets, Sampaloc, in said City,

September 15, 2003, found that it was "very clear that both accused are responsible for the death of Rochelle Lanete,"[15] and convicted the two (2) accused of the crime charged. It found that the petitioner's car first hit the victim, causing her to be thrown into the road on her back, and that Mendez' car ran over her as she was lying down. It held that the two failed to observe the necessary precaution and due care in operating their respective vehicles, to wit: the petitioner was not attentive to his driving such that he failed to see the island divider and bumped Rochelle; Mendez was driving his car too fast at nighttime such that he was unable to avoid running over her as her body lay prone on the street. The RTC sentenced them to suffer the indeterminate penalty of four months and one day of *arresto mayor*, as minimum, to two years, 10 months and 20 days of *prision correccional*, as maximum. It also ordered them to pay the heirs of the victim the following amounts: (a) ₱478,434.12 as actual damages; (b) ₱50,000.00 as civil indemnity; and (c) ₱50,000.00 as moral damages.[16]

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in a careless, reckless, negligent and imprudent manner, by then and there making the said vehicle run at a speed greater than was reasonable and proper, without taking the necessary precaution to avoid accident to person considering the condition of traffic at said place at the time, causing as a consequence of such carelessness, negligence, recklessness, imprudence and lack of precaution, the said vehicle so driven, managed and operate [*sic*] by them in the manner above setforth, said vehicle driven by accused EDWIN TABAO *Y* PEREZ hit and bumped one ROCHELLE LANETE *Y* MATAAC, a pedestrian, causing her to be thrown on the pavement, and thereafter was ran [*sic*] over by the vehicle driven by accused LEONARDO MENDEZ *Y* MENDEZ, and as a result of the said impact, said ROCHELLE LANETE *Y* MATAAC sustained physical injuries which were the cause of her death thereafter.

CONTRARY TO LAW. [Records, p. 1.]

[14] Penned by Judge Reynaldo G. Ros; *rollo*, pp. 61-92.

[15] Records, p. 735.

[16] The dispositive portion of the RTC decision reads:

WHEREFORE, the prosecution having established the guilt of both accused, LEONARDO MENDEZ *Y* MENDEZ and EDWIN TABAO *Y* PEREZ, beyond reasonable doubt of the offense charged in the Information which is for Reckless Imprudence Resulting to Homicide, they are hereby sentenced to suffer the indeterminate penalty of FOUR (4) MONTHS and

The petitioner filed an appeal before the CA, docketed as CA-G.R. CR. No. 28401. The CA, in its decision[17] dated July 27, 2007, agreed with the factual findings of the RTC, and affirmed its decision with the modification that the petitioner be sentenced to suffer an indeterminate penalty of four months and one day of *arresto mayor*, as minimum, to four years, nine months and 10 days of *prision correccional*, as maximum.

The petitioner moved to reconsider this decision, but the CA denied his motion in its resolution[18] of March 17, 2009.

The petitioner filed before this Court a petition for review on *certiorari* alleging that the courts *a quo* erred in convicting him of the crime charged. As earlier stated, we denied this petition for failure to show any reversible error in the assailed CA decision to warrant the exercise of our discretionary appellate jurisdiction, and for raising substantially factual issues.

The petitioner now comes to us *via* the present motion for reconsideration, raising the following arguments:

I. THE FINDINGS OF FACTS OF BOTH THE COURT OF APPEALS AND THE REGIONAL TRIAL COURT ARE HIGHLY SPECULATIVE, MANIFESTLY MISTAKEN AND UNSUPPORTED BY THE EVIDENCE [ON RECORD;]

II. [THE] COURT OF APPEALS [ERRED IN UPHOLDING HIS] CONVICTION [ON THE BASIS OF THE] INCREDIBLE AND UNRELIABLE TESTIMONY OF x x x VICTOR SORIANO[; and]

ONE (1) DAY of *arresto mayor* as minimum, to TWO (2) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS of *prision correccional* as maximum.

Both accused are ordered to jointly and solidarity [*sic*] pay the heirs of the victim Rochelle Lanete *Y* Mataac the amount of ₱478,434.12 as actual damages; ₱50,000.00 as civil indemnity; and ₱50,000.00 as moral damages, and the costs of suit.

SO ORDERED. [*Id.* at 736.]

[17] Penned by Associate Justice Vicente S.E. Veloso, and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison; *rollo*, pp. 41-60.

[18] *Id.* at 119-120.

III. THE [SUPREME] COURT DISREGARDED [HIS CONSTITUTIONAL] PRESUMPTION OF INNOCENCE.[19]

In its Comment, the People of the Philippines, through the Office of the Solicitor General, prays that the motion be denied for being *pro forma*; the petitioner merely advanced the same arguments which he raised in his appellant's brief and motion for reconsideration before the CA.

After due consideration, we resolve to **DENY** the motion.

As a general rule, findings of fact of the trial court, especially when affirmed by the CA, are binding and conclusive upon this Court; we will not normally disturb these factual findings unless they are palpably unsupported by the evidence on record or unless the judgment itself is based on a misapprehension of facts.[20] After a careful review of the records, we see no reason to overturn the lower courts' factual findings that found the petitioner guilty of the crime charged.

Reckless imprudence, generally defined by our penal law, consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place. Imprudence connotes a deficiency of action. It implies a failure in precaution or a failure to take the necessary precaution once the danger or peril becomes foreseen.[21] Thus, in order for conviction to be decreed for reckless imprudence, the material damage suffered by the victim, the failure in precaution on the part of the accused, and the direct link between material damage and failure in precaution must be established beyond reasonable

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[19] *Id.* at 188-201.

[20] *Austria v. Court of Appeals*, 384 Phil. 408, 415 (2000).

[21] *Caminos, Jr. v. People*, G.R. No. 147437, May 8, 2009, 587 SCRA 348, 357, citing *THE REVISED PENAL CODE*, REYES, LUIS B., 15th ed. (2001), pp. 994-995.

doubt. We are morally convinced that all three were established in this case in accordance with the required level of evidence in criminal cases.

The petitioner was positively identified by an eyewitness

The fact of Rochelle Lanete's death was stipulated during pre-trial, as well as duly established during trial.[22] What remain to be proven beyond reasonable doubt are the inexcusable lack in precaution on the part of the petitioner and the direct link of his negligence to the victim's death.

An eyewitness account established that the petitioner's vehicle actually hit Rochelle Lanete. Eyewitness identification is vital evidence, and, in most cases, decisive of the success or failure of the prosecution.[23] One of the prosecution witnesses, Victor Soriano, unfortunately for the petitioner's cause, saw the incident in its entirety; Victor thus provided direct evidence as eyewitness to the very act of the commission of the crime.[24] In his September 1, 1994 testimony, Victor **positively identified** the petitioner as the person who drove the car that ramped on an island divider along Governor Forbes corner G. Tuazon Street, and hit Rochelle. To directly quote from the records:

ATTY. ALICIA SERRANO:

Q: Mr. Soriano, do you remember where were you on or about 10:00 o'clock (sic) of January 21, 1993?

VICTOR SORIANO:

A: Yes, ma'am.

Q: Where were you?
A: I was at the corner of Governor Forbes and G. Tuazon.

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[22] Order dated August 5, 1993; records, p. 51. The Certificate of Death of Rochelle Lanete was presented during trial as Exhibit "P"; records, p. 216.

[23] *People v. Meneses*, 351 Phil. 331, 334 (1998), citing *People v. Teehankee, Jr.*, 319 Phil. 128, 179 (1995).

[24] *People v. Gallarde*, 382 Phil. 718, 736 (2000).

Q: What were you doing at the corner of Governor Forbes and G. Tuazon at that time?
A: My sidecar was parked there because I was waiting for my wife, ma'am.

Q: And when you were there at the corner of G. Tuazon and Governor Forbes at the said time and place, was there any unusual incident that happened?
A: Yes, sir.

Q: And what was that unusual incident?
A: **I saw an accident involving a speeding car which ramped over the island and bumped a woman who was crossing the street.**

Q: **When you saw that the car ramped over the island and hit and bumped a woman, what happened to the woman that was hit and bumped by the car which you said ramped over the island?**
A: **The woman was thrown at the middle of the road on her back, ma'am.**

Q: **When you saw this woman after being hit and bumped by the car that ramped over the island and was thrown at the middle of the road, what else happened?**

xxx xxx xxx

A: The woman was no longer moving at that time when I saw another car coming.

xxx xxx xxx

Q: What else happened when you saw the car coming very fast?
A: The woman sprawled at the middle of the road was ran over by the speeding car and that car stopped while going up to the flyover.

xxx xxx xxx

Q: **You said you saw a car that ramped over the island and that the car that ramped over the island was the car that hit and bumped the victim that was thrown at the middle of the street. Now, will you be able to identify before this court the driver of that car that ramped over the island and hit and bumped the victim?**

A: **Yes, ma'am.**

Q: **If that driver of the car that hit and bumped the victim is inside the courtroom, would you be able to point to him before this Honorable Court?**

A: **Yes, ma'am, he is here.**

Q: Will you kindly point before this courtroom who is that driver of the car that hit and bumped the victim? Although, Your Honor, there was already a stipulation at the start of the pre-trial admitting that the accused Tabao is the driver of the car which ramped at the divider.

INTERPRETER:

Witness approaching a man seated inside the courtroom and who stood up and identified as Edwin Tabao, the accused in this case.[25] [emphases ours]

On cross-examination, Victor further elaborated on what he saw of the incident:

ATTY. ESTEBAN NANCHO:

Q: Mr. Soriano, you said that the first car ramped over the island and bumped a woman, and as a result of that, the woman was thrown at the middle of Forbes Street. Do you confirm that?

VICTOR SORIANO:

A: Yes, sir, that is true.

Q: And can you tell us how the woman was hit, was bumped by the car that ramped over the island?

A: The woman was crossing the street and when she saw the on-coming car, she tried to avoid that but the car [which] ramped over the island bumped the woman.

Q: In other words, the car first ramped over the island before it hit the woman?

A: Yes, sir.

Q: What part of the car bumped the woman?

A: The bumper of the car, the left side of the bumper.

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[25] TSN, September 1, 1994, pp. 12-18.

Q: What part of the body of the victim was hit by the car?
A: Her left side of the body.

Q: Are you saying that the victim was facing the car when the car bumped her.
A: Yes, sir, she was facing the car. She was about to avoid that car.

Q: How was the woman thrown at the middle of Forbes Street?
A: She was thrown backwards.

Q: And what part of the body of the victim first hit the pavement?
A: The back of her head.

xxx xxx xxx

Q: And you said after the woman was thrown at the middle of the street[,] another speeding car ran over the body of the woman?
A: Yes, sir.

xxx xxx xxx

Q: Now, from the time the body of the victim was thrown at the middle of the street, how much time had lapsed when the second car ran over the body of the victim?

A: Not more than one minute. When I saw the car, it was a little bit far then I saw the car running very fast. It did not take more than a minute.

xxx xxx xxx

Q: Now, did you point at any person gathered at the scene of the accident that it were (sic) the 2 accused who were responsible for the accident?

A: I told Cielo about that and I told him that whoever brought the victim to the hospital is the one who ran over the victim.[26]

The petitioner nonetheless claims that Victor is not a credible witness due to inconsistencies between his affidavit and court testimony. He harps on the fact that Victor declared in his affidavit that the petitioner's car first hit Rochelle before it ramped on an island divider; while he testified in court that the petitioner's vehicle ramped on the island divider before hitting the victim.

[26] *Id.* at 37-41.

We find these arguments unmeritorious.

Discrepancies and/or inconsistencies between a witness' affidavit and testimony in open court do not impair credibility as affidavits are taken *ex parte* and are often incomplete or inaccurate for lack or absence of searching inquiries by the investigating officer.[27] At any rate, Victor was able to sufficiently explain the discrepancies between his affidavit and court statements. Victor reasoned out that the secretary who typed his affidavit made a mistake; and explained that he signed the affidavit despite the inaccuracies in paragraph 2 because the secretary told him, "*kasi ho magugulo ang naimakinilya na*."[28] Accordingly, when Victor informed his lawyer during the first day of the hearing about the inaccuracy, the latter told him to state the truth regardless of what was written in his affidavit.

The general rule – that contradictions and discrepancies between the testimony of a witness and his statements in an affidavit do not necessarily discredit him – is not without exception, as when the omission in the affidavit refers to a very important detail of the incident that one relating the incident as an eyewitness would not be expected to fail to mention, or when the narration in the sworn statement substantially contradicts the testimony in court.[29] In the present case, we see no substantial contradiction in Victor's affidavit and in his court statements as he declared in both that he saw the petitioner's car ramp on the island divider and bump Rochelle. As to whether the car ramped on the center island before or after it bumped the victim does not detract from the fundamental fact that **Victor saw and identified the petitioner as the driver of the car that ramped on the island divider and hit Rochelle**. As earlier discussed, Victor sufficiently explained this inconsistency during the trial.

Victor, who stood only seven meters from the incident, clearly and in a straightforward manner described how the petitioner's

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[27] See *People v. Villadares*, 406 Phil. 530, 540 (2001).

[28] TSN, September 1, 1994, p. 47.

[29] See *People v. Narvaez*, 425 Phil. 381, 402-403 (2002); and *People v. Castillo*, 330 Phil. 205, 212 (1996).

car had bumped the victim. We thus see no reason to overturn the lower courts' finding regarding Victor's credibility, more so since the petitioner *did not impute any ill motive that could have induced Victor to testify falsely*. The fundamental and settled rule is that the trial court's assessment regarding the credibility of witnesses is entitled to the highest degree of respect and will not be disturbed on appeal, especially when the assessment is affirmed by the CA.

The positive identification in this case, coupled with the failure of the defense to impute any ill-motive on the eyewitness, to our mind, works to dispel reasonable doubt on the fact that the petitioner's car had in fact hit Rochelle. The eyewitness account provides the necessary link between the petitioner's failure to exercise precaution in operating his vehicle and Rochelle Lanete's death.

The petitioner failed to exercise precaution in operating his vehicle

The right of a person using public streets and highways for travel in relation to other motorists is mutual, coordinate and reciprocal.[30] He is bound to anticipate the presence of other persons whose rights on the street or highway are equal to his own.[31] Although he is not an insurer against injury to persons or property, it is nevertheless his duty to operate his motor vehicle with due and reasonable care and caution under the circumstances for the safety of others as well as for his own.[32]

The petitioner repeatedly admitted that as he drove his vehicle on his way home from work on January 21, 1993, **he did not notice the island divider** at the foot of the Nagtahan Flyover.

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[30] *Caminos, Jr. v. People*, *supra* note 21, at 350, citing *Richards v. Begenstos*, 21 N.W.2d 23, *Hodges v. Smith*, 298 S.W. 1023, and *Lawson v. Fordyce*, 12 N.W.2d 301.

[31] *Id.*, citing *Magnolia Petroleum Co. v. Owen*, 101 S.W.2d 354.

[32] *Id.*, citing *Atlantic Greyhound Corp. v. Lyon*, 107 F.2d 157, *Oklahoma Natural Gas Co. v. McKee*, 121 F.2d 583, *Burdick v. Powell Bros. Truck Lines*, 124 F.2d 694, *Dixie Motor Coach Corp. v. Lane*, 116 F.2d 264, *Shipley v. Komer*, 154 F.2d 861, and *Magnolia Petroleum Co. v. Owen*, 101 S.W.2d 354.

As a result, his car ramped on the island so that both its rear wheels became "elevated" from the road and he could no longer maneuver the vehicle.[33] The petitioner even testified that his car had to be towed.[34] Later, during cross-examination, he admitted that *all* four wheels of his car, not just the two rear wheels mentioned in his earlier testimony, lost contact with the ground.[35] The *entire* vehicle, therefore, ended up on top of the island divider. He puts the blame for the ramping and, essentially, his failure to notice the island on the darkness of nighttime and the alleged newness of the island.[36]

To our mind, the fact that the petitioner's *entire* vehicle ended up ramped on the island divider strongly indicates what actually happened in the unfortunate incident. The vehicle could not have ended up in that condition had the petitioner been driving at a reasonable speed. We are not persuaded by the petitioner's rather simplistic account that mere darkness, coupled with the traffic island's alleged newness, caused his car to veer off the traffic trajectory of Governor Forbes Street and to end

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[33] TSN, March 28, 2001, pp. 5-7.

[34] TSN, January 22, 2002, p. 35.

[35] TSN, July 18, 2002, pp. 26-27.

[36] The pertinent portion from the March 28, 2001 TSN (pp. 6-7) reads:

[Direct Examination of Witness Edwin Tabao. Emphasis ours.]

xxx xxx xxx

Q. After you dropped off your friend to the UST Hospital, what unusual incident happened on this night of January 21, 1993?

A. I was heading for home and that I did not notice an island.

Q. This island is located at the foot of the Nagtahan flyover at the corner of Forbes and G. Tuazon?

A. Yes, sir.

Q. So, what happened on your way home to this particular location?

A. My car was ramped on the island, sir.

Q. Why did you not notice the island divider on that location, Mr. Witness?

A. Because it was already nighttime and it was dark so I did not notice the island and "*mukhang parang bago*."

up jumping on top of the traffic island intended to channel vehicular traffic going to the Nagtahan Flyover.

A motorist is expected to exercise ordinary care and drive at a reasonable rate of speed commensurate with all the conditions encountered,[37] to enable him to keep the vehicle under control and, whenever necessary, **to put the vehicle to a full stop** to avoid injury to others using the highway.[38] It has not escaped our notice that the **intersection** of Governor Forbes Street and G. Tuazon Street is adjacent to the vicinity of the incident. A driver approaching an intersection is generally under duty, among others, to keep and maintain his vehicle under control so he can, if needed, stop at the shortest possible notice.[39] Ordinary or reasonable care in the operation of a motor vehicle at an intersection would naturally require more precaution than is necessary when driving elsewhere in a street or highway.[40]

The fact that the petitioner was driving near the Governor Forbes Street and G. Tuazon Street intersection gives rise to the expectation that he would drive at a speed that anticipated — or would have anticipated — that other persons are on the road, whether as pedestrians or as motorists. The facts show, however, that the petitioner was driving his car at an inappropriate speed for a vehicle crossing an intersection. Otherwise, he should have been able to put his vehicle to a complete stop or, at the very least, at a speed that would have prevented his car from climbing entirely on top of the island divider. That the petitioner's *entire* vehicle landed on top of the traffic island — body, chassis, four wheels and all — sufficiently indicates his speed at that time. The force that propels an entire car off the street and on top of a traffic island could only have been inordinate speed, or

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[37] *Caminos, Jr. v. People, supra* note 21, at 361, citing *Foster v. ConAgra Poultry Co.*, 670 So.2d 471.

[38] *Id.*, citing *Nunn v. Financial Indem. Co.,* 694 So.2d 630. Duty of reasonable care includes duty to keep the vehicle under control and to maintain proper lookout for hazards.

[39] *Id.* at 361-362, citing *Reppert v. White Star Lines*, 106 A.L.R. 413, and *Riccio v. Ginsberg*, 62 A.L.R. 967.

[40] *Id.* at 361, citing *Roberts v. Leahy,* 214 P.2d 673.

at least speed beyond that of a motorist coming from or going to an intersection. In short, the ramping of his vehicle demonstrably indicates to us that the petitioner failed to observe the duty to maintain a reasonable speed. We therefore believe Victor's testimony that the petitioner was speeding when he bumped the victim.[41]

We are likewise not persuaded by the petitioner's claim that darkness and the traffic island's alleged newness justify his failure to notice the island. The petitioner's admission that he did not notice the traffic island is in itself an indication of his failure to observe the vigilance demanded by the circumstances. Ultimately, it shows the criminal recklessness for which he has been convicted. The record shows that pedestrians were present in the vicinity at the time of the incident. The CA even pointed out that the vicinity is near residential areas, while we pointed out its proximity to an intersection. The darkness and these circumstances should have caused the petitioner to be more alert and more vigilant, to say nothing of slowing his car down. Newly constructed or not, the island divider should have received the petitioner's due attention. His bare allegation that the island lacked markers or reflectorized marks is likewise not persuasive. As the trial court correctly observed, many other vehicles passed the same road that night but only the petitioner failed to notice the island divider.[42] We thus find the trial court to be correct when it held that the petitioner failed to exercise precaution in operating his vehicle on the night of the incident.

The location of the victim's injuries vis-à-vis the position of the petitioner's vehicle

The petitioner insists that his car could not have bumped the victim because his car was coming from the right side (*i.e.*, from España), while the victim was hit on the left side of her body. He argues that if the victim was on her way to her house on Mabini Street coming from the corner of Governor Forbes Street and G. Tuazon Street (where she alighted), then the

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[41] TSN, September 1, 1994, p. 13.

[42] Records, p. 736.

responsible vehicle could only have come from the left (*i.e.*, from Nagtahan) as only those vehicles coming from this direction could hit the victim on the left side of her body. He further claims that his car had no dents or scratches.

The petitioner's arguments are misleading.

Dr. Sergio Alteza, Jr., the attending physician, testified that the victim suffered multiple injuries "compatible and consistent with a vehicular accident."[43] He did not state that the injuries suffered by the victim were only on her left side. In fact, a perusal of Dr. Alteza's initial medical report shows that the victim suffered injuries **both on the left and right sides of her body**. In addition, Dr. Floresto Arizala, Jr., the National Bureau of Investigation medico-legal officer who conducted an autopsy on Rochelle's body, confirmed that the victim suffered injuries on various parts of her lower right and left extremities as a result of the initial or primary impact.

The petitioner relies heavily on Dr. Alteza's statement allegedly declaring that the victim's injuries on her lower left leg and left thigh were the "primary impact" injuries. However, this statement was not based on the actual incident but on Dr. Alteza's presumptions. For clarity, we reproduce Dr. Alteza's testimony:

ATTY. SERRANO:

Q: Now doctor, you said that these injuries you found x x x on the body of the victim are compatible and consistent with a vehicular accident. Would you tell this court how these injuries were sustained?

xxx xxx xxx

Doctor, what would be the **possible situation** when you use compatible and consistent vehicular accident?

DR. ALTEZA:

A: **If I would be allowed to make some presumptions**, if the patient was standing up at that time he was hit by a vehicle, I would **presume** that the **primary impact injuries, injuries**

[43] TSN, July 11, 1994, p. 12.

> **hit first by the vehicle are the injuries of the lower leg and the left thigh** considering that the height of the injuries are approximately the height of the bumper as well as the hood of the car.
>
> Q: There are several kinds of vehicles, doctor?
>
> A: Yes, Your Honor, I was thinking of a car. Now, after being hit by [a] car, under normal condition, the victim is normally thrown at the surface of the street.[44] [emphases ours]

From this exchange, we find it clear that Dr. Alteza was merely making a hypothetical statement that a person who is presumed to be standing when hit by a vehicle would suffer primary impact injuries on his lower leg and left thigh. He never declared that Rochelle suffered primary impact injuries on her lower left extremities. At any rate, it was not improbable for the victim to have been hit on the left side of her body as Victor testified that she (victim) tried to avoid the petitioner's car, and was in fact facing the car when she was hit.

We likewise do not believe the petitioner's claim that his vehicle was not involved in the incident due to the absence of dents or scratches. As the petitioner himself admitted, his vehicle was not subjected to any investigation after the incident. Moreover, the pictures of the car, presented by the petitioner in court, were taken long after the incident and after a repair had already been done to the vehicle. There was therefore no way of verifying petitioner's claim that his car did not have any dent or scratch after the incident. At any rate, the absence of a dent or a scratch on the petitioner's car, assuming it to be true, does not conclusively prove his non-participation in the incident. The absence of any dent or scratch is influenced by several factors: the type of paint, the speed of the car, the points of impact, and the material used on the car's exteriors.

Weight of expert testimony

The petitioner likewise claims that the CA violated Section 49, Rule 130 of the Revised Rules of Court when it disregarded the

[44] TSN, July 11, 1994, pp. 15-16.

testimony of defense witness Police Senior Inspector Danilo Cornelio who testified that the petitioner's car could not have bumped the victim because the latter's body was not thrown in line with the car, but on its side. The petitioner argues that P/Sr. Insp. Cornelio is highly qualified in the field of traffic accident investigation, and as such, his statements are "backed-up by [the] principles of applied physics, engineering, and mathematics."[45]

The petitioner's arguments fail to convince us.

Section 49, Rule 130 of the Revised Rules of Court states that the opinion of a witness on a matter requiring special knowledge, skill, experience or training, which he is shown to possess, *may* be received in evidence. The use of the word "may" signifies that the use of opinion of an expert witness is permissive and not mandatory on the part of the courts. Allowing the testimony does not mean, too, that courts are bound by the testimony of the expert witness. The testimony of an expert witness must be construed to have been presented not to sway the court in favor of any of the parties, but to assist the court in the determination of the issue before it, and is for the court to adopt or not to adopt depending on its appreciation of the attendant facts and the applicable law. It has been held of expert testimonies:

> Although courts are not ordinarily bound by expert testimonies, they may place whatever weight they may choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, the fact that he is a paid witness, the relative opportunities for study and observation of the matters about which he testifies, and any other matters which deserve to illuminate his statements. The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be

[45] *Rollo*, p. 204.

given controlling effect. The problem of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of abuse of discretion.[46]

We emphasize that P/Sr. Insp. Cornelio was not an eyewitness to the incident; his testimony was merely based on the Traffic Accident Report prepared by SPO4 Edgar Reyes who himself did not witness the incident. At any rate, nowhere in P/Sr. Insp. Cornelio's testimony did he *conclusively* state that the petitioner could not have been involved in the incident. For clarity, we reproduce the pertinent portions of P/Sr. Insp. Cornelio's testimony:

ATTY. SERRANO:

Q: When you said in line with the motor vehicle that bumped the victim, is it that when a victim is bumped by the motor vehicle, the victim would be thrown in line with the vehicle?

P/SR. INSP. CORNELIO:

A: Yes, Ma'am. Usually, that is the outcome of the incident.

Q: He cannot be thrown sideward?
A: Maybe if another vehicle would hit the pedestrian because that also happened. When a pedestrian is hit by a vehicle and another vehicle hit the pedestrian, it will be thrown somewhere else.

Q: Mr. Witness, you are testifying as far as the vehicle of Tabao is concerned. You said that the line of vehicle that bumped the victim would be in line. Are you telling us that it is not possible that when the vehicle of Tabao hit the victim, the victim would be thrown sidewards?
A: Yes, Ma'am.

Q: What do you mean, yes, Ma'am?
A: He can be thrown either in front of the vehicle that hit the victim or slightly offset with the car of Tabao. It [may be] but not far from the side.

Q: But he would be thrown sidewise[,] not frontal?

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[46] See *People v. Basite*, 459 Phil. 197, 206-207 (2003), citing *People v. Baid*, G.R. No. 129667, July 31, 2000, 336 SCRA 656, 675.

A: Slightly to the side but not considerable length of distance away from the car. It is sidewards.

Q: In your Mathematics, do you consider that if a vehicle is speeding fast, he could have thrown anything that is bumped by that vehicle far away from the vehicle?
A: Yes, Ma'am, possible.

Q: **So, that probability is also possible aside from the probability that you said the victim is thrown in line or in front. So, you are now saying it could be said that the victim can be thrown sidewise?**
A: **It [may be] thrown sidewise. As I said [a while] ago, it might be slightly offset with the vehicle that hit the pedestrian but not too far from the side of the bumping vehicle.**

Q: So, it could depend on the speed of the vehicle that bumped the object bumped?
A: Yes, Ma'am.

Q: **Whether it is forward or sidewise, the distance of the object thrown would depend on the speed of the vehicle that bumped?**
A: **Yes, Ma'am.**

Q: So, if it is speeding, it could be thrown farther?
A: Yes, Ma'am.

Q: Sidewise or frontal?
A: It should be frontal.

Q: **You said it could be thrown sidewise do I take it correct[ly,] it can be thrown sidewise also?**
A: **Maybe. As I have said [a while] ago, it [may be] slightly offset with the line of the vehicle.**

xxx xxx xxx

Q: So, do we take it from you that your basis only of telling the court that Tabao is not in [any way] responsible is the distance of the victim from the car that bumped?
A: **I am not saying categorically that the car of Tabao is not responsible**. But as I can see in the sketch presented today in this Honorable Court, the position of the victim is too far from the vehicle of Mr. Tabao. If I were the investigator in this

particular case, I should indicate the measurement of the victim from the car and this sketch [does] not indicate the distance.

Q: Now, failure of the investigator to indicate the distance, would that show that it was not Tabao who bumped the victim?

A: I cannot say categorically that the car of Tabao indeed, hit the victim. Because the distance is very significant in this sketch for proper evaluation.

xxx xxx xxx

Q: **So, it cannot be said that when an object is bumped by a vehicle, it will be thrown forward. It will all depend on which portion of the bumper hit by object bumped?**

A: **Yes, Ma'am**.[47]

From the foregoing, it is clear that P/Sr. Insp. Cornelio did not discount the possibility that the victim could have been thrown on the side. He likewise admitted that the location of an accident victim in relation to the vehicle would also depend on the speed of the vehicle and the point of impact.

The defense of denial

The petitioner denied that his car had bumped the victim, and insists that he just saw the victim's body sprawled on the road after his car had already ramped on the island divider.

The petitioner's defense of denial must crumble in light of Victor's positive and specific testimony. We reiterate that the petitioner, aside from merely alleging the inconsistency between Victor's affidavit and court testimony, did not impute any ill motive on Victor's part to falsely testify against him. The petitioner, in fact, admitted that he and Victor did not know each other prior to the incident. We have consistently held that positive identification of the accused, when categorical and consistent, and without any showing of ill-motive on the part of the testifying eyewitness, should prevail over the denial of the accused whose testimony is not substantiated by clear and

[47] TSN, April 3, 2003, pp. 25-28 and 33-35.

convincing evidence.[48] A denial is negative evidence. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, the denial is purely self-serving and has no evidentiary value.[49]

We significantly note that the petitioner claimed for the first time in his present petition that he saw a "rug-like thing"[50] being thrown out of a passing car as he was about to alight from his car after turning off its engine; he later discovered that the thing thrown was a person's body. He reiterated this claim in his motion for reconsideration before this Court. This assertion was a clear rip-off from his co-accused Mendez' version who likewise claimed to have seen the same thing. To our mind, the modification of the petitioner's story was a belated attempt to cover up his failure to convincingly explain the presence of the victim's slumped body on the road near his car and a last-ditch effort to exculpate himself. Nowhere in his affidavit or earlier court testimonies, or even in his previous pleadings with the lower courts, did he ever state that a passing car had thrown a "rug-like thing"[51] on the street. The petitioner's sudden change of story at this stage of the proceedings casts doubt on the veracity of his claim.

In addition, we are baffled by the petitioner's act of frequenting the hospital after the incident. Amanda Ycong, the victim's aunt, testified that she saw the petitioner "several times" at the hospital when the victim was confined there; but would immediately leave whenever he saw members of the victim's family. We find it highly unusual for a person who allegedly had no participation in the incident to be overly concerned with the victim's well-being. What puzzles us even more is why the petitioner would evade members of the victim's family whenever he was seen by them at the hospital.

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[48] See *Tapdasan, Jr. v. People*, 440 Phil. 864, 877 (2002).

[49] *Tan v. Pacuribot*, A.M. Nos. RTJ-06-1982-1983, December 14, 2007, 540 SCRA 246, 300.

[50] *Rollo*, p. 7.

[51] *Ibid*.

All told, we see no reason to overturn the lower courts' findings of fact and conclusions of law finding the petitioner guilty beyond reasonable doubt of the crime charged.

WHEREFORE, premises considered, the Court resolves to *DENY* the motion with *FINALITY*, no substantial argument having been adduced to warrant the reconsideration sought. Costs against the petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 192760. July 20, 2011]

JOJIT GARINGARAO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN CASE OF ACTS OF LASCIVIOUSNESS, THE LONE TESTIMONY OF THE OFFENDED PARTY, IF CREDIBLE, IS SUFFICIENT TO ESTABLISH THE GUILT OF THE ACCUSED; CASE AT BAR.— The Court has ruled that in case of acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the

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

[**] Additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno per Special Order No. 1040 dated July 6, 2011.

accused. In this case, both the trial court and the Court of Appeals found the testimony of AAA credible over Garingarao's defense of denial and alibi.

2. ID.; ID.; ID.; DENIAL IS A WEAK DEFENSE AS AGAINST THE POSITIVE IDENTIFICATION BY THE VICTIM; CASE AT BAR.— It is a settled rule that denial is a weak defense as against the positive identification by the victim. Both denial and alibi are inherently weak defenses and constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration by a credible witness. Garingarao's defense of denial and alibi must fail over the positive and straightforward testimony of AAA on the incident. Further, like the trial court and the Court of Appeals, we find incredible Garingarao's defense that the case was an offshoot of a heated argument he had with AAA's father over the manner Garingarao was giving AAA's medications. It is hard to believe that AAA's parents would expose her to a public trial if the charges were not true. In addition, the prosecution was able to establish that, contrary to Garingarao's allegation, both BBB and CCC were not in AAA's room at the time of the incident.

3. CRIMINAL LAW; SPECIAL OFFENSES; REPUBLIC ACT NO. 7610 (AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES); PROVISION ON LASCIVIOUS CONDUCT IS FOUND IN SECTION 5 THEREOF.— Section 5, Article III of RA 7610 provides: Section 5. *Child Prostitution and Other Sexual Abuse*. - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following: (a) x x x (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3 for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code,

for rape or lascivious conduct, as the case may be; Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period. x x x

4. ID.; ID.; ID.; ID.; ELEMENTS OF SEXUAL ABUSE THEREUNDER.— The elements of sexual abuse under Section 5, Article III of RA 7610 are the following: 1. The accused commits the act of sexual intercourse or lascivious conduct; 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and 3. The child, whether male or female, is below 18 years of age.

5. ID.; ID.; ID.; ID.; LASCIVIOUS CONDUCT AS DEFINED UNDER SECTION 32, ARTICLE XIII OF THE IMPLEMENTING RULES AND REGULATIONS OF R.A. NO. 7610; COMMITTED IN CASE AT BAR.— Under Section 32, Article XIII of the Implementing Rules and Regulations of RA 7610, lascivious conduct is defined as follows: *[T]he intentional touching, either directly or through clothing, of the* genitalia, anus, groin, ***breast***, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. In this case, the prosecution established that Garingarao touched AAA's breasts and inserted his finger into her private part for his sexual gratification. Garingarao used his influence as a nurse by pretending that his actions were part of the physical examination he was doing. Garingarao persisted on what he was doing despite AAA's objections. AAA twice asked Garingarao what he was doing and he answered that he was just examining her. The Court has ruled that a child is deemed subject to other sexual abuse when the child is the victim of lascivious conduct under the coercion or influence of any adult. In lascivious conduct under the coercion or influence of any adult, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. In this case, Garingarao coerced AAA into submitting to his lascivious acts by pretending that he was examining her.

6. ID.; ID.; ID.; ID.; ACCUSED LIABLE THEREFOR ALTHOUGH SEXUAL ABUSE UNDER RA 7610 OCCURRED ONLY ONCE; CASE AT BAR.— The Court has already ruled that it is inconsequential that sexual abuse under RA 7610 occurred only once. Section 3(b) of RA 7610 provides that the abuse may be habitual or not. Hence, the fact that the offense occurred only once is enough to hold Garingarao liable for acts of lasciviousness under RA 7610.

APPEARANCES OF COUNSEL

Carlito M. Soriano for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 26 November 2009 Decision[2] and 22 June 2010 Resolution[3] of the Court of Appeals in CA-G.R. CR No. 31354. The Court of Appeals affirmed with modifications the decision of the Regional Trial Court of San Carlos City, Pangasinan, Branch 56 (trial court), finding Jojit Garingarao (Garingarao) guilty beyond reasonable doubt of the crime of acts of lasciviousness in relation to Republic Act No. 7610 (RA 7610).[4]

The Antecedent Facts

The facts of the case, as can be gleaned from the decision of the Court of Appeals, are as follows:

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

[2] *Rollo*, pp. 42-62. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Mario L. Guariña III and Jane Aurora C. Lantion, concurring.

[3] *Id.* at 63-64.

[4] An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes.

On 28 October 2003, AAA[5] was brought to the Virgen Milagrosa Medical Center by her father BBB and mother CCC due to fever and abdominal pain. Dr. George Morante (Dr. Morante), the attending physician, recommended that AAA be confined at the hospital for further observation. AAA was admitted at the hospital and confined at a private room where she and her parents stayed for the night.

On 29 October 2003, BBB left the hospital to go to Lingayen, Pangasinan to process his daughter's Medicare papers. He arrived at Lingayen at around 8:00 a.m. and left the place an hour later. CCC also left the hospital that same morning to attend to their store at Urbiztondo, Pangasinan, leaving AAA alone in her room.

When BBB returned to the hospital, AAA told him that she wanted to go home. Dr. Morante advised against it but due to AAA's insistence, he allowed AAA to be discharged from the hospital with instructions that she should continue her medications. When AAA and her parents arrived at their house around 11:30 a.m., AAA cried and told her parents that Garingarao sexually abused her. They all went back to the hospital and reported the incident to Dr. Morante. They inquired from the nurses' station and learned that Garingarao was the nurse on duty on that day.

On 20 January 2004, the City Prosecutor filed an Information against Garingarao for acts of lasciviousness in relation to RA 7610, as follows:

> That on or about the 29th day of October 2003, at Virgen Milagrosa University Hospital, San Carlos City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there, willfully, unlawfully and feloniously touched the breast of AAA, 16 years of age, touched her genitalia, and inserted his finger into her vagina, to the damage and prejudice of said AAA who suffered psychological and emotional disturbance, anxiety, sleeplessness and humiliation.

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[5] The real names of the victim and her family were not disclosed pursuant to the ruling of this Court in *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

Contrary to Article 336 of the Revised Penal Code in relation to RA 7610.[6]

During the trial, AAA testified that on 29 October 2003, between 7:00 a.m. and 8:00 a.m., Garingarao, who was wearing a white uniform, entered her room and asked if she already took her medicines and if she was still experiencing pains. AAA replied that her stomach was no longer painful. Garingarao then lifted AAA's bra and touched her left breast. Embarrassed, AAA asked Garingarao what he was doing. Garingarao replied that he was just examining her. Garingarao then left the room and returned 15 to 30 minutes later with a stethoscope. Garingarao told AAA that he would examine her again. Garingarao lifted AAA's shirt, pressed the stethoscope to her stomach and touched her two nipples. Garingarao then lifted AAA's pajama and underwear and pressed the lower part of her abdomen. Garingarao then slid his finger inside AAA's private part. AAA instinctively crossed her legs and again asked Garingarao what he was doing. She asked him to stop and informed him she had her monthly period. Garingarao ignored AAA and continued to insert his finger inside her private part. Garingarao only stopped when he saw that AAA really had her monthly period. He went inside the bathroom of the private room, washed his hands, applied alcohol and left. When BBB arrived at the hospital, AAA insisted on going home. She only narrated the incident to her parents when they got home and they went back to the hospital to report the incident to Dr. Morante.

Dr. Morante testified on AAA's confinement to and discharge from the hospital.

The prosecution presented the following documents before the trial court:

(a) AAA's birth certificate to establish that she was 16 years old at the time of the incident;

(b) AAA's medical records establishing her confinement to and discharge from Virgen Milagrosa Medical Center;

[6] *Rollo*, p. 43.

(c) the schedule of duties of the nurses at the hospital showing that Garingarao was on duty from 12:00 a.m. to 8:00 a.m. on 29 October 2003;

(d) a certificate from the Department of Education Division Office showing that BBB was present at the office from 8:00 a.m. to 9:00 a.m. on 29 October 2003;

(e) AAA's Medical Payment Notice;

(f) the incident report filed by AAA's parents with the police; and

(g) a letter from the hospital administrator requiring Garingarao to explain why no administrative action should be filed against him in view of the incident.

For the defense, Garingarao gave a different version of the incident. Garingarao alleged that on 29 October 2003, he and his nursing aide Edmundo Tamayo (Tamayo) went inside AAA's room to administer her medicines and check her vital signs. BBB then accused them of not administering the medicines properly and on time. Garingarao told BBB that they should not be told how to administer the medicines because they knew what they were doing and that they would be accountable should anything happen to AAA. A heated argument ensued between BBB and Garingarao. BBB told Garingarao he was an arrogant nurse. Garingarao replied that if BBB had any complaint, he could report the matter to the hospital. Garingarao denied that he inserted his finger into AAA's private part and that he fondled her breasts. Garingarao alleged that the filing of the case was motivated by the argument he had with BBB.

Tamayo testified that he was with Garingarao when they went to AAA's room between 7:00 a.m. and 8:00 a.m. of 29 October 2003. He alleged that BBB was present and he accused Garingarao of not administering the medications properly. Tamayo alleged that Garingarao and BBB had an argument. Tamayo stated that he would always accompany Garingarao whenever the latter would visit the rooms of the patients.

The Decision of the Trial Court

In its Decision[7] dated 5 November 2007, the trial court found Garingarao guilty as charged. The trial court gave credence to the testimony of AAA over Garingarao's denial. The trial court ruled that Garingarao was positively identified by AAA as the person who entered her room, touched her breasts and inserted his finger into her private part. The trial court also found that the prosecution was able to establish that BBB and CCC were not in the room when Garingarao went inside.

The trial court found as baseless Garingarao's defense that the case was only motivated by the argument he had with BBB. The trial court ruled that it was illogical for BBB to convince his daughter to fabricate a story of sexual abuse just to get even at Garingarao over a heated argument.

The dispositive portion of the trial court's Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding the accused Jojit Garingarao **GUILTY** beyond reasonable doubt of the crime of acts of lasciviousness in relation to Republic Act 7610, and sentencing him to suffer the penalty of imprisonment ranging from 12 years to 1 day of *Reclusion Temporal* as minimum to 14 years and 8 months of *Reclusion Temporal* as maximum.
>
> The accused is ordered to pay to the minor victim [AAA] ₱20,000.00 as moral damages and ₱10,000.00 as fine.
>
> SO ORDERED.[8]

Garingarao appealed from the trial court's Decision.

The Decision of the Court of Appeals

In its 26 November 2009 Decision, the Court of Appeals affirmed the trial court's decision with modifications.

The Court of Appeals ruled that while Garingarao was charged for acts of lasciviousness in relation to RA 7610, he should be convicted under RA 7610 because AAA was 16 years old when

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[7] *Id.* at 68-76. Penned by Presiding Judge Hermogenes C. Fernandez.

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

the crime was committed. The Court of Appeals ruled that under Section 5(b) of RA 7610, the offender shall be charged with rape or lascivious conduct under the Revised Penal Code (RPC) only if the victim is below 12 years old; otherwise, the provisions of RA 7610 shall prevail.

The Court of Appeals ruled that based on the evidence on record and the testimony of AAA, the decision of the trial court has to be affirmed. The Court of Appeals ruled that under Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, the introduction of any object into the genitalia of the offended party as well as the intentional touching of her breasts when done with the intent to sexually gratify the offender qualify as a lascivious act. AAA's testimony established that Garingarao committed the lascivious acts.

The Court of Appeals found no reason for AAA or her family to fabricate the charges against Garingarao. The Court of Appeals ruled that Garingarao's claim that the case was filed so that BBB could get even with him because of the argument they had was too shallow to be given consideration. The Court of Appeals likewise rejected Garingarao's defense of denial which could not prevail over the positive testimony of AAA.

The Court of Appeals modified the penalty imposed by the trial court. The Court of Appeals ruled that the duration of *reclusion temporal* in its maximum period should be 17 years, 4 months and 1 day to 20 years and not 14 years and 8 months as imposed by the trial court. The Court of Appeals also raised the award of moral damages and fine, which was deemed as civil indemnity, to conform with recent jurisprudence.

The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, in view of the foregoing, the Decision dated November 5, 2007 of the Regional Trial Court of San Carlos City, Pangasinan in Criminal Case No. SCC-4167 is hereby AFFIRMED with the following MODIFICATIONS:

1. The penalty imposed on the accused-appellant is 14 years and 8 months of *reclusion temporal* as minimum to 20 years of *reclusion temporal* as maximum[;]

2. The award of moral damages is raised from ₱20,000.00 to ₱50,000.00; and

3. The award of indemnity is raised from ₱10,000.00 to ₱50,000.00.

SO ORDERED.[9]

Garingarao filed a motion for reconsideration. In its 22 June 2010 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issue

The only issue in this case is whether the Court of Appeals committed a reversible error in affirming with modifications the trial court's decision.

The Ruling of this Court

The petition has no merit.

Garingarao alleges that the Court of Appeals erred in affirming the trial court's decision finding him guilty of acts of lasciviousness in relation to RA 7610. Garingarao insists that it was physically impossible for him to commit the acts charged against him because there were many patients and hospital employees around. He alleges that AAA's room was well lighted and that he had an assistant when the incident allegedly occurred. Garingarao further alleges that, assuming the charges were correct, there was only one incident when he allegedly touched AAA and as such, he should have been convicted only of acts of lasciviousness and not of violation of RA 7610.

We do not agree.

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[9] *Id.* at 61.

Credibility of Witnesses

The Court has ruled that in case of acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused.[10] In this case, both the trial court and the Court of Appeals found the testimony of AAA credible over Garingarao's defense of denial and alibi. It is a settled rule that denial is a weak defense as against the positive identification by the victim.[11] Both denial and alibi are inherently weak defenses and constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration by a credible witness.[12] Garingarao's defense of denial and alibi must fail over the positive and straightforward testimony of AAA on the incident. Further, like the trial court and the Court of Appeals, we find incredible Garingarao's defense that the case was an offshoot of a heated argument he had with AAA's father over the manner Garingarao was giving AAA's medications. It is hard to believe that AAA's parents would expose her to a public trial if the charges were not true.[13] In addition, the prosecution was able to establish that, contrary to Garingarao's allegation, both BBB and CCC were not in AAA's room at the time of the incident.

Violation of RA 7610

Section 5, Article III of RA 7610 provides:

Section 5. *Child Prostitution and Other Sexual Abuse*. - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

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[10] *People v. Mendoza*, G.R. No. 180501, 24 December 2008, 575 SCRA 616.

[11] *People v. Fetalino*, G.R. No. 174472, 19 June 2007, 525 SCRA 170.

[12] *People v. Candaza*, G.R. No. 170474, 16 June 2006, 491 SCRA 280.

[13] *People v. Ortoa*, G.R. No. 174484, 23 February 2009, 580 SCRA 80.

(a) x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3 for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be; Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period, x x x

(c) x x x

The elements of sexual abuse under Section 5, Article III of RA 7610 are the following:

1. The accused commits the act of sexual intercourse or lascivious conduct;

2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and

3. The child, whether male or female, is below 18 years of age.[14]

Under Section 32, Article XIII of the Implementing Rules and Regulations of RA 7610, lascivious conduct is defined as follows:

[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, ***breast***, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.[15]

In this case, the prosecution established that Garingarao touched AAA's breasts and inserted his finger into her private part for his sexual gratification. Garingarao used his influence as a nurse

[14] *Olivarez v. Court of Appeals*, 503 Phil. 421 (2005).

[15] *Id.* at 431-432. Emphasis in the original text.

by pretending that his actions were part of the physical examination he was doing. Garingarao persisted on what he was doing despite AAA's objections. AAA twice asked Garingarao what he was doing and he answered that he was just examining her.

The Court has ruled that a child is deemed subject to other sexual abuse when the child is the victim of lascivious conduct under the coercion or influence of any adult.[16] In lascivious conduct under the coercion or influence of any adult, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will.[17] In this case, Garingarao coerced AAA into submitting to his lascivious acts by pretending that he was examining her.

Garingarao insists that, assuming that the testimonies of the prosecution witnesses were true, he should not be convicted of violation of RA 7610 because the incident happened only once. Garingarao alleges that the single incident would not suffice to hold him liable under RA 7610.

Garingarao's argument has no legal basis.

The Court has already ruled that it is inconsequential that sexual abuse under RA 7610 occurred only once.[18] Section 3(b) of RA 7610 provides that the abuse may be habitual or not.[19] Hence, the fact that the offense occurred only once is enough to hold Garingarao liable for acts of lasciviousness under RA 7610.

Indemnity and Moral Damages

In view of recent jurisprudence, we deem it proper to reduce the amount of indemnity to ₱20,000[20] and moral damages awarded

[16] *Olivarez v. Court of Appeals, supra* note 14.

[17] *People v. Abello*, G.R. No. 151952, 25 March 2009, 582 SCRA 378.

[18] *Olivarez v. Court of Appeals, supra* note 14.

[19] *Id*.

[20] *Flordeliz v. People*, G.R. No. 186441, 3 March 2010, 614 SCRA 225.

by the Court of Appeals to ₱15,000.[21] We also impose on Garingarao a fine of ₱15,000.[22]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 26 November 2009 Decision and 22 June 2010 Resolution of the Court of Appeals in CA-G.R. CR No. 31354 with *MODIFICATIONS*. The Court finds Jojit Garingarao *GUILTY* beyond reasonable doubt of acts of lasciviousness in relation to Republic Act No. 7610. He is sentenced to suffer the penalty of 14 years and 8 months of *reclusion temporal* as minimum to 20 years of *reclusion temporal* as maximum and ordered to pay AAA ₱20,000 as civil indemnity, ₱15,000 as moral damages and a fine of ₱15,000.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Peralta,*[**] and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 193723. July 20, 2011]

GENERAL MILLING CORPORATION, *petitioner, vs.* **SPS. LIBRADO RAMOS and REMEDIOS RAMOS,** *respondents.*

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[21] *Id.*; *People v. Montinola*, G.R. No. 178061, 31 January 2008, 543 SCRA 412.

[22] *Id.*

[*] Designated acting member per Special Order No. 1006 dated 10 June 2011.

[**] Designated acting member per Special Order No. 1040 dated 6 July 2011.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; UNASSIGNED ERRORS ON APPEAL; AN APPELLATE COURT HAS A BROAD DISCRETIONARY POWER IN CASE AT BAR.— In *Diamonon v. Department of Labor and Employment* (327 SCRA 283, 288-289), We explained that an appellate court has a broad discretionary power in waiving the lack of assignment of errors in the following instances: (a) Grounds not assigned as errors but affecting the jurisdiction of the court over the subject matter; (b) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) Matters not assigned as errors on appeal but closely related to an error assigned; (f) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent. Paragraph (c) above applies to the instant case, for there would be a just and complete resolution of the appeal if there is a ruling on whether the Spouses Ramos were actually in default of their obligation to GMC.

2. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DEFAULT; REQUISITES FOR FINDING OF DEFAULT.— There are three requisites necessary for a finding of default. *First*, the obligation is demandable and liquidated; *second*, the debtor delays performance; and *third*, the creditor judicially or extrajudicially requires the debtor's performance. x x x Indeed, Article 1169 of the Civil Code on delay requires the following: "Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfilment of their obligation. However, the demand by the creditor shall not be necessary in order that delay may exist: (1) When the obligation or the law expressly so declares; x x x

3. ID.; ID.; ID.; ID.; ID.; FORECLOSURE, VALID ONLY WHEN DEBTOR IS IN DEFAULT; CASE AT BAR NOT A CASE OF.— According to the CA, GMC did not make a demand on Spouses Ramos but merely requested them to go to GMC's office to discuss the settlement of their account. In spite of the lack of demand made on the spouses, however, GMC proceeded with the foreclosure proceedings. Neither was there any provision in the Deed of Real Estate Mortgage allowing GMC to extrajudicially foreclose the mortgage without need of demand. x x x As the contract in the instant case carries no such provision on demand not being necessary for delay to exist, We agree with the appellate court that GMC should have first made a demand on the spouses before proceeding to foreclose the real estate mortgage. *Development Bank of the Philippines v. Licuanan* finds application to the instant case: The issue of whether demand was made before the foreclosure was effected is essential. If demand was made and duly received by the respondents and the latter still did not pay, then they were already in default and foreclosure was proper. However, if demand was not made, then the loans had not yet become due and demandable. This meant that respondents had not defaulted in their payments and the foreclosure by petitioner was premature. **Foreclosure is valid only when the debtor is in default in the payment of his obligation.**

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; SUPREME COURT, NOT A TRIER OF FACTS; THE ISSUE OF WHETHER OR NOT DEMAND WAS MADE IS A QUESTION OF FACT AND, THUS, IS NOT WITHIN THE JURISDICTION OF THE COURT; CASE AT BAR.— In turn, whether or not demand was made is a question of fact. This petition filed under Rule 45 of the Rules of Court shall raise only questions of law. For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. It need not be reiterated that this Court is not a trier of facts. We will defer to the factual findings of the trial court, because petitioner GMC has not shown any circumstances making this case an exception to the rule.

APPEARANCES OF COUNSEL

Kho Bustos Malcontento Argosino Law Offices for petitioner.
Exconde & Exconde Law Offices for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is a petition for review of the April 15, 2010 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 85400 entitled *Spouses Librado Ramos & Remedios Ramos v. General Milling Corporation, et al.*, which affirmed the May 31, 2005 Decision of the Regional Trial Court (RTC), Branch 12 in Lipa City, in Civil Case No. 00-0129 for Annulment and/or Declaration of Nullity of Extrajudicial Foreclosure Sale with Damages.

The Facts

On August 24, 1989, General Milling Corporation (GMC) entered into a Growers Contract with spouses Librado and Remedios Ramos (Spouses Ramos). Under the contract, GMC was to supply broiler chickens for the spouses to raise on their land in *Barangay* Banaybanay, Lipa City, Batangas.[1] To guarantee full compliance, the Growers Contract was accompanied by a Deed of Real Estate Mortgage over a piece of real property upon which their conjugal home was built. The spouses further agreed to put up a surety bond at the rate of PhP 20,000 per 1,000 chicks delivered by GMC. The Deed of Real Estate Mortgage extended to Spouses Ramos a maximum credit line of PhP 215,000 payable within an indefinite period with an interest of twelve percent (12%) per annum.[2]

The Deed of Real Estate Mortgage contained the following provision:

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[1] *Rollo*, p. 37.

[2] *Id.* at 13.

WHEREAS, the MORTGAGOR/S has/have agreed to guarantee and secure the full and faithful compliance of [MORTGAGORS'] obligation/s with the MORTGAGEE by a First Real Estate Mortgage in favor of the MORTGAGEE, over a 1 parcel of land and the improvements existing thereon, situated in the Barrio/s of - Banaybanay, Municipality of Lipa City, Province of Batangas, Philippines, his/her/their title/s thereto being evidenced by Transfer Certificate/s No./s T-9214 of the Registry of Deeds for the Province of Batangas in the amount of TWO HUNDRED FIFTEEN THOUSAND (₱ 215,000.00), Philippine Currency, which the maximum credit line payable within a x x x day term and to secure the payment of the same plus interest of twelve percent (12%) per annum.

Spouses Ramos eventually were unable to settle their account with GMC. They alleged that they suffered business losses because of the negligence of GMC and its violation of the Growers Contract.[3]

On March 31, 1997, the counsel for GMC notified Spouses Ramos that GMC would institute foreclosure proceedings on their mortgaged property.[4]

On May 7, 1997, GMC filed a Petition for Extrajudicial Foreclosure of Mortgage. On June 10, 1997, the property subject of the foreclosure was subsequently sold by public auction to GMC after the required posting and publication.[5] It was foreclosed for PhP 935,882,075, an amount representing the losses on chicks and feeds exclusive of interest at 12% per annum and attorney's fees.[6] To complicate matters, on October 27, 1997, GMC informed the spouses that its Agribusiness Division had closed its business and poultry operations.[7]

On March 3, 2000, Spouses Ramos filed a Complaint for Annulment and/or Declaration of Nullity of the Extrajudicial Foreclosure Sale with Damages. They contended that the

[3] *Id.* at 113.

[4] *Id.* at 37.

[5] *Id.*

[6] *Id.* at 117.

[7] *Id.* at 114.

extrajudicial foreclosure sale on June 10, 1997 was null and void, since there was no compliance with the requirements of posting and publication of notices under Act No. 3135, as amended, or *An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages*. They likewise claimed that there was no sheriff's affidavit to prove compliance with the requirements on posting and publication of notices. It was further alleged that the Deed of Real Estate Mortgage had no fixed term. A prayer for moral and exemplary damages and attorney's fees was also included in the complaint.[8] Librado Ramos alleged that, when the property was foreclosed, GMC did not notify him at all of the foreclosure.[9]

During the trial, the parties agreed to limit the issues to the following: (1) the validity of the Deed of Real Estate Mortgage; (2) the validity of the extrajudicial foreclosure; and (3) the party liable for damages.[10]

In its Answer, GMC argued that it repeatedly reminded Spouses Ramos of their liabilities under the Growers Contract. It argued that it was compelled to foreclose the mortgage because of Spouses Ramos' failure to pay their obligation. GMC insisted that it had observed all the requirements of posting and publication of notices under Act No. 3135.[11]

The Ruling of the Trial Court

Holding in favor of Spouses Ramos, the trial court ruled that the Deed of Real Estate Mortgage was valid even if its term was not fixed. Since the duration of the term was made to depend exclusively upon the will of the debtors-spouses, the trial court cited jurisprudence and said that "the obligation is not due and payable until an action is commenced by the mortgagee against the mortgagor for the purpose of having the court fix

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

[9] *Id.* at 117.

[10] *Id.* at 115.

[11] *Id.* at 38.

the date on and after which the instrument is payable and the date of maturity is fixed in pursuance thereto."[12]

The trial court held that the action of GMC in moving for the foreclosure of the spouses' properties was premature, because the latter's obligation under their contract was not yet due.

The trial court awarded attorney's fees because of the premature action taken by GMC in filing extrajudicial foreclosure proceedings before the obligation of the spouses became due.

The RTC ruled, thus:

WHEREFORE, premises considered, judgment is rendered as follows:

1. The Extra-Judicial Foreclosure Proceedings under docket no. 0107-97 is hereby declared null and void;

2. The Deed of Real Estate Mortgage is hereby declared valid and legal for all intents and puposes (sic);

3. Defendant-corporation General Milling Corporation is ordered to pay Spouses Librado and Remedios Ramos attorney's fees in the total amount of ₱57,000.00 representing acceptance fee of ₱30,000.00 and P3,000.00 appearance fee for nine (9) trial dates or a total appearance fee of ₱27,000.00;

4. The claims for moral and exemplary damages are denied for lack of merit.

IT IS SO ORDERED.[13]

The Ruling of the Appellate Court

On appeal, GMC argued that the trial court erred in: (1) declaring the extrajudicial foreclosure proceedings null and void; (2) ordering GMC to pay Spouses Ramos attorney's fees; and (3) not awarding damages in favor of GMC.

The CA sustained the decision of the trial court but anchored its ruling on a different ground. Contrary to the findings of the

[12] *Id.* at 123. (Citation omitted.)

[13] *Id.* at 127. Penned by Judge Vicente F. Landicho.

trial court, the CA ruled that the requirements of posting and publication of notices under Act No. 3135 were complied with. The CA, however, still found that GMC's action against Spouses Ramos was premature, as they were not in default when the action was filed on May 7, 1997.[14]

The CA ruled:

> In this case, a careful scrutiny of the evidence on record shows that defendant-appellant GMC made no demand to spouses Ramos for the full payment of their obligation. While it was alleged in the Answer as well as in the Affidavit constituting the direct testimony of Joseph Dominise, the principal witness of defendant-appellant GMC, that demands were sent to spouses Ramos, the documentary evidence proves otherwise. A perusal of the letters presented and offered as evidence by defendant-appellant GMC did not "demand" but only request spouses Ramos to go to the office of GMC to "discuss" the settlement of their account.[15]

According to the CA, however, the RTC erroneously awarded attorney's fees to Spouses Ramos, since the presumption of good faith on the part of GMC was not overturned.

The CA disposed of the case as follows:

> WHEREFORE, and in view of the foregoing considerations, the Decision of the Regional Trial Court of Lipa City, Branch 12, dated May 21, 2005 is hereby AFFIRMED with MODIFICATION by deleting the award of attorney's fees to plaintiffs-appellees spouses Librado Ramos and Remedios Ramos.[16]

Hence, We have this appeal.

The Issues

A. WHETHER [THE CA] MAY CONSIDER ISSUES NOT ALLEGED AND DISCUSSED IN THE LOWER COURT AND

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

[15] *Id.* at 41.

[16] *Id.* at 36-44. Penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Fernanda Lampas Peralta and Manuel B. Barrios.

LIKEWISE NOT RAISED BY THE PARTIES ON APPEAL, THEREFORE HAD DECIDED THE CASE NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT.

B. WHETHER [THE CA] ERRED IN RULING THAT PETITIONER GMC MADE NO DEMAND TO RESPONDENT SPOUSES FOR THE FULL PAYMENT OF THEIR OBLIGATION CONSIDERING THAT THE LETTER DATED MARCH 31, 1997 OF PETITIONER GMC TO RESPONDENT SPOUSES IS TANTAMOUNT TO A FINAL DEMAND TO PAY, THEREFORE IT DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.[17]

The Ruling of this Court

Can the CA consider matters not alleged?

GMC asserts that since the issue on the existence of the demand letter was not raised in the trial court, the CA, by considering such issue, violated the basic requirements of fair play, justice, and due process.[18]

In their Comment,[19] respondents-spouses aver that the CA has ample authority to rule on matters not assigned as errors on appeal if these are indispensable or necessary to the just resolution of the pleaded issues.

In *Diamonon v. Department of Labor and Employment*,[20] We explained that an appellate court has a broad discretionary power in waiving the lack of assignment of errors in the following instances:

(a) Grounds not assigned as errors but affecting the jurisdiction of the court over the subject matter;

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[17] *Id.* at 18.

[18] *Id.* at 19.

[19] *Id.* at 194-199.

[20] G.R. No. 108951, March 7, 2000, 327 SCRA 283, 288-289. *See* also *Kulas Ideas & Creations v. Alcoseba*, G.R. No. 180123, February 18, 2010, 613 SCRA 217, 231.

(b) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;

(c) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice;

(d) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;

(e) Matters not assigned as errors on appeal but closely related to an error assigned;

(f) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.

Paragraph (c) above applies to the instant case, for there would be a just and complete resolution of the appeal if there is a ruling on whether the Spouses Ramos were actually in default of their obligation to GMC.

Was there sufficient demand?

We now go to the second issue raised by GMC. GMC asserts error on the part of the CA in finding that no demand was made on Spouses Ramos to pay their obligation. On the contrary, it claims that its March 31, 1997 letter is akin to a demand.

We disagree.

There are three requisites necessary for a finding of default. *First*, the obligation is demandable and liquidated; *second*, the debtor delays performance; and *third*, the creditor judicially or extrajudicially requires the debtor's performance.[21]

According to the CA, GMC did not make a demand on Spouses Ramos but merely requested them to go to GMC's office to discuss the settlement of their account. In spite of the lack of

[21] *Selegna Management and Development Corporation v. United Coconut Planters Bank*, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 138.

demand made on the spouses, however, GMC proceeded with the foreclosure proceedings. Neither was there any provision in the Deed of Real Estate Mortgage allowing GMC to extrajudicially foreclose the mortgage without need of demand.

Indeed, Article 1169 of the Civil Code on delay requires the following:

> Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfilment of their obligation.
>
> However, the demand by the creditor shall not be necessary in order that delay may exist:
>
> (1) When the obligation or the law expressly so declares; xxx

As the contract in the instant case carries no such provision on demand not being necessary for delay to exist, We agree with the appellate court that GMC should have first made a demand on the spouses before proceeding to foreclose the real estate mortgage.

Development Bank of the Philippines v. Licuanan finds application to the instant case:

> The issue of whether demand was made before the foreclosure was effected is essential. If demand was made and duly received by the respondents and the latter still did not pay, then they were already in default and foreclosure was proper. However, if demand was not made, then the loans had not yet become due and demandable. This meant that respondents had not defaulted in their payments and the foreclosure by petitioner was premature. **Foreclosure is valid only when the debtor is in default in the payment of his obligation**.[22]

In turn, whether or not demand was made is a question of fact.[23] This petition filed under Rule 45 of the Rules of Court shall raise only questions of law. For a question to be one of law, it must not involve an examination of the probative value

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[22] G.R. No. 150097, February 26, 2007, 516 SCRA 644, 650. (Emphasis supplied.)

[23] *Id*.

of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[24] It need not be reiterated that this Court is not a trier of facts.[25] We will defer to the factual findings of the trial court, because petitioner GMC has not shown any circumstances making this case an exception to the rule.

WHEREFORE, the petition is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 85400 is *AFFIRMED*.

SO ORDERED.

Carpio,[*] *Leonardo-de Castro,*[**] *Abad,* and *Mendoza, JJ.*, concur.

THIRD DIVISION

[A.M. No. MTJ-09-1736. July 25, 2011]
(Formerly OCA I.P.I. No. 08-2034-MTJ)

ATTY. CONRADO B. GANDEZA, JR., *complainant, vs.* **JUDGE MARIA CLARITA C. TABIN, Presiding Judge, Municipal Trial Court in Cities, Branch 4, Baguio City,** *respondent.*

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[24] *Tirazona v. Court of Appeals*, G.R. No. 169712, March 14, 2008, 548 SCRA 560, 581.

[25] *Heirs of Completo & Abiad v. Sgt. Albayda*, G.R. No. 172200, July 6, 2010, 624 SCRA 97, 110.

[*] Additional member per Special Order No. 1042 dated July 6, 2011.

[**] Additional member per raffle dated July 13, 2011.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; CODE OF JUDICIAL CONDUCT; CANON 2 THEREOF; DUTY OF JUDGE TO AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES.—** Canon 2 of the Code of Judicial Conduct requires a judge to avoid not only impropriety but also the mere appearance of impropriety in **all activities**. To stress how the law frowns upon even any appearance of impropriety in a magistrate's activities, it has often been held that a judge must be like Caesar's wife - above suspicion and beyond reproach. x x x We have repeatedly reminded members of the Judiciary to be irreproachable in conduct and to be free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties, but also in their daily life. For no position exacts a greater demand for moral righteousness and uprightness of an individual than a seat in the Judiciary. The imperative and sacred duty of each and everyone in the Judiciary is to maintain its good name and standing as a temple of justice.

2. **ID.; ID.; ID.; ID.; VIOLATED IN CASE AT BAR.—** On March 26, 2010, the OCA, however, found Judge Tabin guilty of violation of Canon 4, Section 1 of the New Code of Judicial Conduct. The OCA reasoned that there was sufficient evidence showing that respondent Judge is liable for impropriety. Records show that Judge Tabin did not merely look after the safety of her nephew after the vehicular accident, but she likewise ascertained that the conduct of the investigation was in her nephew's favor. x x x As found by the OCA, it was inappropriate for respondent judge to direct that a second test be conducted on complainant's driver when the first test resulted in a "negative." Respondent judge cannot interfere in the conduct of the investigation. Inevitably, as a result of her interference, complainant suspected that she was influencing the outcome of the investigation as evidenced by complainant's alleged statement: "*Itong ospital na ito, pwede palang impluwensyahan ng huwes.*" Even assuming that respondent Judge did not make public her position as a judge to the examining doctor or the investigating policeman, the fact that she knew that said police officer and the complainant had knowledge of her being a judge should have refrained her from further interfering in the

investigation. She cannot act oblivious as to how and what the public will view her actions. Likewise, respondent's act of borrowing court records and accompanying her sister at the PMC under the guise of extending assistance to her sister manifested not only lack of maturity as a judge, but also a lack of understanding of her vital role as an impartial dispenser of justice. She may have the best intention devoid of any malicious motive but sadly her actions, however, spawned the impression that she was using her office to unduly influence or pressure the concerned people to conduct the medical examination as well as the investigation in their favor.

3. ID.; ID.; ID.; ID.; ID.; SANCTIONS FOR IMPROPRIETY, WHICH IS A LIGHT CHARGE. – In a number of cases, following the case of *Rosauro v. Kallos*, we ruled that impropriety constitutes a light charge. Section 11 (C), Rule 140 of the Rules of Court provides the following sanctions if the respondent is found guilty of a light charge: C. If the respondent is guilty of a light charge, any of the following sanctions shall be imposed: 1. A fine of not less than ₱1,000.00 but not exceeding ₱10,000.00 and/or; 2. Censure; 3. Reprimand; 4. Admonition with warning.

D E C I S I O N

PERALTA, *J.*:

Before us is an administrative complaint[1] filed by complainant Atty. Conrado B. Gandeza, Jr. against Judge Maria Clarita C. Tabin, Presiding Judge, Municipal Trial Court in Cities (MTCC), Branch 4, Baguio City, for Gross Misconduct and Conduct Unbecoming a Judge.

The antecedent facts are as follows:

Complainant alleged that on November 20, 2007, around 9 o'clock in the evening, a Mitsubishi Galant with plate number UJB 799 driven along Marcos Highway, Baguio City by Guimba Digermo (Digermo), collided head on with a Ssangyong Musso Pick-Up with plate number XMW 135 driven by Marion Derez.

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

The Mitsubishi Galant is owned by complainant and his wife, Atty. April B. Gandeza, while the Ssangyong Musso Pick-Up is owned by respondent Judge's nephew, Paul N. Casuga.

Complainant recalled that when he arrived at the accident site, he saw respondent Judge conferring with the police investigator. He claimed that respondent Judge approached him and in a harsh tone accused his driver to be the one at fault and was under the influence of liquor. Respondent also kept on reminding the police investigator to put in his report the alleged drunken condition of his driver despite complainant's request to respondent judge not to prejudge the situation.

Complainant claimed that at the hospital, while both drivers were being subjected to physical examination, respondent Judge, instead of accompanying her nephew's driver, opted to stand closely beside complainant's driver and kept on suggesting to the examining doctor that his driver was under the influence of liquor. He added that when respondent Judge came to know the "negative" result of the alcoholic breath examination of his driver, she protested and demanded another examination on his driver. Despite his protests and his driver's refusal to undergo a re-examination, respondent Judge's request prevailed. Later on, complainant alleged that a new medical certificate showing his driver was under the influence of liquor was issued upon respondent's insistence.

Complainant argued that respondent Judge has no personality to interfere with the police investigation and only the police investigator has the right to request for re-examination.

Complainant likewise suspected that respondent Judge may have also facilitated the filing of the criminal complaint in court against his driver, since the complaint was filed in court barely a week after the collision. The investigating prosecutor even recommended an exorbitant sum of ₱30,000.00 for complainant's driver's liberty. Complainant believed that the processes have been railroaded to accommodate respondent Judge.

Moreover, complainant averred that his wife, a practicing lawyer in Baguio City, at one time saw an employee of the

Municipal Trial Court of Baguio, Branch 2, carrying outside of the court premises, the folder of the criminal case filed against their driver. When asked as to why said staff was carrying the case record outside the court's premises, said employee informed her that she will bring it to the sala of respondent Judge as the latter requested for it.

In another incident, complainant added that when his wife went to the Philippine Mediation Center (PMC), Baguio City, to move for the postponement of the scheduled mediation of the subject criminal case, she was informed by the clerk that respondent Judge went there and inquired about the supposed mediation.

Complainant insisted that respondent's actions showed her interest in the criminal case without regard to proper decorum. She, in effect, abused her judicial position.

On July 11, 2008, the Office of the Court Administrator (OCA) directed Judge Tabin to submit her comment on the complaint against him.[2]

In her Comment[3] dated September 9, 2008, Judge Tabin denied that she exerted undue influence in the conduct of the investigation. While she admitted that she did request the police officer that complainant's driver should be subjected to an alcoholic breath test as done earlier to her nephew, she, however, insisted that she did not influence PO3 Jackson U. Pabillo and the doctor of the Baguio General Hospital into doing the same.[4] Judge Tabin also pointed out that she never made public the fact that she is a judge, albeit, she admitted that complainant and PO3 Pabillo knew her as such.[5]

Respondent Judge also disputed that she used her position in borrowing the records of the criminal case against Digermo.

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[2] *Id.* at 17.

[3] *Id.* at 58-69.

[4] *Id.* at 61.

[5] *Id.* at 62.

She explained that at that time, her sister did not have a lawyer, thus, she asked one of her staff to borrow the records of the criminal case as there may be developments in the case that her sister might not be aware of. Respondent added that she opted to borrow the case records instead, since she did not want to create the wrong impression that she was exerting her influence on the conduct of the criminal proceeding. Likewise, she explained her presence at the PMC by claiming that she merely accompanied her sister there as the latter did not know PMC's location.

Likewise, Judge Tabin denied that she had a hand in the filing of the case against Digermo. She disputed that she recommended the amount of ₱30,000.00 as bond for his provisional liberty, considering that the Prosecutor's Office is an independent office.

In a Memorandum[6] dated February 5, 2009, due to conflicting statements of the parties, the OCA recommended that the instant complaint be referred to the Executive Judge of the Regional Trial Court of Baguio City for investigation, report and recommendation.

On March 11, 2009, the Court directed the redocketing of the instant complaint as a regular administrative matter and referred the case to Executive Judge Edilberto T. Claravall of the Regional Trial Court of Baguio City, for investigation, report and recommendation.[7]

During the investigation conducted by the Investigating Judge, complainant failed to appear.[8] Later on, it appeared that the criminal case against complainant's driver was dismissed after the complainant settled his differences with respondent Judge.

On November 3, 2009, in his Report,[9] Judge Claravall recommended the dismissal of the complaint against Judge Tabin

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[6] *Id.* at 70-75.

[7] *Id.* at 79.

[8] *Id.* at 150.

[9] *Id.* at 212-220.

due to insufficient evidence to prove her guilty of gross misconduct and conduct unbecoming a judge.

Judge Claravall pointed out that the charges of Gross Misconduct and Conduct Unbecoming a Judge are penal in nature; thus, the same must be proven by convincing proof. The Investigating Judge observed that the act of Judge Tabin in borrowing the records of the criminal case was an exercise of her right to information. He is convinced that the actions of Judge Tabin were just normal reactions of any person who comes in defense and aide of a relative.

On March 26, 2010, the OCA, however, found Judge Tabin guilty of violation of Canon 4, Section 1 of the New Code of Judicial Conduct. The OCA reasoned that there was sufficient evidence showing that respondent Judge is liable for impropriety. Records show that Judge Tabin did not merely look after the safety of her nephew after the vehicular accident, but she likewise ascertained that the conduct of the investigation was in her nephew's favor.[10]

RULING

While we agree with the findings of the Investigating Judge that respondent Judge cannot be held liable for gross misconduct and conduct unbecoming of a judge due to lack of evidence of malice on the part of respondent Judge, we, however, agree with the findings of the OCA that Judge Tabin is guilty of impropriety.

As found by the OCA, it was inappropriate for respondent judge to direct that a second test be conducted on complainant's driver when the first test resulted in a "negative." Respondent judge cannot interfere in the conduct of the investigation. Inevitably, as a result of her interference, complainant suspected that she was influencing the outcome of the investigation as evidenced by complainant's alleged statement: "*Itong ospital na ito, pwede palang impluwensyahan ng huwes.*"

[10] *Id.* at 241.

Even assuming that respondent Judge did not make public her position as a judge to the examining doctor or the investigating policeman, the fact that she knew that said police officer and the complainant had knowledge of her being a judge should have refrained her from further interfering in the investigation. She cannot act oblivious as to how and what the public will view her actions. She should have kept herself free from any appearance of impropriety and endeavored to distance herself from any act liable to create an impression of indecorum.

Likewise, respondent's act of borrowing court records and accompanying her sister at the PMC under the guise of extending assistance to her sister manifested not only lack of maturity as a judge, but also a lack of understanding of her vital role as an impartial dispenser of justice. She may have the best intention devoid of any malicious motive but sadly her actions, however, spawned the impression that she was using her office to unduly influence or pressure the concerned people to conduct the medical examination as well as the investigation in their favor.

Indeed, while respondent Judge's concern over the safety of her nephew and the outcome of his criminal case is understandable, she should not have disregarded the rules on proper decorum at the expense of the integrity of the court. Although concern for family members is deeply ingrained in the Filipino culture, respondent, being a judge, should bear in mind that he is also called upon to serve the higher interest of preserving the integrity of the entire Judiciary. Canon 2 of the Code of Judicial Conduct requires a judge to avoid not only impropriety but also the mere appearance of impropriety in **all activities**.[11]

To stress how the law frowns upon even any appearance of impropriety in a magistrate's activities, it has often been held that a judge must be like Caesar's wife - above suspicion and beyond reproach. Respondent's act discloses a deficiency in prudence and discretion that a member of the Judiciary must

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[11] *Vidal v. Dojillo*, A.M. No. MTJ-05-1591, July 14, 2005. (Emphasis supplied.)

exercise in the performance of his official functions and of his activities as a private individual. It is never trite to caution respondent to be prudent and circumspect in both speech and action, keeping in mind that her conduct in and outside the courtroom is always under constant observation.[12]

In a number of cases,[13] following the case of *Rosauro v. Kallos*,[14] we ruled that impropriety constitutes a light charge. Section 11 (C), Rule 140 of the Rules of Court provides the following sanctions if the respondent is found guilty of a light charge:

> C. If the respondent is guilty of a light charge, any of the following sanctions shall be imposed:
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> 1. A fine of not less than ₱1,000.00 but not exceeding ₱10,000.00 and/or;
> 2. Censure;
> 3. Reprimand;
> 4. Admonition with warning.

We have repeatedly reminded members of the Judiciary to be irreproachable in conduct and to be free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties, but also in their daily life. For no position exacts a greater demand for moral righteousness and uprightness of an individual than a seat in the Judiciary. The imperative and sacred duty of each and everyone in the Judiciary is to maintain its good name and standing as a temple of justice. The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the

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[12] *Eladio D. Perfecto v. Judge Alma Consuelo Desales-Esidera, Presiding Judge, RTC, Catarman*, A.M. No. RTJ-11-2270, January 31, 2011.

[13] *Id.*; *Mansueta T. Rubin v. Judge Jose Y. Aguirre, Jr., RTC, Branch 55, Himamaylan, Negros Occidental,* A.M. No. RTJ-11-2267 (formerly A.M. OCA IPI No. 03-1788-RTJ), January 19, 2011; *Judge Capco-Umali v. Judge Acosta-Villarante*, A.M. No. RTJ-08-2124 [Formerly OCA I.P.I. No. 07-2631-RTJ], August 27, 2009, 597 SCRA 240.

[14] 517 Phil. 366, 378 (2006).

administration of justice which would violate the norm of public accountability or tend to diminish the faith of the people in the Judiciary, as in the case at bar.[15]

WHEREFORE, the Court finds Judge Clarita C. Tabin, Municipal Trial Court in Cities, Branch 4, Baguio City, *GUILTY of IMPROPRIETY* and is hereby *REPRIMANDED* and *WARNED* that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Abad,* and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 151911. July 25, 2011]

EDGAR PAYUMO, REYNALDO RUANTO, CRISANTO RUANTO, APOLINARIO RUANTO, and EXEQUIEL BONDE, *petitioners, vs.* **HONORABLE SANDIGANBAYAN, PEOPLE OF THE PHILIPPINES, OFFICE OF THE OMBUDSMAN, OFFICE OF THE SPECIAL PROSECUTOR, DOMICIANO CABIGAO, NESTOR DOMACENA, ROLANDO DOBLADO, ERNESTO PAMPUAN, EDGARDO PRADO, ROMEO DOMINICO, RAMON GARCIA, and CARLOS PACHECO,** *respondents.*

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[15] *Tiongco v. Judge Salao,* A.M. No. RTJ-06-2009, July 27, 2006, 496 SCRA 575, 586-587.

[*] Designated as an additional member, per Special Order No. 1042 dated July 6, 2011.

[G.R. No. 154535. July 25, 2011]

NESTOR DOMACENA, *petitioner, vs.* **HONORABLE SANDIGANBAYAN, PEOPLE OF THE PHILIPPINES, EDGAR PAYUMO, REYNALDO RUANTO, CRISANTO RUANTO, APOLINARIO RUANTO, and EXEQUIEL BONDE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; SANDIGANBAYAN; A SPECIAL COURT OF THE SAME LEVEL AS THE COURT OF APPEALS AND POSSESSES ALL THE INHERENT POWERS OF A COURT OF JUSTICE, WITH FUNCTIONS OF A TRIAL COURT; THE MEMBERS THEREOF ACT ON THE BASIS OF A CONSENSUS OR MAJORITY RULE.— The Sandiganbayan is a special court of the same level as the Court of Appeals (*CA*), and possessing all the inherent powers of a court of justice, with functions of a trial court. It is a collegial court. Collegial is defined as relating to a collegium or group of colleagues. In turn, a collegium is "an executive body with each member having approximately equal power and authority." The members of the graft court act on the basis of consensus or majority rule. The three Justices of a Division, rather than a single judge, are naturally expected to exert keener judiciousness and to apply broader circumspection in trying and deciding cases. The seemingly higher standard is due in part to the fact that the reviews of judgment of conviction are elevated directly to this Court generally through the discretionary mode of petition for review on *certiorari* under Rule 45, Rules of Court, which eliminates issues of fact, instead of via an ordinary appeal whereby the judgment of conviction still undergoes intermediate reviews in the appellate court before ultimately reaching the Court, if at all.

2. ID.; JUDGMENTS; PROMULGATION OF JUDGMENT; EXPLAINED; A FINAL DECISION OR RESOLUTION BECOMES BINDING ONLY AFTER IT IS PROMULGATED AND NOT BEFORE.— A judgment of a division of the Sandiganbayan shall be promulgated by reading the judgment or sentence in the presence of the accused and any Justice of

the division which rendered the same. Promulgation of the decision is an important part of the decision-making process. Promulgation signifies that on the date it was made, the judge or justices who signed the decision continued to support it which could be inferred from his silence or failure to withdraw his vote despite being able to do so. A decision or resolution of the court becomes such, only from the moment of its promulgation. A final decision or resolution becomes binding only after it is promulgated and not before.

3. ID.; ID.; ID.; FOR JUDGMENT TO BE BINDING, IT MUST BE DULY SIGNED AND PROMULGATED DURING THE INCUMBENCY OF THE JUDGE WHO PENNED IT; IT IS REQUIRED THAT AT THE TIME OF THE PROMULGATION OF THE DECISION, THE JUDGE WHO PENNED THE DECISION IS STILL AN INCUMBENT JUDGE, THAT IS, A JUDGE OF THE SAME COURT, ALBEIT NOW ASSIGNED TO A DIFFERENT BRANCH.— It is an elementary doctrine that for a judgment to be binding, it must be duly signed and promulgated during the incumbency of the judge who penned it. In this connection, the Court *En Banc* issued the Resolution dated February 10, 1983 implementing B.P. 129 which merely requires that the judge who pens the decision is still an incumbent judge, that is, a judge of the same court, albeit now assigned to a different branch, at the time the decision is promulgated. In *People v. CFI of Quezon, Branch X*, it was clarified that a judge who died, resigned, retired, had been dismissed, promoted to a higher court or appointed to another office with inconsistent functions, would no longer be considered an incumbent member of the court and his decision written thereafter would be invalid. Indeed, one who is no longer a member of the court at the time the final decision or resolution is signed and promulgated cannot validly take part in that decision or resolution. Much less could he be the *ponente* of the decision or resolution. Also, when a judge or a member of the collegiate court, who had earlier signed or registered his vote, has vacated his office at the time of the promulgation of the decision or resolution, his vote is automatically withdrawn or cancelled.

4. ID.; ID.; ID.; A JUDGMENT OF CONVICTION PENNED BY AN INCUMBENT JUSTICE IS VALID EVEN IF HE IS NO

LONGER A MEMBER OF THE SAME DIVISION AND HAS TRANSFERRED TO ANOTHER DIVISION OF THE SAID COURT, AT THE TIME HIS *PONENCIA* WAS PROMULGATED.— Guided by the foregoing principles, the judgment of conviction dated November 27, 1998 penned by Justice Legaspi must be declared valid. Apparently, it was not necessary that he be a member of the Fifth Division at the time the decision was promulgated since he remained an incumbent justice of the Sandiganbayan. What is important is that the *ponente* in a collegiate court remains a member of said court at the time his *ponencia* is promulgated because, at any time before that, he has the privilege of changing his opinion or making some last minute changes therein for the consideration and approval of his colleagues. After all, each division is not separate and distinct from the other divisions as they all constitute one Sandiganbayan. Jurisdiction is vested in the court, not in the judges or justices. Thus, when a case is filed in the Sandiganbayan, jurisdiction over the case does not attach to the division or justice alone, to the exclusion of the other divisions. x x x. At any rate, the decision penned by Justice Legaspi cannot be said to be a decision of another court, but of the same Sandiganbayan and of which the *ponente* was an incumbent justice when he wrote the decision until its promulgation.

5. ID.; EVIDENCE; PRESUMPTIONS; OFFICIAL FUNCTIONS ARE PRESUMED TO BE REGULARLY PERFORMED, ABSENT EVIDENCE THAT THE JUSTICES WERE IMPELLED BY MALICE OR CORRUPT MOTIVE OR INSPIRED BY AN INTENTION TO VIOLATE THE LAW OR WELL-KNOWN LEGAL RULES IN PROMULGATING THE JUDGMENT OF CONVICTION.— Moreover, the other two members then of the Fifth Division signed and adopted the judgment of conviction dated November 27, 1998, and continued to support it until its promulgation on February 23, 1999. The members reached their conclusion in consultation and, accordingly, rendered it as a collective judgment after due deliberation. Hence, there was no procedural defect. Besides, the presumption that the three justices had regularly performed their official function has not at all been rebutted by contrary evidence. Not an iota of evidence was adduced to show that the three justices were either impelled by malice or corrupt

motive or inspired by an intention to violate the law or well-known legal rules in promulgating the judgment of conviction.

6. ID.; COURTS; SANDIGANBAYAN; 2002 REVISED INTERNAL RULES OF THE SANDIGANBAYAN; TRANSFER OF THE *PONENTE* TO ANOTHER DIVISION AT ANY TIME BEFORE THE PROMULGATION OF THE DECISION; PROCEDURE TO BE FOLLOWED.— Notably, the 1984 Revised Rules of the Sandiganbayan, its prevailing rules at the time the challenged October 24, 2001 Resolution was issued, did not provide the procedure to be followed in case the *ponente* would be transferred to another division at any time before the promulgation of the decision. This time, however, under the 2002 Revised Internal Rules of the Sandiganbayan which was approved by the Court *En Banc* in the Resolution dated August 28, 2002 and issued in A.M. No. 02-6-07-SB, the situation contemplated in this controversy has been covered. Section 4 (k) of Rule XII thereof provides: SEC. 4. Cases Submitted for Decision; Assignment to *Ponente*. — xxx (k) If the justice to whom the case is assigned for study and report is transferred to another Division as its permanent member, he shall bring with him and write his report of the cases assigned to him in his original Division together with the other members of the Division to which the case was submitted for decision. The Division from which the Justice to whom the case is assigned for study and report came shall be known as a Special Division.

7. ID.; CRIMINAL PROCEDURE; GROUNDS FOR NEW TRIAL; AN ERRONEOUS ADMISSION OR REJECTION OF EVIDENCE BY THE TRIAL COURT IS NOT A GROUND FOR A NEW TRIAL OR REVERSAL OF THE DECISION IF THERE ARE OTHER INDEPENDENT EVIDENCE TO SUSTAIN THE DECISION, OR IF THE REJECTED EVIDENCE, IF IT HAD BEEN ADMITTED, WOULD NOT HAVE CHANGED THE DECISION.— Granting *arguendo* that the First Division erred in admitting the testimonies of the Payumos given during the first trial, which proceedings were nullified by this Court in the *Cabigao* case, the same would still not justify a new trial. It must be emphasized that an erroneous admission or rejection of evidence by the trial court is not a ground for a new trial or reversal of the decision if there are other independent evidence to sustain the decision,

or if the rejected evidence, if it had been admitted, would not have changed the decision. In the case at bench, a meticulous reading of the November 27, 1998 Decision reveals that the combined testimonies of the other complainants, namely, Reynaldo Ruanto, Crisanto Ruanto, Apolinario Ruanto, and Exequiel Bonde, have sufficiently established the commission of the crime charged in the information and the participation of the accused in the said crime. Seemingly, it would not debilitate the cause of the prosecution even if the testimonies of the Payumos would be expunged from the records.

8. ID.; ID.; ID.; NEWLY-DISCOVERED EVIDENCE; REQUISITES; NOT MET.— Neither would the presentation in evidence of the records of the JAGO warrant a new trial. [T]he records of the JAGO relative to the February 26, 1980 incident do not meet the criteria for newly discovered evidence that would merit a new trial. A motion for new trial based on newly-discovered evidence may be granted only if the following requisites are met: (a) that the evidence was discovered after trial; (b) that said evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) that it is material, not merely cumulative, corroborative or impeaching; and (d) that the evidence is of such weight that, if admitted, would probably change the judgment. It is essential that the offering party exercised reasonable diligence in seeking to locate the evidence before or during trial but nonetheless failed to secure it. In this case, however, such records could have been easily obtained by the accused and could have been presented during the trial with the exercise of reasonable diligence. Hence, the JAGO records cannot be considered as newly discovered evidence. There was nothing that prevented the accused from using these records during the trial to substantiate their position that the shooting incident was a result of a military operation.

9. LEGAL ETHICS; ATTORNEYS; ATTORNEY- CLIENT RELATIONSHIP; A CLIENT IS BOUND BY THE ACTS OF HIS COUNSEL, INCLUDING THE LATTER'S MISTAKES AND NEGLIGENCE.— [T]he non-presentation of the JAGO records, if they are indeed vital to the acquittal of the accused, speaks of negligence, either on the part of the accused themselves, or on the part of their counsels. In either instance, however, this negligence is binding upon the accused.

It is a settled rule that a party cannot blame his counsel for negligence when he himself was guilty of neglect. A client is bound by the acts of his counsel, including the latter's mistakes and negligence.

10. REMEDIAL LAW; CRIMINAL PROCEDURE; GROUNDS FOR NEW TRIAL; MISTAKES OF THE ATTORNEY AS TO COMPETENCY OF A WITNESS, THE SUFFICIENCY, RELEVANCY, MATERIALITY OR IMMATERIALITY OF A CERTAIN EVIDENCE, THE PROPER DEFENSE, OR THE BURDEN OF PROOF ARE NOT PROPER GROUNDS FOR NEW TRIAL.— [T]he matter of presentation of evidence for the defense is not for the trial court to decide. Considering that the defense counsels have control over the conduct of the defense, the determination of which evidence to present rests upon them. The Court notes that the defense presented a substantial number of witnesses and exhibits during trial *de novo* to belie the accusation against the accused and to prove the defenses they interposed. It has been held that the mistakes of the attorney as to the competency of a witness, the sufficiency, relevancy, materiality or immateriality of a certain evidence, the proper defense, or the burden of proof are not proper grounds for a new trial.

11. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; THERE IS EXCESS OF JURISDICTION WHERE THE RESPONDENT COURT, BEING CLOTHED WITH THE POWER TO DETERMINE THE CASE, OVERSTEPS ITS AUTHORITY AS DETERMINED BY LAW.— [T]he Court finds and so rules that the Sandiganbayan Special Fifth Division acted in excess of its jurisdiction when it nullified the November 27, 1998 Decision and granted a new trial for Criminal Case No. 4219. There is excess of jurisdiction where the respondent court, being clothed with the power to determine the case, oversteps its authority as determined by law. Accordingly, the assailed Resolution dated October 24, 2001 must be set aside.

12. ID.; ID.; *MANDAMUS*; WILL NOT ISSUE TO CONTROL THE EXERCISE OF DISCRETION OF A PUBLIC OFFICER WHERE THE LAW IMPOSES UPON HIM THE DUTY TO EXERCISE HIS JUDGMENT IN REFERENCE TO ANY MANNER IN WHICH HE IS REQUIRED TO ACT,

BECAUSE IT IS HIS JUDGMENT THAT IS TO BE EXERCISED AND NOT THAT OF THE COURT.— [T]he Court finds the petition for *mandamus* to be bereft of merit. Petitioners failed to adduce clear and convincing proof to substantiate their submission that the Ombudsman and the OSP unlawfully neglected the performance of their duty. In any event, the determination of what pleadings should be filed for the People, as well as the necessity of filing them to protect and advance the prosecution's cause, clearly involves the exercise of discretion or judgment. Either the Ombudsman or the OSP cannot be compelled by *mandamus* to file a particular pleading when it determines, in the exercise of its sound judgment, that it is not necessary. As an extraordinary writ, the remedy of *mandamus* lies only to compel an officer to perform a ministerial duty, not a discretionary one. *Mandamus* will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court.

APPEARANCES OF COUNSEL

Melgar Tria and Associates for Edgar Payumo, *et al.*

Espaldon Alapan & Gonzales for Edgardo Prado & Rolando Doblado.

Gonzales Gonzales & Associates for Domiciano Cabigao.

D E C I S I O N

MENDOZA, *J.*:

Before this Court are two consolidated petitions filed under Rule 65 of the 1997 Rules on Civil Procedure and docketed as G.R. No. 151911 and G.R. No. 154535, respectively. These cases were consolidated by the Court in its Resolution dated January 29, 2003.

G.R. No. 151911 is a petition for *certiorari* and *mandamus* which seeks to reverse and set aside the October 24, 2001

Resolution[1] by the Sandiganbayan Special Fifth Division, granting the Omnibus Motion to Set Aside the Decision dated November 27, 1998 and for New Trial, filed by the accused in Criminal Case No. 4219 entitled "*People of the Philippines v. Domiciano Cabigao, et al.*" for Murder with Multiple Frustrated and Attempted Murder. The petition also seeks to compel the Office of the Ombudsman (*Ombudsman*) and the Office of the Special Prosecutor (*OSP*) to perform their lawful duties of protecting the interests of the State and the petitioners.

G.R. No. 154535 was filed by Nestor Domacena (*Domacena*), one of the accused in Criminal Case No. 4219 and one of the respondents in G.R. No. 151911, to nullify the April 12, 2002 Resolution[2] of the Sandiganbayan which denied his Urgent Omnibus Motion to Dismiss. This petition, together with G.R. No. 151911 with respect to Domacena, was later dismissed by the Court in its January 31, 2007 Resolution, after the Sandiganbayan dismissed Criminal Case No. 4219 against this accused, in view of his death.

THE FACTS

The petitions stem from the facts of Criminal Case No. 4219 involving a shooting incident that occurred on February 26, 1980 at around 5:30 o'clock in the afternoon in Sitio Aluag, *Barangay* Sta. Barbara, Iba, Zambales. A composite team of Philippine Constabulary (*PC*) and Integrated National Police (INP) units allegedly fired at a group of civilians instantly killing Amante Payumo and wounding Teofilo Payumo, *Barangay* Captain of Sta. Barbara at Cabatuhan River; Edgar Payumo, Reynaldo Ruanto; Crisanto Ruanto; Apolinario Ruanto; and Exequiel Bonde. The following were indicted for Murder with Multiple Frustrated and Attempted Murder before the

[1] *Rollo* (G.R. No. 151911), pp. 38-55. Penned by Associate Justice Anaclete D. Badoy, Jr. with Associate Justices Raoul V. Victorino and Nicodemo T. Ferrer, concurring and Associate Justices Minita V. Chico-Nazario and Ma. Cristina G. Cortez-Estrada, dissenting.

[2] *Id.* (G.R. No. 154535), pp. 16-20. Penned by Associate Justice Ma. Cristina G. Cortez-Estrada with Associate Justices Minita V. Chico-Nazario and Francisco H. Villaruz, Jr., concurring.

Sandiganbayan: Domiciano Cabigao, Nestor Domacena, Rolando Doblado, Ernesto Pampuan, Edgardo Prado, Romeo Dominico, Rodolfo Erese, Ramon Garcia and Carlos Pacheco.

Accused Rodolfo Erese, however, died before the arraignment. When arraigned, the rest of the accused pleaded not guilty to the offense charged.[3] During the trial, the accused interposed the defenses of lawful performance of duty, self-defense, mistake of fact, and alibi. They insisted that the incident was a result of a military operation, and not an ambush as claimed by the prosecution.

After four (4) years of trial, the Second Division of the Sandiganbayan rendered its Decision[4] dated October 5, 1984, penned by Justice Romeo M. Escareal, convicting the accused as co-principals in the crime of Murder with Multiple Frustrated and Attempted Murder. The dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered finding accused Domiciano Cabigao *y* Cabal, Nestor Domacena *y* Deveraturda, Rolando Doblado *y* Draguin, Ernesto Pampuan *y* Santos, Edgardo Prado *y* Molina, Romeo Dominico *y* Quitaneg, Ramon Garcia *y* Dantes and Carlos Pacheco *y* Dominico GUILTY beyond reasonable doubt as co-principals in the crime of Murder with Multiple Frustrated and Attempted Murder, qualified by abuse of superior strength, and there being no modifying circumstances present, hereby sentences each of them to suffer the penalty of *Reclusion Perpetua*, with the accessory penalties attached thereto; to indemnify, jointly and severally the heirs of deceased victim Amante Payumo in the amount of ₱30,000.00; to indemnify, jointly and severally, Reynaldo Ruanto, Crisanto Ruanto, Edgar Payumo, Teofilo Payumo, Apolinario Ruanto and Exequiel Bonde in the amount of ₱10,000.00, ₱2,000.00 to Apolinario Ruanto and ₱1,000.00 to Exequiel Bonde for actual damages, and to pay their proportionate costs of this action.
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On October 23, 1984, the accused jointly moved for a reconsideration of the aforesaid decision, but the motion

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[3] *Id.* (G.R. No. 151911), p. 345.

[4] *Id.* at 8.

was denied by the Second Division in its Resolution dated December 10, 1984 and promulgated on December 11, 1984.

On January 11, 1985, the accused filed their Motion for New Trial anchored on the following grounds: (1) Error of law or irregularities have been committed during the trial prejudicial to the substantive rights of the accused; and (2) the accused were denied procedural due process of law.

The accused appealed to this Court the October 5, 1984 Decision of the respondent court through a petition for review on *certiorari*, which was docketed as G.R. No. 69422 entitled "*Domiciano Cabigao v. Sandiganbayan*."

In view of the appeal (G.R. No. 69422) before this Court, the Sandiganbayan Second Division issued a Resolution dated January 31, 1985 denying accused's Motion for New Trial on the ground that it no longer had any jurisdiction over the case.

This prompted the accused to file on February 20, 1985 a petition for *certiorari* before the Court, docketed as G.R. No. 69960, claiming that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the January 31, 1985 Resolution.

The petition in G.R. No. 69960 was later denied by the Court *En Banc* for lack of merit. A motion for reconsideration was filed by the accused but was likewise denied by the Court in its Resolution dated June 4, 1985.

On May 29, 1987, this Court rendered its Decision in G.R. No. 69422 granting the petition, setting aside the October 5, 1984 Decision of the Sandiganbayan and remanding the case for a new trial. The dispositive portion of the decision reads:

> WHEREFORE, the petition is hereby GRANTED. The questioned decision is set aside and the case is remanded to the court *a quo* for new trial as prayed for in the petitioner's motion.

Thus, Criminal Case No. 4219 was remanded to the Sandiganbayan and was raffled to the First Division. Meanwhile, upon motion of the accused, the Court clarified in its Resolution

dated February 2, 1989 that the conduct of a new trial should not be limited to the mere presentation of newly discovered evidence but "should be full and complete, taking into account the other serious allegations touching on due process."[5] Accordingly, the First Division received anew all the evidence of the parties, both testimonial and documentary.

Later, with the creation of the Fourth and Fifth divisions, Criminal Case No. 4219 was transferred to the Fifth Division.

On February 23, 1999, the Fifth Division promulgated its 92-page judgment[6] dated November 27, 1998, penned by Justice Godofredo T. Legaspi, convicting the accused of the crime of Murder with Multiple Attempted Murder, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered finding accused Domiciano Cabigao *y* Cabal, Nestor Domacena *y* Deveraturda, Rolando Doblado y Draguin, Ernesto Pampuan *y* Santos, Edgardo Prado *y* Molina, Romeo Dominico *y* Quitaneg, Ramon Garcia *y* Dantes and Carlos Pacheco *y* Dominico GUILTY beyond reasonable doubt of the Crime Murder with Multiple Attempted Murder, qualified by abuse of superior strength. Considering that the accused failed to prove any mitigating circumstance, they are hereby sentenced to suffer the penalty of *reclusion perpetua*, with the accessory penalties attached thereto. They are also hereby ordered to indemnify jointly and severally the heirs of the victim Amante Payumo the amount of ₱50,000.00 for his death; to jointly and severally indemnify the heirs of Teofilo Payumo, Reynaldo Ruanto, Crisanto Ruanto and Apolinario Ruanto, Edgar Payumo, Exequiel Bonde and Virgilio Abong the amount of ₱10,000.00 each as moral damages; to pay jointly and severally the heirs of Teofilo Payumo the amount of ₱2,000.00, Reynaldo Ruanto the amount of ₱1,000.00, Crisanto Ruanto the amount of ₱1,000.00, Exequiel Bonde the sum of ₱800.00, Apolinario Ruanto the amount of ₱3,000.00 and Edgar Payumo the amount of ₱3,000.00, all by way of actual damages, and to pay the costs of this suit.

Considering that, as manifested by Prosecutor Benitez in open court that accused Rodolfo Erese already died, his criminal liability,

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[5] *Id.* at 47.

[6] *Id.* at 83-173.

if any, is deemed extinguished. As regards the civil liability deemed impliedly instituted with the criminal case, pursuant to Sec. 1, Rule III of the Rules of Court, no judgment can be made against his estate, there being no proper substitution made upon his legal representative.

Accordingly, pursuant to Supreme Court Administrative Circular No. 2-92, par. 4, (3) dated January 20, 1990 the bail bonds of accused Cabigao, Domacena, Doblado, Pampuan, Prado, Dominico, Garcia and Pacheco are hereby ordered cancelled. Said accused are hereby ordered confined at the National Bureau of Prisons.

SO ORDERED.[7]

On March 8, 1999, the accused filed their Omnibus Motion to Set Aside Judgment and for New Trial[8] contending that errors of law or irregularities had been committed during and after trial which were prejudicial to their substantive and constitutional rights. Later, the accused filed their Supplemental Omnibus Motion to Set Aside Judgment and for New Trial,[9] and thereafter their Supplemental Omnibus Motion to Re-open Case and to Set for Oral Arguments.[10]

Since the Fifth Division could not reach unanimity in resolving the aforesaid omnibus motion, a Special Fifth Division composed of five (5) members of the Sandiganbayan[11] was constituted pursuant to Section 1 (b) of Rule XVIII of the 1984 Revised Rules of the Sandiganbayan. On September 27, 2001, Special Fifth Division, voting 3-2, issued the subject Resolution promulgated on October 24, 2001, setting aside the November 27, 1998 Decision and granting a second new trial of the case. The dispositive portion of which states:

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[7] *Id.* at 172-173.

[8] *Id.* at 174-182.

[9] *Id.* at 202-206.

[10] *Id.* at 196-201.

[11] Justice Minita V. Chico-Nazario, Justice Ma. Cristina G. Cortez-Estrada, Justice Anacleto D. Badoy, Jr., Justice Raoul V. Victorino, and Justice Nicodemo T. Ferrer.

WHEREFORE, accused's "OMNIBUS MOTION TO SET ASIDE JUDGMENT AND FOR NEW TRIAL" and its supplemental thereto is hereby GRANTED. The grant of the accused's "SUPPLEMENTAL OMNIBUS MOTION TO REOPEN CASE AND TO SET FOR ORAL ARGUMENTS dated April 5, 1999 thus becomes unnecessary."[12]

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The Special Fifth Division reasoned out that the November 27, 1998 Decision of the Fifth Division penned by Justice Godofredo T. Legaspi, (Justice Legaspi) could not have been validly promulgated and could not have acquired binding effect since Justice Legaspi had transferred to the Second Division and, hence, he ceased to be a member of the Fifth Division before the Decision was promulgated on February 23, 1999. Further, the Special Fifth Division ruled that a second new trial was necessary because the directive of this Court for the conduct of a trial *de novo* "has not yet been fully and completely complied with."[13] The testimonies of prosecution witnesses Teofilo Payumo (Teofilo) and Edgar Payumo (*Edgar*), which had been tainted with the irregularity of "*rigodon de juezes*" pursuant to the ruling of the Court in the case of *Cabigao v. The Sandiganbayan*,[14] were erroneously admitted during the trial *de novo* and, as such, had to be stricken out and taken anew. The Special Fifth Division also pronounced that a second new trial would enable it to allow the accused to adduce pertinent evidence including the records of the Judge Advocate General Office (*JAGO*), Armed Forces of the Philippines, to shed light on the "serious allegations" also referred to in the *Cabigao* case.

Ascribing grave abuse of discretion to the Sandiganbayan amounting to lack or excess of jurisdiction for nullifying the November 27, 1998 Decision and granting new trial, the complainants in Criminal Case No. 4219, Edgar Payumo, Reynaldo Ruanto, Crisanto Ruanto, Apolinario Ruanto, and Exequiel Bonde (*petitioners*) filed the present petition for *certiorari* and *mandamus*

[12] *Id.* at 54.

[13] *Id.* at 51.

[14] 234 Phil. 476 (1987).

with prayer for the issuance of a temporary restraining order and/or injunction to enjoin the Sandiganbayan from proceeding with the scheduled hearings for a second new trial.

In support of their position, petitioners allege that the Ombudsman and OSP negligently failed to protect their interest and that of the State when they did not file any opposition to the Omnibus Motion to Set Aside Judgment and for New Trial and, later, a motion for reconsideration of the challenged resolution dated October 24, 2001. They claim that the Ombudsman and the OSP slept on their lawful duty to protect their interest and that of the State.

ISSUES

Faulting the Special Fifth Division of the Sandiganbayan, petitioners raised the following issues:

FIRST

WHETHER OR NOT THE RESPONDENT COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING PRIVATE RESPONDENTS' "OMNIBUS MOTION TO SET ASIDE JUDGMENT AND FOR NEW TRIAL."

SECOND

WHETHER OR NOT THE RESPONDENT COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN SETTING ASIDE THE JUDGMENT OF CONVICTION (DECISION DATED 27 NOVEMBER 1998) ON THE GROUND THAT THE PROMULGATION THEREOF WAS DONE AT THE TIME THE *PONENTE* WAS ALREADY TRANSFERRED FROM THE FIFTH DIVISION TO THE SECOND DIVISION.

THIRD

WHETHER OR NOT THE RESPONDENT COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN SETTING ASIDE THE TESTIMONIES OF THE PROSECUTION WITNESSES TEOFILO PAYUMO AND EDGAR PAYUMO WHICH WERE ADOPTED

IN THE FIRST NEW TRIAL ON THE GROUND THAT THEIR NON-AVAILABILITY FOR THE FIRST NEW TRIAL DOES NOT DISPENSE WITH THE NEED TO CURE THEIR TAINTED TESTIMONIES OF THE EFFECTS OF THE IRREGULARITIES OF THE "*RIGODON DE JUEZES*."

FOURTH

WHETHER OR NOT THE RESPONDENT COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ORDERING AND DIRECTING THE PRIVATE RESPONDENTS TO PRESENT EVIDENCE IN CONNECTION WITH THE RECORDS OF INVESTIGATION CONDUCTED BY THE OFFICE OF THE JUDGE ADVOCATE GENERAL RELATIVE TO THE SHOOTING INCIDENT ON FEBRUARY 21, 1980 AND IN DIRECTING THE ISSUANCE OF A SUBPOENA *DUCES TECUM* FOR THIS PURPOSE.[15]

In a Minute Resolution[16] dated April 29, 2002, this Court denied petitioners' application for the issuance of a restraining order and/or injunction.

On September 29, 2005, Atty. Pascual Lacas filed a Consolidated Manifestation [17] informing this Court of the death of his client, Nestor Domacena, on June 12, 2005, and praying for the dismissal of the aforesaid cases insofar as his deceased client was concerned. Meanwhile, the Sandiganbayan dismissed Criminal Case No. 4219 as against Nestor Domacena in view of his death. Accordingly, on January 31, 2007, the Court in a resolution,[18] dismissed G.R. Nos. 151911 and 154535, and considered said cases closed and terminated with respect to Nestor Domacena in light of his untimely demise.

On October 24, 2007, Atty. Pablito Carpio filed a Manifestation[19] informing the Court of the death of Edgardo Prado *y* Molina

[15] *Rollo* (G.R. No. 151911), pp. 13-14.

[16] *Id.* at 212.

[17] *Id.* at 483-486.

[18] *Id.* at 506-507.

[19] *Id.* (G.R. No. 151911), pp. 521-523.

(Prado), another accused in Criminal Case No. 4219 and one of the respondents in G.R. No. 151911, and seeking the dismissal of the case against him. In its Resolution[20] dated March 10, 2008, the Court dismissed G.R. No. 151911 as far as Prado was concerned.

Likewise, the Court issued its July 30, 2008 Resolution[21] dismissing G.R. No. 151911 against another respondent, Romeo Dominico, who had also died during the pendency of the case.

In the light of the dismissal of **G.R. No. 154535**, the present disposition shall pertain only to **G.R. No. 151911**.

A perusal of the voluminous pleadings filed by the parties leads the Court to the following core issues:

1. Whether or not the Sandiganbayan acted in excess of its jurisdiction when it set aside the November 27, 1998 Decision;

2. Whether or not the Sandiganbayan acted in excess of its jurisdiction when it granted a new trial of Criminal Case No. 4219; and

3. Whether or not grave abuse of discretion attended the non-filing by the Ombudsman and the OSP of an Opposition to private respondents' Omnibus Motion to Set Aside Judgment and for New Trial, a Motion for Reconsideration of the assailed Resolution dated October 24, 2001 and a Petition for *Certiorari*.

The Court finds the petition for *certiorari* impressed with merit.

The Sandiganbayan is a special court of the same level as the Court of Appeals (*CA*), and possessing all the inherent powers of a court of justice, with functions of a trial court.[22] It is a collegial court. Collegial is defined as relating to a collegium or

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[20] *Id.* at 532.

[21] *Id.* at 545.

[22] R.A. No. 8249, Section 2, empowers the Sandiganbayan to "hold sessions . . . for the trial and determination of cases filed with it."

group of colleagues. In turn, a collegium is "an executive body with each member having approximately equal power and authority."[23] The members of the graft court act on the basis of consensus or majority rule. The three Justices of a Division, rather than a single judge, are naturally expected to exert keener judiciousness and to apply broader circumspection in trying and deciding cases.[24] The seemingly higher standard is due in part to the fact that the reviews of judgment of conviction are elevated directly to this Court generally through the discretionary mode of petition for review on *certiorari* under Rule 45, Rules of Court, which eliminates issues of fact, instead of via an ordinary appeal whereby the judgment of conviction still undergoes intermediate reviews in the appellate court before ultimately reaching the Court, if at all.

In resolving the private respondents' Omnibus Motion, the majority of the Sandiganbayan Special Fifth Division, declared that after reviewing the case of *Consolidated Bank and Trust Corporation v. Intermediate Appellate Court*,[25] it realized that it might have erred in the promulgation of the November 27, 1998 Decision considering that at the time of its promulgation, the *ponente*, Justice Legaspi, was no longer a member of the Fifth Division as he already transferred to the Second Division as its Senior Member. According to the Special Fifth Division, the thrust and spirit of the case of *Consolidated Bank and Trust Corporation* was that a decision could no longer be promulgated after the ponente died because the latter had "already lost that freedom, authority and right to amend or even reverse during the period intervening from the time of his death up to the time of promulgation."[26] The division ruled that the *ratio decidendi* in the aforecited case applied *mutatis mutandis* to the present case where a member of a division was transferred to another

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[23] Webster's Third New World International Dictionary, 445 (1993).

[24] *Jamsani-Rodriguez v. Justice Ong*, A.M. No. 08-19-SB-J, August 24, 2010, 628 SCRA 626, 646.

[25] G.R. Nos. 13777-78, September 12, 1990, 189 SCRA 433.

[26] *Rollo* (G.R. No. 151911), p. 40.

division and ceased to be a member of it before the promulgation of a decision. Thus, the cessation of Justice Legaspi's membership in the Fifth Division carried with it the cessation of all his authority and power to continue participating in the resolution of Criminal Case No. 4219 and all other cases assigned to said division, which included the authority and right to change or amend the November 27, 1998 Decision up to the time of its promulgation.

The Court does not agree.

A judgment of a division of the Sandiganbayan shall be promulgated by reading the judgment or sentence in the presence of the accused and any Justice of the division which rendered the same.[27] Promulgation of the decision is an important part of the decision-making process. Promulgation signifies that on the date it was made, the judge or justices who signed the decision continued to support it which could be inferred from his silence or failure to withdraw his vote despite being able to do so. A decision or resolution of the court becomes such, only from the moment of its promulgation.[28]

A final decision or resolution becomes binding only after it is promulgated and not before.[29] It is an elementary doctrine that for a judgment to be binding, it must be duly signed and promulgated during the incumbency of the judge who penned it.[30] In this connection, the Court *En Banc* issued the Resolution dated February 10, 1983 implementing B.P. 129[31] which merely requires that the judge who pens the decision is still an incumbent judge, that is, a judge of the same court, albeit now assigned to

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[27] Rule VII, 1984 Revised Rules of the Sandiganbayan.

[28] *Consolidated Bank and Trust Corporation v. Intermediate Appellate Court, supra* note 25 at 438.

[29] *Ambil, Jr. v. Commission on Elections*, 398 Phil. 257, 279 (2000).

[30] *People v. Labao*, 220 SCRA 100, 102 (1993); *Lao v. To-Chip*, 241 Phil. 1040, 1044 (1988).

[31] "1. Cases already submitted for decision shall be decided by the Judge to whom they were submitted, except cases submitted for decision to judges who were promoted to higher courts or to those who are no longer in the service."

a different branch, at the time the decision is promulgated.[32] In *People v. CFI of Quezon, Branch X*,[33] it was clarified that a judge who died, resigned, retired, had been dismissed, promoted to a higher court or appointed to another office with inconsistent functions, would no longer be considered an incumbent member of the court and his decision written thereafter would be invalid. Indeed, one who is no longer a member of the court at the time the final decision or resolution is signed and promulgated cannot validly take part in that decision or resolution.[34] Much less could he be the *ponente* of the decision or resolution. Also, when a judge or a member of the collegiate court, who had earlier signed or registered his vote, has vacated his office at the time of the promulgation of the decision or resolution, his vote is automatically withdrawn or cancelled.[35]

Guided by the foregoing principles, the judgment of conviction dated November 27, 1998 penned by Justice Legaspi must be declared valid. Apparently, it was not necessary that he be a member of the Fifth Division at the time the decision was promulgated since he remained an incumbent justice of the Sandiganbayan. What is important is that the *ponente* in a collegiate court remains a member of said court at the time his *ponencia* is promulgated because, at any time before that, he has the privilege of changing his opinion or making some last minute changes therein for the consideration and approval of his colleagues. After all, each division is not separate and distinct from the other divisions as they all constitute one Sandiganbayan. Jurisdiction is vested in the court, not in the judges or justices.[36] Thus, when a case is filed in the Sandiganbayan, jurisdiction over the case does not attach to the division or justice alone, to the exclusion of the other divisions.

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[32] *ABC Davao Auto Supply, Inc. v. Court of Appeals*, 348 Phil. 240, 245 (1998).

[33] G.R. No. L-48817, October 29, 1993, 227 SCRA 457, 462.

[34] *Araneta v. Dinglasan*, 84 Phil. 368, 433 (1949).

[35] *Jamil v. Commission on Elections*, 347 Phil. 630, 651 (1997).

[36] *Idolor v. Court of Appe*als, 490 Phil. 808, 815 (2005).

Moreover, the other two[37] members then of the Fifth Division signed and adopted the judgment of conviction dated November 27, 1998, and continued to support it until its promulgation on February 23, 1999. The members reached their conclusion in consultation and, accordingly, rendered it as a collective judgment after due deliberation. Hence, there was no procedural defect.

Besides, the presumption that the three justices had regularly performed their official function has not at all been rebutted by contrary evidence. Not an iota of evidence was adduced to show that the three justices were either impelled by malice or corrupt motive or inspired by an intention to violate the law or well-known legal rules in promulgating the judgment of conviction. At any rate, the decision penned by Justice Legaspi cannot be said to be a decision of another court, but of the same Sandiganbayan and of which the **ponente** was an incumbent justice when he wrote the decision until its promulgation.

Notably, the 1984 Revised Rules of the Sandiganbayan, its prevailing rules at the time the challenged October 24, 2001 Resolution was issued, did not provide the procedure to be followed in case the *ponente* would be transferred to another division at any time before the promulgation of the decision. This time, however, under the 2002 Revised Internal Rules of the Sandiganbayan which was approved by the Court *En Banc* in the Resolution dated August 28, 2002 and issued in A.M. No. 02-6-07-SB, the situation contemplated in this controversy has been covered. Section 4 (k) of Rule XII thereof provides:

SEC. 4. Cases Submitted for Decision; Assignment to *Ponente*.—

xxx xxx xxx

(k) If the justice to whom the case is assigned for study and report is transferred to another Division as its permanent member, he shall bring with him and write his report of the cases assigned to him in his original Division together with the other members of the Division to which the case was submitted for decision.

The Division from which the Justice to whom the case is assigned for study and report came shall be known as a Special Division.

[37] Justice Minita Chico-Nazario and Justice Anacleto Badoy, Jr.

xxx xxx xxx

On the propriety of the grant by the Special Fifth Division of the motion for new trial in Criminal Case No. 4219, the Court finds the same to be devoid of any legal and factual basis.

The majority of the Special Fifth Division granted a new trial on the following grounds: (1) serious irregularity during the trial due to the erroneous admission of the testimonies of Teofilo and Edgar, which according to the Sandiganbayan, were tainted with irregularities of the "too frequent rotation of Justices hearing the case"[38] and, thus, had to be taken anew; and (2) to afford the accused the opportunity to present in evidence the records of the JAGO relative to the incident that happened on February 26, 1980 in Sitio Aluag, Brgy. Sta. Barbara, Iba, Zambales to shed light on the crucial issue as to whether the shooting incident was an ambush or the result of a military operation.

The Court cannot sustain it.

Rule 121, Section 2 of the 2000 Rules on Criminal Procedure enumerates the grounds for a new trial, to wit:

> Sec. 2. Grounds for a new trial. — The court shall grant a new trial on any of the following grounds:
>
> (a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during trial;
>
> (b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment

Records disclosed that during the conduct of a new trial in the First Division of the Sandiganbayan, the testimonies of the prosecution and defense witnesses were retaken with the exception of those of prosecution witnesses, Teofilo and Edgar. The prosecution instead filed a Motion to Admit Former Testimonies of Prosecution Witnesses stating that Teofilo had died as shown

[38] *Rollo* (G.R. No. 151911), p. 46.

by the attached death certificate and that Edgar was out of the country. The defense filed no opposition thereto. On September 14, 1989, the First Division issued a resolution allowing the adoption of said witnesses' testimonies. Thereafter, the defense filed a motion for reconsideration of the aforesaid resolution, which was denied by the First Division.[39]

Granting *arguendo* that the First Division erred in admitting the testimonies of the Payumos given during the first trial, which proceedings were nullified by this Court in the *Cabigao* case, the same would still not justify a new trial. It must be emphasized that an erroneous admission or rejection of evidence by the trial court is not a ground for a new trial or reversal of the decision if there are other independent evidence to sustain the decision, or if the rejected evidence, if it had been admitted, would not have changed the decision.[40] In the case at bench, a meticulous reading of the November 27, 1998 Decision reveals that the combined testimonies of the other complainants, namely, Reynaldo Ruanto, Crisanto Ruanto, Apolinario Ruanto, and Exequiel Bonde, have sufficiently established the commission of the crime charged in the information and the participation of the accused in the said crime. Seemingly, it would not debilitate the cause of the prosecution even if the testimonies of the Payumos would be expunged from the records.

Neither would the presentation in evidence of the records of the JAGO warrant a new trial.

To begin with, the records of the JAGO relative to the February 26, 1980 incident do not meet the criteria for newly discovered evidence that would merit a new trial. A motion for new trial based on newly-discovered evidence may be granted only if the following requisites are met: (a) that the evidence was discovered after trial; (b) that said evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) that it is material, not merely

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[39] *Id.* at 47-48.

[40] *People v. Bande*, 50 Phil. 37, 41 (1927); Regalado, *Remedial Law Compendium*, Vol. II, 10th Rev. Ed. (2004), p. 825.

cumulative, corroborative or impeaching; and (d) that the evidence is of such weight that, if admitted, would probably change the judgment.[41] It is essential that the offering party exercised reasonable diligence in seeking to locate the evidence before or during trial but nonetheless failed to secure it.[42] In this case, however, such records could have been easily obtained by the accused and could have been presented during the trial with the exercise of reasonable diligence. Hence, the JAGO records cannot be considered as newly discovered evidence. There was nothing that prevented the accused from using these records during the trial to substantiate their position that the shooting incident was a result of a military operation.

Secondly, the non-presentation of the JAGO records, if they are indeed vital to the acquittal of the accused, speaks of negligence, either on the part of the accused themselves, or on the part of their counsels. In either instance, however, this negligence is binding upon the accused. It is a settled rule that a party cannot blame his counsel for negligence when he himself was guilty of neglect.[43] A client is bound by the acts of his counsel, including the latter's mistakes and negligence.[44]

Lastly, the matter of presentation of evidence for the defense is not for the trial court to decide. Considering that the defense counsels have control over the conduct of the defense, the determination of which evidence to present rests upon them. The Court notes that the defense presented a substantial number of witnesses and exhibits during trial *de novo* to belie the accusation against the accused and to prove the defenses they interposed. It has been held that the mistakes of the attorney as to the competency of a witness, the sufficiency, relevancy, materiality or immateriality of a certain evidence,

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[41] *Reynaldo de Villa v. Director, New Bilibid Prisons*, 485 Phil. 368, 388-389 (2004).

[42] *Colinares v. Court of Appeals*, 394 Phil. 106, 118 (2000).

[43] *Villanueva v. People*, 386 Phil. 912, 921 (2000).

[44] *Id.* at 920.

the proper defense, or the burden of proof are not proper grounds for a new trial.[45]

All told, the Court finds and so rules that the Sandiganbayan Special Fifth Division acted in excess of its jurisdiction when it nullified the November 27, 1998 Decision and granted a new trial for Criminal Case No. 4219. There is excess of jurisdiction where the respondent court, being clothed with the power to determine the case, oversteps its authority as determined by law.[46] Accordingly, the assailed Resolution dated October 24, 2001 must be set aside.

Finally, the Court finds the petition for *mandamus* to be bereft of merit. Petitioners failed to adduce clear and convincing proof to substantiate their submission that the Ombudsman and the OSP unlawfully neglected the performance of their duty. In any event, the determination of what pleadings should be filed for the People, as well as the necessity of filing them to protect and advance the prosecution's cause, clearly involves the exercise of discretion or judgment. Either the Ombudsman or the OSP cannot be compelled by *mandamus* to file a particular pleading when it determines, in the exercise of its sound judgment, that it is not necessary. As an extraordinary writ, the remedy of *mandamus* lies only to compel an officer to perform a ministerial duty, not a discretionary one. *Mandamus* will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court. [47]

WHEREFORE, the petition for is *GRANTED*. Accordingly, the assailed Resolution dated October 24, 2001 of the Sandiganbayan Special Fifth Division is hereby *SET ASIDE* and the November 27, 1998 Decision is *REINSTATED*.

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[45] *Brig. Gen. Custodio v. Sandiganbayan*, 493 Phil. 194, 217 (2005).

[46] *Corpuz v. Sandiganbayan*, 484 Phil. 899, 912 (2004).

[47] *Alvarez v. PICOP Resources, Inc.*, G.R. No. 162243, December 3, 2009, 606 SCRA 444, 467.

The prayer for the issuance of a Writ of *Mandamus* is *DENIED*.

The case is hereby ordered *REMANDED* to the Sandiganbayan for appropriate proceedings. The Sandiganbayan shall notify the parties of the reinstatement of the November 27, 1998 Decision. The period of appeal shall be reckoned from the date of receipt of notice by the accused.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 152695. July 25, 2011]

VICTORIA CLARAVALL, assisted by her husband, LORETO CLARAVALL, *petitioner, vs.* **RICARDO LIM, ROBERTO LIM, and ROGELIO LIM,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED BY THE PARTIES IN A PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT.— At the outset, it bears to reiterate the well-settled rule that, in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised by the parties and passed upon by this Court. This restriction of the review to questions of law has been institutionalized in Section 1, Rule 45 of the Rules of Court, the second sentence of which provides that the petition shall

[*] Designated as additional member of the Third Division per Special Order No. 1042 dated July 6, 2011.

raise only questions of law which must be distinctly set forth. Indeed, in the exercise of its power of review, the Court is *not* a trier of facts and, subject to certain exceptions, which the Court finds to be absent in the instant case, it does not normally undertake the re-examination of the evidence presented by the contending parties during the trial. Perforce, the findings of fact by the CA, affirming that of the RTC, are conclusive and binding on the Court.

2. ID.; ID.; ID.; ID.; PETITIONER'S ASSIGNED ERRORS READILY SHOW THAT THE ISSUES RAISED ARE FACTUAL IN CASE AT BAR.— In the instant case, a perusal of petitioner's first four assigned errors would readily show that the issues raised are factual in nature; thus, necessitating a review of the evidence presented by the parties. Without doubt, the following questions raised in the instant petition, to wit: (1) whether the property subject of the instant case is in the possession of petitioner; (2) whether petitioner's right to repurchase is extended; (3) whether respondents were only able to pay a portion of the purchase price for the subject property, and (4) whether the subject deed of sale with right of repurchase is actually an equitable mortgage, are all questions of fact which are beyond the province of a petition for review on *certiorari*.

3. ID.; ID.; ID.; ID.; ID.; NO COGENT REASON TO DEPART FROM FINDINGS OF BOTH THE CA AND RTC THAT THE CONTRACT ENTERED INTO BY THE PARTIES IS ONE OF SALE WITH RIGHT OF REPURCHASE AND NOT OF A LOAN WITH EQUITABLE MORTGAGE; CASE AT BAR.— Even granting, *arguendo*, that the foregoing issues of fact can be validly raised in the instant petition, the Court still finds petitioner's arguments to be without merit. x x x [T]he Court finds no cogent reason to depart from the findings of both the CA and the RTC that petitioner failed to substantiate her claims and that the subject contract is, in fact, one of sale with right of repurchase. The CA correctly held as follows: The person in actual possession of the property at the time of the execution of the deed of sale with right to repurchase was Enrique Claravall, a lessee of the dwelling unit located on the commercial lot. In the case of *Ignacio vs. CA*, the Supreme Court held the transaction between the petitioner and respondent to be a sale with a right to repurchase observing that "private

respondents have not been in actual possession of the subject property. They had been leasing it out at the time the deed was executed." x x x The fact that plaintiff instituted the action for consolidation of ownership five months after December 3, 1978, the expiry date of the right to repurchase, should not be construed as an extension of the period for defendant to exercise her right to repurchase the subject property. Any extension for the exercise of the right to repurchase must be expressly provided in another document to give rise to the presumption of equitable mortgage, and not merely implied from any act or omission. The Court likewise quotes, with approval, the disquisition of the RTC disposing of the issue on respondents' supposed failure to pay the full amount of the purchase price, thus: Admittedly, there is no dispute as to the existence and due execution of the Contract embodied in said Exhibits "A", "A-1" and "A-2". x x x The Court is not inclined to believe that a *vendor-a-retro* would affix her signature therein if the consideration thereof is fixed but not yet fully paid, much less if said balance as hereto claimed involves a big amount of money. Suffice it to say that had plaintiffs still under obligation to pay the balance of One Hundred Thousand (₱100,000.00) Pesos, as theorized by the defendant, the latter would certainly have initiated an action to recover the balance or rescind the contract altogether. Unfortunately, not even a single proof demanding the balance, if any, was adduced by the defendant.

4. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; PARTY ALLEGING A FACT HAS THE BURDEN OF PROVING IT; CLAIM OF EQUITABLE MORTGAGE PLAINLY A PLOY TO RESURRECT A RIGHT TO REPURCHASE SUBJECT PROPERTY WHICH HAD ALREADY EXPIRED; CASE AT BAR.— Indeed, petitioner failed to present any competent evidence, documentary or otherwise, to prove her claim that the subject contract is an equitable mortgage and not a sale with right of repurchase. It is settled that the party alleging a fact has the burden of proving it and mere allegation is not evidence. In fact, it appears from all indications that petitioner's claim of equitable mortgage is simply an afterthought subsequent to her realization that she cannot repurchase the subject property within the period stipulated in her contract with petitioners. It is plainly a ploy to resurrect a right which has already expired.

5. ID.; CIVIL LAW; CIVIL CODE; ARTICLE 1606 THEREOF; COVERS SUITS WHERE SELLER CLAIMS TRANSACTION WAS A LOAN WITH EQUITABLE MORTGAGE AND NOT A SALE WITH RIGHT OF REPURCHASE; RATIONALE.— With respect to the last assigned error, the Court's discussion in *Felicen, Sr. v. Orias,* as reiterated in the subsequent cases of *Heirs of Vda. de Macoy v. Court of Appeals* and *Agan v. Heirs of the Spouses Andres Nueva and Diosdada Nueva,* with respect to the rationale behind the provisions of Article 1606 of the Civil Code, is instructive, to wit: Article 1606 is intended to cover suits where the seller claims that the real intention was a loan with equitable mortgage but decides otherwise. The seller, however, must entertain a good faith belief that the contract is an equitable mortgage. In *Felicen, Sr., et al. v. Orias, et al.,* cited by petitioner, the Court explained: The application of the third paragraph of Article 1606 is predicated upon the *bona fides* of the vendor *a retro*. It must appear that there was a belief on his part, founded on facts attendant upon the execution of the sale with *pacto de retro*, honestly and sincerely entertained, that the agreement was in reality a mortgage, one not intended to affect the title to the property ostensibly sold, but merely to give it as security for a loan or obligation. In that event, if the matter of the real nature of the contract is submitted for judicial resolution, the application of the rule is meet and proper: that the vendor *a retro* be allowed to repurchase the property sold within 30 days from rendition of final judgment declaring the contract to be a true sale with right to repurchase. Conversely, if it should appear that the parties' agreement was really one of sale – transferring ownership to the vendee, but accompanied by a reservation to the vendor of the right to repurchase the property – and there are no circumstances that may reasonably be accepted as generating some honest doubt as to the parties' intention, the *proviso* is inapplicable. The reason is quite obvious. If the rule were otherwise, it would be within the power of every vendor *a retro* to set at naught a *pacto de retro*, or resurrect an expired right of repurchase, by simply instituting an action to reform the contract – known to him to be in truth a sale with *pacto de retro* – into an equitable mortgage.

APPEARANCES OF COUNSEL

Emerito M. Salva & Associates for petitioner.
Ramorella P. Lodriguito-Caranay for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court which seeks to set aside the Decision[1] of the Court of Appeals (CA) dated March 18, 2002 in CA-G.R. CV No. 38859. The assailed CA Decision affirmed the Decision[2] of the Regional Trial Court (RTC) of Isabela, Branch 17, in Civil Case No. 2583.

The instant petition arose from a Complaint for Consolidation of Ownership of Real Properties filed by herein respondents against herein petitioner, alleging as follows:

xxx xxx xxx

3. That sometime on December 3, 1976, the defendant, with the marital consent of her husband, executed a DEED OF SALE WITH THE RIGHT OF REPURCHASE SELLING AND CONVEYING unto the plaintiffs the following described properties, to wit:

> A COMMERCIAL LOT located in the Centro of Ilagan, Isabela x x x.
>
> A DWELING HOUSE with a ground area of 108 square meters, more or less, constructed with wooden materials and with G.I. roofing, erected on the above-described commercial lot x x x.

4. That the consideration of the sale is TWO HUNDRED FIFTY THOUSAND PESOS (₱250,000.00), Philippine Currency paid by the plaintiffs to the defendant;

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[1] Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Mercedes Gozo-Dadole and Juan Q. Enriquez, Jr., concurring.

[2] Penned by Judge Senen O. Casibang.

5. That the condition of said sale is that the defendant reserved the right to repurchase, within two (2) years from said date, said commercial lot and dwelling house by paying and returning unto the plaintiffs the purchase [price] of ₱250,000.00 stipulated in the Deed, a copy of which is hereto attached and made part hereof marked Annex "A"; that within [six] (6) months before the expiration of the date of repurchase, the defendant is under obligation to give plaintiffs written notice that she is in a position to repurchase said properties before the expiration of said period; and for failure to give such notice, the plaintiffs who are *vendees-a-retro* shall automatically become the absolute owners thereof upon the expiration of said period;

6. That defendant never gave written notice to plaintiffs that she was in a position to repurchase said commercial lot and dwelling house as described above; neither did defendant offer to repurchase the same upon the expiration of said period; and that after notifying the defendant that she may still repurchase said properties three months after the expiration of said period, she failed to repurchase the same;

7. That considering that the dwelling house is already an old house and has depreciated a lot, the purchase price of the building and house indicated in the deed justly represents the fair market value of said properties;

8. That considering that the defendant failed to repurchase the dwelling house and commercial lot described in paragraph 3 hereof on or before December 3, 1976, the plaintiffs are now entitled to the consolidation of their ownership of the same.

xxx xxx xxx[3]

In her Answer with Counterclaim, petitioner denied the material allegations of the Complaint and raised the following Special and Affirmative Defenses:

1 – That on December 3, 1976, the plaintiffs and the defendant entered into a contract of sale with right of repurchase over the properties mentioned and described in the deed x x x for a consideration and/or price of Two Hundred Fifty Thousand Pesos (₱250,000.00), x x x;

[3] Records, pp. 1-2.

2 – That after the plaintiffs have paid to the defendant One Hundred Fifty Thousand Pesos (₱150,000.00), out of the stipulated consideration and/or price of Two Hundred Fifty Thousand Pesos (₱250,000.00), the former demanded and/or required upon the latter as additional obligation to require her brother-in-law, Francisco *alias* Enrique *alias* Igme Claravall from whom the dwelling house was bought by her in 1967, to execute another deed of sale over the same dwelling house in their (plaintiffs') favor, with right of repurchase of the former;

3 – That upon the failure and/or refusal of the defendant to comply with the additional obligation imposed upon her by the plaintiffs mentioned in the next preceding paragraph, the latter also refused and/or failed to pay their balance of One Hundred Thousand Pesos (₱100,000.00), to the former, although said plaintiffs, on the occasions of their refusal to pay said balance, promised to the defendant that should she win her case then pending before the Court of Appeals, involving another bigger residential lot, with a very much bigger and concrete house thereon, also situated in Centro, Ilagan, Isabela, the former shall be ready and willing to cancel the said contract of sale with right of repurchase and instead and/or in lieu thereof, to execute with the latter, another contract of sale with right of repurchase over said bigger residential lot with a bigger and concrete dwelling house thereon, for a consideration and/or price of Five Hundred Thousand Pesos (₱500,000.00), in addition to the One Hundred Fifty Thousand Pesos (₱150,000.00) already paid by them under the deed, x x x and for a longer period of five (5) years within which to repurchase;

4 – That when the defendant refused to agree to the promise and/or proposal of the plaintiffs mentioned in the next preceding paragraph, the latter insisted on their refusal to pay their balance of One Hundred Thousand Pesos (₱100,000.00) x x x;

5 – That by reason of the refusal of the plaintiffs to pay to the defendant their balance of One Hundred Thousand Pesos (₱100,000.00), and/or for having retained the same for themselves, the latter, on December 1, 1978, executed a "Cautionary Notice," addressed to the Register of Deeds and Provincial Assessor of Isabela, registering and/or manifesting her opposition to any consolidation of ownership which may be made by the plaintiffs in connection with the Deed of Sale with Right of Repurchase x x x;

6 – That considering the fact that the plaintiffs, as vendees, retained for themselves One Hundred Thousand Pesos (₱100,000.00), which is a part of the consideration and/or price of the contract of sale with right of repurchase and that the defendant, as vendor, retained possession of the properties sold, the document executed by and between the parties plaintiffs and defendant on December 3, 1976, x x x, is consequently presumed to be a mere equitable mortgage;

xxx xxx xxx.[4]

After the issues were joined, trial on the merits ensued.

On August 5, 1991, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of plaintiffs and against the defendant:

1. Declaring the plaintiffs to be the absolute owners of the commercial lot and dwelling house described in par. 3 of the Complaint;

2. Declaring the defendant to have waived her right to repurchase said properties;

3. Ordering the defendant to pay attorney's fees of ₱2,000.00; and

4. Ordering the defendant to pay costs of this suit.

SO ORDERED.[5]

Aggrieved by the judgment of the RTC, petitioner filed an appeal with the CA.

On March 18, 2002, the CA promulgated the presently assailed Decision affirming the judgment of the RTC.

Hence, the instant petition with the following assignment of errors:

A. THE RESPONDENT COURT SERIOUSLY ERRED IN NOT FINDING THAT THE POSSESSION OF THE PROPERTY SUBJECT

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

[5] *Id*. at 202.

OF THE DEED OF SALE WITH RIGHT TO REPURCHASE, REMAINED WITH PETITIONER VICTORIA CLARAVALL, AS LESSOR, TO ENRIQUE CLARAVALL, AS LESSEE;

B. THE RESPONDENT COURT GRAVELY ERRED IN NOT FINDING THAT BY CLEAR INFERENCE RESPONDENTS EXTENDED THE PERIOD OF PETITIONER VICTORIA H. CLARAVALL TO EXERCISE HER RIGHT TO REPURCHASE THE PROPERTY WHICH IS THE SUBJECT OF THE DEED OF SALE WITH RIGHT TO REPURCHASE (EXHIBIT A);

C. THE RESPONDENT COURT GRAVELY ERRED IN NOT FINDING THAT BY THE UNASSAILABLE RECEIPTS, RESPONDENTS PAID ONLY ONE HUNDRED [FIFTY] THOUSAND (₱150,000.00) PESOS AND REFUSED TO PAY THE BALANCE OF ONE HUNDRED THOUSAND PESOS;

D. THE RESPONDENT COURT SERIOUSLY ERRED IN NOT FINDING THAT THE DEED OF SALE WITH RIGHT TO REPURCHASE (EXH. A) IS AN EQUITABLE MORTGAGE; AND

E. EVEN ASSUMING THAT EXHIBIT A IS A *BONA FIDE* DEED OF SALE WITH RIGHT TO REPURCHASE, THE RESPONDENT COURT SERIOUSLY ERRED IN NOT GRANTING PETITIONER VICTORIA CLARAVALL'S RIGHT TO EXERCISE HER RIGHT TO REPURCHASE WITHIN THIRTY (30) DAYS FROM THE TIME OF FINAL JUDGMENT PURSUANT TO ARTICLE 1606 OF THE CIVIL CODE.[6]

At the outset, it bears to reiterate the well-settled rule that, in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised by the parties and passed upon by this Court.[7] This restriction of the review to questions of law has been institutionalized in Section 1, Rule 45 of the Rules of Court, the second sentence of which provides that the petition shall raise only questions of law which

[6] *Rollo*, pp. 28-29.

[7] *Asian Terminals, Inc. v. Malayan Insurance Co., Inc.*, G.R. No. 171406, April 4, 2011; *Anita Monasterio-Pe and the Spouses Romulo and Editha Pe-Tan v. Jose Juan Tong, herein represented by his attorney-in-fact, Jose Y. Ong*, G.R. No. 151369, March 23, 2011; *Spouses Moises and Clemencia Andrada v. Pilhino Sales Corporation, represented by its Branch Manager, Jojo S. Saet*, G.R. No. 156448, February 23, 2011.

must be distinctly set forth. Indeed, in the exercise of its power of review, the Court is *not* a trier of facts and, subject to certain exceptions,[8] which the Court finds to be absent in the instant case, it does not normally undertake the re-examination of the evidence presented by the contending parties during the trial.[9] Perforce, the findings of fact by the CA, affirming that of the RTC, are conclusive and binding on the Court.[10] In the instant case, a perusal of petitioner's first four assigned errors would readily show that the issues raised are factual in nature; thus, necessitating a review of the evidence presented by the parties. Without doubt, the following questions raised in the instant petition, to wit: (1) whether the property subject of the instant case is in the possession of petitioner; (2) whether petitioner's right to repurchase is extended; (3) whether respondents were only able to pay a portion of the purchase price for the subject property, and (4) whether the subject deed of sale with right of repurchase is actually an equitable mortgage, are all questions

[8] (a) When the findings are grounded entirely on speculation, surmises, or conjectures;

(b) When the inference made is manifestly mistaken, absurd, or impossible;

(c) When there is grave abuse of discretion;

(d) When the judgment is based on a misapprehension of facts;

(e) When the findings of facts are conflicting;

(f) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

(g) When the CA's findings are contrary to those by the trial court;

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

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

(j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or

(k) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (cited in *Spouses Andrada v. Pilhino Sales Corporation, supra*).

[9] *Spouses Andrada v. Pilhino Sales Corporation*, *supra* note 7.

[10] *Id*.

of fact which are beyond the province of a petition for review on *certiorari*.

Even granting, *arguendo*, that the foregoing issues of fact can be validly raised in the instant petition, the Court still finds petitioner's arguments to be without merit.

Echoing her arguments raised before the CA, petitioner's bone of contention in the present petition is that the contract she entered into with respondents is an equitable mortgage, claiming that: (1) she remained in possession of the subject property; (2) her right to repurchase has not yet expired; and (3) respondents retained a portion of the purchase price. Petitioner argues that, under Article 1602 of the Civil Code,[11] these circumstances indicate that her contract with respondents is an equitable mortgage. However, the Court finds no cogent reason to depart from the findings of both the CA and the RTC that petitioner failed to substantiate her claims and that the subject contract is, in fact, one of sale with right of repurchase.

The CA correctly held as follows:

The person in actual possession of the property at the time of the execution of the deed of sale with right to repurchase was Enrique Claravall, a lessee of the dwelling unit located on the commercial lot. In the case of *Ignacio vs. CA*, the Supreme Court held the

[11] Article 1602. The contract shall be presumed to be an equitable mortgage in any of the following cases:

(1) When the price of a sale with right to repurchase is unusually inadequate;

(2) When the vendor remains in possession as lessee or otherwise;

(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(4) When the purchaser retains for himself a part of the purchase price;

(5) When the vendor binds himself to pay the taxes on the thing sold;

(6) In any case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.

transaction between the petitioner and respondent to be a sale with a right to repurchase observing that "private respondents have not been in actual possession of the subject property. They had been leasing it out at the time the deed was executed." x x x

xxx xxx xxx

The fact that plaintiff instituted the action for consolidation of ownership five months after December 3, 1978, the expiry date of the right to repurchase, should not be construed as an extension of the period for defendant to exercise her right to repurchase the subject property. Any extension for the exercise of the right to repurchase must be expressly provided in another document to give rise to the presumption of equitable mortgage, and not merely implied from any act or omission.[12]

The Court likewise quotes, with approval, the disquisition of the RTC disposing of the issue on respondents' supposed failure to pay the full amount of the purchase price, thus:

Admittedly, there is no dispute as to the existence and due execution of the Contract embodied in said Exhibits "A", "A-1" and "A-2". However, defendant [herein petitioner] anchored her evidence on the theory that although she had affixed her signature on said Deed of Sale with Right to Repurchase as could be gleaned in the aforesaid exhibits, the consideration of ₱250,000.00 has not yet been fully paid by plaintiffs. This argument is obviously defective and will only merit scant consideration by the Court. The circumstances obtaining in the instant case argue against such contention. The Contract is, undeniably, executed in accordance with the formalities required by law and as correctly observed by plaintiffs, its contents are clear and couched in unambiguous terms which would leave no room for interpretation. x x x

Likewise, the Court cannot just lose sight of the fact that the signature of defendant's husband Loreto Claravall, showing his marital conformity to the same, will certainly negate such claim for the balance of ₱100,000.00 as defendant would insist. Besides, there are two competent witnesses, namely, Gaudencio Talaue, defendant's driver herself and Estenelie B. Salvador. These witnesses could have been utilized by defendant to buttress her theory had her story been

[12] *Rollo,* pp. 55-56.

based on facts and the truth. Failing this, the Court can hardly rely on her oral claim[s] which are obviously inconclusive and incredible, if not purely conjectural. By affixing her signature therein, defendant is now estopped in plainly denying having received the whole amount as exactly stated.

Furthermore, even without going deeper into the evidence presented by the parties, defendant's theory is highly inconceivable, considering the value of the property and the big amount of money involved therewith. The Court is not inclined to believe that a *vendor-a-retro* would affix her signature therein if the consideration thereof is fixed but not yet fully paid, much less if said balance as hereto claimed involves a big amount of money. Suffice it to say that had plaintiffs still under obligation to pay the balance of One Hundred Thousand (₱100,000.00) Pesos, as theorized by the defendant, the latter would certainly have initiated an action to recover the balance or rescind the contract altogether. Unfortunately, not even a single proof demanding the balance, if any, was adduced by the defendant. As a matter of fact, even the letters sent by defendant to plaintiffs on June 2, 1978 and November 27, 1978 (Exhibits "4" and "5", defendant) did not mention, much less disclose, any claim to that effect other than defendant's intention to repurchase said properties.

xxx xxx xxx

Concededly, while the defendant served plaintiffs written notice of her desire to repurchase said properties, defendant never made any tender of payment of the repurchase price representing the amount of the sale she received from plaintiffs at the time the contract was executed on December 3, 1976. x x x

xxx xxx xxx[13]

Indeed, petitioner failed to present any competent evidence, documentary or otherwise, to prove her claim that the subject contract is an equitable mortgage and not a sale with right of repurchase. It is settled that the party alleging a fact has the burden of proving it and mere allegation is not evidence.[14] In

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[13] *Id*. at 81-83.

[14] *Garcia v. Philippine Airlines*, G.R. No. 162868, July 14, 2008, 558 SCRA 171, 193; *Atienza v. De Castro*, G.R. No. 169698, November 29, 2006, 508 SCRA 593, 602.

fact, it appears from all indications that petitioner's claim of equitable mortgage is simply an afterthought subsequent to her realization that she cannot repurchase the subject property within the period stipulated in her contract with petitioners. It is plainly a ploy to resurrect a right which has already expired.

With respect to the last assigned error, the Court's discussion in *Felicen, Sr. v. Orias*,[15] as reiterated in the subsequent cases of *Heirs of Vda. de Macoy v. Court of Appeals*[16] and *Agan v. Heirs of the Spouses Andres Nueva and Diosdada Nueva*,[17] with respect to the rationale behind the provisions of Article 1606 of the Civil Code,[18] is instructive, to wit:

Article 1606 is intended to cover suits where the seller claims that the real intention was a loan with equitable mortgage but decides otherwise. The seller, however, must entertain a good faith belief that the contract is an equitable mortgage. In *Felicen, Sr., et al. v. Orias, et al.,* cited by petitioner, the Court explained:

> The application of the third paragraph of Article 1606 is predicated upon the *bona fides* of the vendor *a retro*. It must appear that there was a belief on his part, founded on facts attendant upon the execution of the sale with *pacto de retro*, honestly and sincerely entertained, that the agreement was in reality a mortgage, one not intended to affect the title to the property ostensibly sold, but merely to give it as security for a loan or obligation. In that event, if the matter of the real nature of the contract is submitted for judicial resolution, the application of the rule is meet and proper: that the vendor *a retro* be allowed to repurchase the property sold within 30 days from rendition of final judgment declaring the contract

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[15] 240 Phil. 550, 553-555 (1987).

[16] G.R. No. 95871, February 13, 1992, 206 SCRA 244, 254-255.

[17] 463 Phil. 834, 843-844 (2003).

[18] Art. 1606. The right referred to in Article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

Should there be an agreement, the period cannot exceed ten years.

However, the vendor may still exercise the right to repurchase within thirty days from the time the final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase.

> to be a true sale with right to repurchase. Conversely, if it should appear that the parties' agreement was really one of sale — transferring ownership to the vendee, but accompanied by a reservation to the vendor of the right to repurchase the property — and there are no circumstances that may reasonably be accepted as generating some honest doubt as to the parties' intention, the *proviso* is inapplicable. The reason is quite obvious. If the rule were otherwise, it would be within the power of every vendor *a retro* to set at naught a *pacto de retro*, or resurrect an expired right of repurchase, by simply instituting an action to reform the contract — known to him to be in truth a sale with *pacto de retro* — into an equitable mortgage. As postulated by the petitioner, "to allow herein private respondent to repurchase the property by applying said paragraph x x x to the case at bar despite the fact that the stipulated redemption period had already long expired when they instituted the present action, would in effect alter or modify the stipulation in the contract as to the definite and specific limitation of the period for repurchase (2 years from the date of sale or only until June 25, 1958) thereby not simply increasing but in reality resuscitating the expired right to repurchase x x x and likewise the already terminated and extinguished obligation to resell by herein petitioner." The rule would thus be made a tool to spawn, protect and even reward fraud and bad faith, a situation surely never contemplated or intended by the law.
>
> This court has already had occasion to rule on the proper interpretation of the provision in question. In *Adorable v. Inacala*, where the proofs established that there could be no honest doubt as to the parties' intention, that the transaction was clearly and definitely a sale with *pacto de retro*, the Court adjudged the vendor *a retro* not to be entitled to the benefit of the third paragraph of Article 1606.

As earlier discussed, the Court finds no error in the conclusions reached by both the CA and the RTC that the unmistakable and definite intention of petitioner and respondents was that the transaction they entered into is one of sale with right of repurchase. Hence, petitioner is not entitled to the reprieve provided for under the third paragraph of Article 1606 of the Civil Code.

WHEREFORE, the instant petition is *DENIED*. The Decision of the Court of Appeals, dated March 18, 2002 in CA-G.R. CV No. 38859, is *AFFIRMED*.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Abad,* and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 165777. July 25, 2011]

CEFERINA DE UNGRIA [DECEASED], substituted by her HEIRS, represented by LOLITA UNGRIA SAN JUAN-JAVIER, and RHODORA R. PELOMIDA as their Attorney-in-fact, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, THE HONORABLE REGIONAL TRIAL COURT OF GENERAL SANTOS CITY, BRANCH 35, ROSARIO DIDELES *VDA. DE* CASTOR, NEPTHALIE CASTOR ITUCAS, FEROLYN CASTOR FACURIB, RACHEL DE CASTOR, LEA CASTOR DOLLOLOSA, and ROSALIE CASTOR BENEDICTO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; IN THE CASE OF JOINDER OF CAUSES OF ACTION WHICH COMPREHENDS MORE THAN THE ISSUE OF POSSESSION AND INTEREST IN THE REAL PROPERTY AND INCLUDES AN ACTION TO ANNUL CONTRACTS AND RECONVEYANCE WHICH ARE INCAPABLE OF

[*] Designated as an additional member per Special Order No. 1042 dated July 6, 2011.

PECUNIARY ESTIMATION, JURISDICTION LIES IN THE REGIONAL TRIAL COURT; SUSTAINED; CASE AT BAR. — It would appear that the first cause of action involves the issue of recovery of possession and interest of the parties over the subject land which is a real action. Respondents alleged that the assessed value of the subject land was ₱12,780.00 based on Tax Declaration No. 15272. Thus, since it is a real action with an assessed value of less than ₱20,000.00, the case would fall under the jurisdiction of the MTC as provided under the above-quoted Section 33 (3) of BP 129, as amended. Notably, however, respondents in the same Complaint filed alternative causes of action assailing the validity of the Deed of Transfer of Rights and Interest executed by Fernando in favor of petitioner's father. Respondents also sought for the reconveyance to respondent Rosario of the undivided one-half portion of the subject land as conjugal owner thereof in case the Deed of Transfer of Rights and Interest will be upheld as valid; and/or for redemption of the subject land. Clearly, this is a case of joinder of causes of action which comprehends more than the issue of possession of, or any interest in the real property under contention, but includes an action to annul contracts and reconveyance which are incapable of pecuniary estimation and, thus, properly within the jurisdiction of the RTC.

2. **ID.; ID.; ID.; PAYMENT OF DOCKET FEE; 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 ACTION; APPLICATION IN CASE AT BAR.—** It is a settled rule in this jurisdiction that when an action is filed in court, the complaint must be accompanied by the payment of the requisite docket and filing fees. 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. x x x Since we find that the case involved the annulment of contract which is not susceptible of pecuniary estimation, thus, falling within the jurisdiction of the RTC, the docket fees should not be based on the assessed value of the subject land as claimed by petitioner in their memorandum, but should be based on Section 7(b)(1) of Rule 141. A perusal of the entries in the

Legal Fees Form attached to the records would reflect that the amount of ₱400.00 was paid to the Clerk of Court, together with the other fees, as assessed by the Clerk of Court. Thus, upon respondents' proof of payment of the assessed fees, the RTC has properly acquired jurisdiction over the complaint. Jurisdiction once acquired is never lost, it continues until the case is terminated.

3. ID.; ID.; ID.; ID.; ID.; FILING FEES FOR DAMAGES AND AWARDS THAT CANNOT BE ESTIMATED CONSTITUTE LIENS ON THE JUDGMENT; RULING IN *SUN INSURANCE OFFICE, LTD. V. ASUNCION,* APPLICABLE IN CASE AT BAR.— SC Circular No. 7 was brought about by our ruling in *Manchester Development Corporation v. Court of Appeals*, where we held that a pleading which does not specify in the prayer the amount of damages being asked for shall not be accepted or admitted, or shall otherwise be expunged from the record; and that the Court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. However, *Sun Insurance Office, Ltd. v. Asuncion*, we laid down the following guidelines in the payment of docket fees x x x. *Sun Insurance* effectively modified SC Circular No. 7 by providing that filing fees for damages and awards that cannot be estimated constitute liens on the awards finally granted by the trial court. x x x judgment awards which were left for determination by the court or as may be proven during trial would still be subject to additional filing fees which shall constitute a lien on the judgment. It would then be the responsibility of the Clerk of Court of the trial court or his duly-authorized deputy to enforce said lien and assess and collect the additional fees. A reading of the allegations in the complaint would show that the amount of the rental due can only be determined after a final judgment, since there is a need to show supporting evidence when the petitioner and the other defendants started to possess the subject land. Thus, we find no reversible error committed by the CA when it ruled that there was no grave abuse of discretion committed by the RTC in issuing its Order dated March 30, 2000, where the RTC stated that "since there was no hearing yet, respondents are not in a position to determine how much is to be charged and that after hearing, the Clerk of Court determines that the filing fee is still insufficient, the same shall be considered as lien on the judgment that may be entered."

4. CIVIL LAW; LAND REGISTRATION; NO TITLE TO REGISTERED LAND IN DEROGATION OF THE RIGHTS OF THE REGISTERED OWNER SHALL BE ACQUIRED BY PRESCRIPTION OR ADVERSE POSSESSION.— It is a well-entrenched rule in this jurisdiction that no title to registered land in derogation of the rights of the registered owner shall be acquired by prescription or adverse possession. Prescription is unavailing not only against the registered owner but also against his hereditary successors.

5. ID.; PRESCRIPTION; WITHOUT EVIDENTIARY BASIS, LACHES CANNOT BE A VALID GROUND TO DISMISS THE COMPLAINT; APPLICATION IN CASE AT BAR.— Anent petitioner's defense of laches, the same is evidentiary in nature and cannot be established by mere allegations in the pleadings. Without solid evidentiary basis, laches cannot be a valid ground to dismiss respondents' complaint. Notably, the allegations of respondents in their petition filed before the RTC: x x x would not conclusively establish *laches*. Thus, it is necessary for petitioners to proceed to trial and present controverting evidence to prove the elements of *laches*.

APPEARANCES OF COUNSEL

Andres Feble Rosario & Chan Law Office and *Benjamin B. Cuanan* for petitioner.

Landero & Peralta Law Offices for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* are the Decision[1] dated May 26, 2004 and the Resolution[2] dated September 17, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 60764.

[1] Penned by Justice Japar B. Dimaampao, with Associate Justices Teresita Dy-Liacco Flores and Edgardo A. Camello, concurring; *rollo*, pp. 126-132.

[2] *Id.* at 175-179.

On August 26, 1999, respondents Rosario Dideles *Vda. de* Castor (Rosario), Nepthalie Castor Itucas, Ferolyn Castor Facurib (Ferolyn), Rachel De Castor, Lea Castor Dollolosa and Rosalie Castor Benedicto, filed with the Regional Trial Court (RTC) of General Santos City a Complaint[3] for ownership, possession and damages, and alternative causes of action either to declare two documents as patent nullities, and/or for recovery of Rosario's conjugal share with damages or redemption of the subject land against petitioner Ceferina de Ungria, defendants Avelino Gumban, Dolores Cagaitan, Zacasio Poutan, PO1 Jonas Montales, Ignacio Olarte and *alias* Dory. Respondent Rosario is the surviving wife of the late Fernando Castor, while the rest of the respondents are their legitimate children. The documents they sought to annul are (1) the Deed of Transfer of Rights and Interest including Improvements thereon dated October 3, 1960 allegedly executed by Fernando in favor of Eugenio de Ungria, petitioner's father; and (2) the Affidavit of Relinquishment dated November 23, 1960 executed by Eugenio in favor of petitioner.

Petitioner Ceferina filed a Motion to Dismiss[4] (*Ex-Abundante Ad Cautelam*) on the following grounds: (1) the claim or demand has been extinguished by virtue of the valid sale of Lot No. 1615 to Eugenio; (2) the action is barred by extraordinary acquisitive prescription; (3) the action is barred by laches; and (4) plaintiff failed to state a cause of action, or filed the case prematurely for failure to resort to prior *barangay* conciliation proceedings.

Petitioner also filed an Addendum to the Motion to Dismiss[5] raising the following additional grounds: (1) plaintiffs have no legal capacity to sue; and (2) the court has no jurisdiction over the case for failure of plaintiffs to pay the filing fee in full. Respondents filed their Opposition thereto.

On November 19, 1999, the RTC issued an Order[6] denying the motion to dismiss, to wit:

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[3] *Id.* at 34-46. Docketed as Civil Case No. 6636 and raffled off to Branch 35.

[4] *Id.* at 55-66.

[5] *Id.* at 87-90.

[6] *Id.* at 93.

After the motion to dismiss and its addendum have been received, it is now ripe for resolution. One of the grounds alleged in the complaint is for the recovery of conjugal share on Lot No. 1615, of Pls-209 D with damages.

It is alleged that the late Fernando Castor and Rosario Dideles *Vda. de* Castor were married on September 15, 1952, and the application to the land was dated January 17, 1952 and the patent was issued by the President on November 19, 1954.

The said land was sold to the defendant on October 3, 1960 (Annex C) and an Affidavit of Relinquishment dated November 23, 1960 which was made a part thereof as Annex "D". Considering the marriage of September 15, 1992, the said land became conjugal as of the date of the marriage and, therefore, ½ thereof belongs to the wife, Rosario Dideles *Vda. de* Castor.

Thus, considering the above, the motion to dismiss is DENIED.[7]

Petitioner Ceferina filed a Motion for Reconsideration,[8] which the RTC denied in an Order[9] dated February 4, 2000.

Petitioner filed an Omnibus Motion[10] asking the RTC to resolve the issues of (1) whether or not the complaint should be dismissed or expunged from the records pursuant to Supreme Court (SC) Circular No. 7; (2) reconsidering the findings contained in the Order dated February 4, 2000; and (3) holding in abeyance the submission of the answer to the complaint.

Pending resolution of the motion, respondents filed a Motion to Allow[11] them to continue prosecuting this case as indigent litigants.

On March 8, 2000, the RTC resolved the Omnibus Motion in an Order[12] that read in this wise:

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[7] *Id.*

[8] *Id.* at 94-104.

[9] *Id.* at 105-106

[10] *Id.* at 107-115.

[11] *Id.* at 117-121.

[12] *Id.* at 122.

On the omnibus motion regarding filing fees, the plaintiffs asserted in its motion that they are charging defendant actual and compensatory damages such as are proved during the hearing of this case. So also are attorney's fees and moral damages, all to be proved during the hearing of this case.

Since there was no hearing yet, they are not in a possession (sic) to determine how much is to be charged.

At any rate, if after hearing the Clerk of Court determine that the filing fees is still insufficient, considering the total amount of the claim, the Clerk of Court should determine and, thereafter, if any amount is found due, he must require the private respondent to pay the same x x x.

As to the second issue, the same has already been decided in its order dated February 4, 2000.

WHEREFORE, premises considered, the omnibus motion is DENIED.

The defendant shall file their answer within fifteen (15) days from receipt of this order.[13]

From this Order, petitioner filed a motion for reconsideration and clarification on whether plaintiffs should be allowed to continue prosecuting the case as indigent litigants.

On March 30, 2000, the RTC issued a Clarificatory Order[14] reading as follows:

As has been said, the plaintiff asserted in its motion that they are charging defendants actual and compensatory damages as has been proved during the hearing of this case. So also are attorney's fees and moral damages all to be proved during the hearing of this case.

Since there was no hearing yet, they are not in a possession (sic) to determine how much is to be charged.

At any rate, after hearing, the Clerk of Court determines that the filing fee is still insufficient, the same shall be considered as lien on the judgment that may be entered.

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[13] *Id.*

[14] *Id.* at 123.

As to the motion seeking from the Honorable Court allowance to allow plaintiff to continue prosecuting this case as indigent litigants, suffice it to say that the same is already provided for in this order.

WHEREFORE, the defendants shall file their answer within fifteen (15) days from receipt of this Order.[15]

In an Order dated May 31, 2000, the RTC again denied petitioner's motion for reconsideration.

Petitioner filed with the CA a petition for *certiorari* and prohibition with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction. Petitioner sought the nullification of the Order dated November 19, 1999 and the subsequent orders issued by the RTC thereto for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Respondents filed their Comment thereto.

In a Decision dated May 26, 2004, the CA dismissed the petition. The CA found that SC Circular No. 7 would not apply where the amount of damages or value of the property was immaterial; that the Circular could be applied only in cases where the amount claimed or the value of the personal property was determinative of the court's jurisdiction citing the case of *Tacay v. RTC of Tagum, Davao del Norte*.[16] The CA found that respondents had paid the corresponding docket fees upon the filing of the complaint, thus, the RTC had acquired jurisdiction over the case despite the failure to state the amount of damages claimed in the body of the complaint or in the prayer thereof. The CA found that the RTC did not commit grave abuse of discretion amounting to lack of jurisdiction when it denied petitioner's motion to dismiss. It noted that the RTC's Clarificatory Order dated March 30, 2000, which stated that "if after hearing the Clerk of Court determines that the filing fee is still insufficient, the same shall be considered as lien on the judgment that may be entered" was in accordance with the rule laid down in *Sun Insurance Office, Ltd. v. Asuncion*.[17] The CA proceeded to

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[15] *Id.*

[16] G.R. Nos. 88075-77, December 20, 1989, 180 SCRA 433.

[17] 252 Phil. 280 (1989).

state that a judicious examination of the complaint pointed to a determination of the respective rights and interests of the parties over the property based on the issues presented therein which could only be determined in a full-blown trial on the merits of the case.

Petitioner filed a Motion for Reconsideration, which the CA denied in a Resolution dated September 17, 2004. The CA ruled, among others, that the defenses of acquisitive prescription and laches were likewise unavailing. It found that the subject property is covered by a Torrens title (OCT No. V-19556); thus, it is axiomatic that adverse, notorious and continuous possession under a claim of ownership for the period fixed by law is ineffective against a Torrens title; that unless there are intervening rights of third persons which may be affected or prejudiced by a decision directing the return of the lot to petitioner, the equitable defense of laches will not apply as against the registered owner.

Hence, this petition for review on *certiorari* where petitioner raises the following assignment of errors:

THE COURT OF APPEALS ERRED IN NOT FINDING THAT RESPONDENT TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S MOTION TO DISMISS DESPITE RESPONDENTS' NON-PAYMENT OF THE CORRECT DOCKET FEES.

THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE ACTION OF PRIVATE RESPONDENTS IS BARRED BY LACHES AND EXTRAORDINARY ACQUISITIVE PRESCRIPTION.[18]

We find the petition without merit.

Preliminarily, although not raised as an issue in this petition, we find it necessary to discuss the issue of jurisdiction over the subject matter of this case. Respondents' complaint was filed in 1999, at the time *Batas Pambansa Blg*. (BP) 129, the Judiciary Reorganization Act of 1980, was already amended by Republic Act (RA) No. 7691, *An Act Expanding the Jurisdiction of the*

[18] *Rollo,* pp. 18-19.

Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, amending for the purpose BP Blg. 129.[19] Section 1 of RA 7691, amending BP Blg. 129, provides that the RTC shall exercise exclusive original jurisdiction on the following actions:

> Section 1. Section 19 of Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980," is hereby amended to read as follows:
>
> > Sec. 19. *Jurisdiction in civil cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction:
> >
> > (1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;
> >
> > (2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty Thousand Pesos (₱20,000.00) or for civil actions in Metro Manila, where such value exceeds Fifty Thousand Pesos (₱50,000.00), except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts; x x x

Section 3 of RA No. 7691 expanded the exclusive original jurisdiction of the first level courts, thus:

> Section 3. Section 33 of the same law (BP Blg. 129) is hereby amended to read as follows:
>
> > Sec. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases.* – Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:
> >
> > xxx xxx xxx
> >
> > (3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty Thousand Pesos

[19] Took effect April 15, 1994.

> (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty Thousand Pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: *Provided*, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots.

Respondents filed their Complaint with the RTC; hence, we would first determine whether the RTC has jurisdiction over the subject matter of this case based on the above-quoted provisions.

The Complaint filed by respondents in the RTC was for ownership, possession and damages, and alternative causes of action either to declare two documents as patent nullities and/or for recovery of conjugal share on the subject land with damages or redemption of the subject land. In their Complaint, respondents claimed that Rosario and Fernando are the registered owners of the subject land with an assessed value of ₱12,780.00; that the couple left the cultivation and enjoyment of the usufruct of the subject land to Fernando's mother and her second family to augment their means of livelihood; that respondent Rosario and Fernando thought that when the latter's mother died in 1980, the subject land was in the enjoyment of the second family of his mother, but later learned that the subject land was leased by petitioner Ceferina; that sometime in August 1999, respondents learned of the existence of the Deed of Transfer of Rights and Interest including Improvements thereon dated October 3, 1960, where Fernando had allegedly transferred his rights and interests on the subject land in favor of Eugenio, petitioner Ceferina's father, as well as an Affidavit of Relinquishment dated November 23, 1960 executed by Eugenio in favor of petitioner Ceferina; that Fernando's signature in the Deed of Transfer was not his but a forgery; and the Affidavit of Relinquishment was also void as it was a direct result of a simulated Deed of Transfer.

Respondents prayed that they be declared as absolute and lawful owners of the subject land and to order petitioner and the other

defendants to vacate the premises and restore respondents to its possession and enjoyment therefore. On their second cause of action, they prayed that the Deed of Transfer of Rights and Interest Including Improvements Thereon be declared as a forgery, purely simulated and without any consideration; hence, inexistent, void *ab initio* and/or a patent nullity, as well as the Affidavit of Relinquishment which was the direct result of the Deed of Transfer. Respondents also prayed in the alternative that if the Deed be finally upheld as valid, to order petitioner to reconvey to respondent Rosario the undivided one-half portion of the subject land as conjugal owner thereof and to account and reimburse her of its usufruct; and/or to allow them to redeem the subject land.

It would appear that the first cause of action involves the issue of recovery of possession and interest of the parties over the subject land which is a real action. Respondents alleged that the assessed value of the subject land was ₱12,780.00 based on Tax Declaration No. 15272. Thus, since it is a real action with an assessed value of less than ₱20,000.00, the case would fall under the jurisdiction of the MTC as provided under the above-quoted Section 33 (3) of BP 129, as amended.

Notably, however, respondents in the same Complaint filed alternative causes of action assailing the validity of the Deed of Transfer of Rights and Interest executed by Fernando in favor of petitioner's father. Respondents also sought for the reconveyance to respondent Rosario of the undivided one-half portion of the subject land as conjugal owner thereof in case the Deed of Transfer of Rights and Interest will be upheld as valid; and/or for redemption of the subject land. Clearly, this is a case of joinder of causes of action which comprehends more than the issue of possession of, or any interest in the real property under contention, but includes an action to annul contracts and reconveyance which are incapable of pecuniary estimation and, thus, properly within the jurisdiction of the RTC.[20]

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[20] *Copioso v. Copioso*, 439 Phil. 936, 942 (2002).

In *Singson v. Isabela Sawmill,*[21] we held 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. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance (now Regional Trial Courts).[22]

Thus, respondents correctly filed their Complaint with the RTC.

It is a settled rule in this jurisdiction that when an action is filed in court, the complaint must be accompanied by the payment of the requisite docket and filing fees.[23] 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.[24]

Section 7(b)(1) of Rule 141 of the Rules of Court provides:

SEC. 7. *Clerks of Regional Trial Courts*. - (a) For filing an action or a permissive counter-claim or money claim against an estate not based on judgment, or for filing with leave of court a third-party, fourth-party, *etc*. complaint, or a complaint-in-intervention, and for

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[21] 177 Phil. 575 (1979).

[22] *Id.* at 588-589.

[23] *Tacay v. RTC of Tagum, Davao del Norte*, *supra* note 16; *Sun Insurance Office, Ltd. v. Asuncion*, *supra* note 17, at 291. See also *Manchester Development Corporation v. Court of Appeals*, G.R. Nos. 75919, May 7, 1987, 149 SCRA 562, 568-569.

[24] *Pantranco North Express, Inc. vs. Court of Appeals*, G.R. No. 105180, July 5, 1993, 224 SCRA 477, 478.

all clerical services in the same, if the total-sum claimed, exclusive of interest, or the stated value of the property in litigation, is:

xxx xxx xxx

(b) For filing:

1. Actions where the value of the subject matter

cannot be estimated ..... ₱400.00

2. x x x

In a real action, the assessed value of the property, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees.[25]

Since we find that the case involved the annulment of contract which is not susceptible of pecuniary estimation, thus, falling within the jurisdiction of the RTC, the docket fees should not be based on the assessed value of the subject land as claimed by petitioner in their memorandum, but should be based on Section 7(b)(1) of Rule 141. A perusal of the entries in the Legal Fees Form attached to the records would reflect that the amount of ₱400.00 was paid to the Clerk of Court, together with the other fees, as assessed by the Clerk of Court. Thus, upon respondents' proof of payment of the assessed fees, the RTC has properly acquired jurisdiction over the complaint. Jurisdiction once acquired is never lost, it continues until the case is terminated.[26]

Notably, petitioner's claim that the RTC did not acquire jurisdiction in this case is premised on her contention that respondents violated SC Circular No. 7 issued on March 24, 1998 requiring that all complaints must specify the amount of damages sought not only in the body of the pleadings but also in the prayer to be accepted and admitted for filing. Petitioner argues that respondents alleged in paragraph 13 of their Complaint that:

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[25] Underscoring supplied.

[26] *Intercontinental Broadcasting Corporation v. Alonzo-Legasto*, G.R. No. 169108, April 18, 2006, 487 SCRA 339, 350.

(T)he reasonable rental for the use of the [subject] land is ₱2,000.00 per hectare, every crop time, once every four months, or ₱6,000.00 a year per hectare; that defendants in proportion and length of time of their respective occupancy is and/or are jointly and severally liable to plaintiffs of the produce thereby in the following proportions, *viz*: (a) for defendant Ceferina de Ungria for a period of time claimed by her as such; (b) for defendants Dolores Cagautan, a certain *alias* "Dory," and PO1 Jonas Montales, of an undetermined area, the latter having entered the area sometime in 1998 and defendant *alias* "Dory," only just few months ago; that defendant Ignacio Olarte and Zacasio Puutan of occupying about one-half hectare each.[27]

and in their prayer asked:

x x x Ordering the defendants, jointly and severally, in proportion to the length and area of their respective occupancy, to pay reasonable rentals to the plaintiffs in the proportion and amount assessed in paragraph 13 of the First Cause of Action.

xxx xxx xxx

(a) Ordering the defendants, jointly and severally, to pay plaintiffs actual and compensatory damages such as are proved during the hearing of this case;

(b) Ordering the defendants, jointly and severally, to pay plaintiffs attorneys' fees and moral damages, all to be proved during the hearing of this case.[28]

Thus, the RTC should have dismissed the case, since respondents did not specify the amount of damages in their prayer.

We are not persuaded.

SC Circular No. 7 was brought about by our ruling in *Manchester Development Corporation v. Court of Appeals*,[29] where we held that a pleading which does not specify in the prayer the amount of damages being asked for shall not be accepted or admitted, or shall otherwise be expunged from the

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[27] *Rollo*, p. 39.

[28] *Id.* at 43-44.

[29] *Supra* note 23.

record; and that the Court acquires jurisdiction over any case only upon the payment of the prescribed docket fee.

However, in *Sun Insurance Office, Ltd. v. Asuncion*,[30] we laid down the following guidelines in the payment of docket fees, to wit:

> 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 therefor 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.
>
> 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 therefor 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.

Subsequently, in *Heirs of Bertuldo Hinog v. Melicor*,[31] we said:

> Furthermore, the fact that private respondents prayed for payment of damages "in amounts justified by the evidence" does not call for the dismissal of the complaint for violation of SC Circular No. 7, dated March 24, 1988 which required that all complaints must specify the amount of damages sought not only in the body of the pleadings but also in the prayer in order to be accepted and admitted for filing.

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[30] *Supra* note 17, at 291-292.

[31] 495 Phil. 422 (2005).

Sun Insurance effectively modified SC Circular No. 7 by providing that filing fees for damages and awards that cannot be estimated constitute liens on the awards finally granted by the trial court.

x x x judgment awards which were left for determination by the court or as may be proven during trial would still be subject to additional filing fees which shall constitute a lien on the judgment. It would then be the responsibility of the Clerk of Court of the trial court or his duly-authorized deputy to enforce said lien and assess and collect the additional fees.[32]

A reading of the allegations in the complaint would show that the amount of the rental due can only be determined after a final judgment, since there is a need to show supporting evidence when the petitioner and the other defendants started to possess the subject land. Thus, we find no reversible error committed by the CA when it ruled that there was no grave abuse of discretion committed by the RTC in issuing its Order dated March 30, 2000, where the RTC stated that "since there was no hearing yet, respondents are not in a position to determine how much is to be charged and that after hearing, the Clerk of Court determines that the filing fee is still insufficient, the same shall be considered as lien on the judgment that may be entered."

Petitioner claims that the action is barred by extraordinary acquisitive prescription and laches. Petitioner contends that she took possession of the land in the concept of an owner, open, exclusive, notorious and continuous since 1952 through her predecessor-in-interest, Eugenio, and by herself up to the present; that the late Fernando and private respondents had never taken possession of the land at any single moment; and that, granting without admitting that the transfer of rights between Fernando and Eugenio was null and void for any reason whatsoever, petitioner's possession of the land had already ripened into ownership after the lapse of 30 years from August 1952 by virtue of the extraordinary acquisitive prescription.

We are not persuaded.

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[32] *Id.* at 437.

It is a well-entrenched rule in this jurisdiction that no title to registered land in derogation of the rights of the registered owner shall be acquired by prescription or adverse possession.[33] Prescription is unavailing not only against the registered owner but also against his hereditary successors.[34] In this case, the parcel of land subject of this case is a titled property, *i.e.*, titled in the name of the late Fernando Castor, married to Rosario Dideles.

Petitioner claims that respondent had impliedly admitted the fact of sale by Fernando to Eugenio in August 1952, but only according to respondents, the sale was null and void because it violated the provisions of the Public Land Act. Petitioner argues that the application of Fernando, dated January 17, 1952, was not the homestead application referred to in Sections 118 and 124 of the Public Land Act; and that Fernando's application was only as settler, or for the allocation of the subject land to him vice the original settler Cadiente.

Such argument does not persuade.

The trial in this case has not yet started as in fact no answer has yet been filed. We find that these issues are factual which must be resolved at the trial of this case on the merits wherein both parties will be given ample opportunity to prove their respective claims and defenses.

Anent petitioner's defense of laches, the same is evidentiary in nature and cannot be established by mere allegations in the pleadings. Without solid evidentiary basis, laches cannot be a

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[33] *D.B.T.-Mar Bay Construction, Inc. v. Panes*, G.R. No. 167232, July 31, 2009, 594 SCRA 578; *Abadiano v. Martir*, G.R. No. 156310, July 31, 2008, 560 SCRA 676, 693; *Ragudo v. Fabella Estate Tenants Association, Inc.*, 503 Phil. 751, 764 (2005); *Alcantara-Daus v. Sps. De Leon*, 452 Phil. 92, 102 (2003); *Velez, Sr. v. Rev. Demetrio*, 436 Phil. 1, 9 (2002); *Villegas v. Court of Appeals*, 403 Phil. 791, 801 (2001); *Bishop v. Court of Appeals*, G.R. No. 86787, May 8, 1992, 208 SCRA 636, 641; and *Barcelona, et al. v. Barcelona and Court of Appeals*, 100 Phil. 251, 256-257 (1956).

[34] *Id.*

valid ground to dismiss respondents' complaint.[35] Notably, the allegations of respondents in their petition filed before the RTC which alleged among others:

7. That sometime between the years 1965 to 1970, defendant Ceferina de Ungria, accompanied by Miss Angela Jagna-an, appeared in the residence of plaintiff Rosario Dideles *Vda. de* Castor in Bo.1, Banga, South Cotabato, and requested her to sign a folded document with her name only appearing thereon, telling her that it has something to do with the land above-described, of which she refused telling her that she better return it to the person who requested her to do so (referring to her mother-in-law), more so that her husband was out at that time;

8. That when the matter was brought home to Fernando Castor, the latter just commented that [his] mother desires the land above-described to be sold to defendant Ceferina de Ungria which however he was opposed to do so even as they occasionally come into heated arguments everytime this insistence on the same subject propped up;

9. That even after the death of the mother of the late Fernando Castor in Bo. Bula, City of General Santos, sometime in 1980, the latter and his surviving wife thought all the while that the land above-described was in the enjoyment of his late mother's family with his 2nd husband; that it was only after sometime when plaintiff Rosario Dideles *Vda. de* Castor heard that the land above-described had even been leased by defendant Ceferina de Ungria with the Stanfilco and Checkered farm;

10. That sometime in 1997, defendant Ceferina de Ungria sent overtures to plaintiffs through Ester Orejana, who is the half sister-in-law of plaintiff Rosario Dideles *Vda. de* Castor that she desires to settle with them relating to the land above-described; that the overtures developed into defendant Ceferina de Ungria meeting for the purpose plaintiff Ferolyn Castor Facurib where the negotiation continued with Lolita Javier as attorney-in-fact after defendant Ceferina de Ungria left to reside in Manila and which resulted later to the attorney-in-fact offering the plaintiffs ₱100,000.00 to quitclaim on their rights over the said land, which offer, however, was refused

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[35] *Macababbad, Jr. v. Masirag*, G.R. No. 161237, January 14, 2009, 576 SCRA 70, 87.

by plaintiffs as so [insignificant] as compared to the actual value of the same land; that in that negotiation, defendant Ceferina de Ungria was challenged to show any pertinent document to support her claim on the land in question and where she meekly answered by saying at the time that she does not have any of such document;

xxx xxx xxx[36]

would not conclusively establish *laches*. Thus, it is necessary for petitioners to proceed to trial and present controverting evidence to prove the elements of *laches*.

WHEREFORE, the petition for review is *DENIED*.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Abad,* and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 173259. July 25, 2011]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **F.F. CRUZ AND CO., INC.,** *respondent.*

SYLLABUS

COMMERCIAL LAW; BANKS; LIABILITY FOR LOSSES INCURRED; THE BANK'S GREATER SHARE OF THE LOSS INCURRED, SUSTAINED; RATIONALE.— The

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

[*] Designated additional member per Special Order No. 1042 dated July 6, 2011.

banking business is impressed with public trust. A higher degree of diligence is imposed on banks relative to the handling of their affairs than that of an ordinary business enterprise. Thus, the degree of responsibility, care and trustworthiness expected of their officials and employees is far greater than those of ordinary officers and employees in other enterprises. In the case at bar, PNB failed to meet the high standard of diligence required by the circumstances to prevent the fraud. In *Philippine Bank of Commerce v. Court of Appeals* and *The Consolidated Bank & Trust Corporation v. Court of Appeals*, where the bank's negligence is the proximate cause of the loss and the depositor is guilty of contributory negligence, we allocated the damages between the bank and the depositor on a 60-40 ration. We apply the same ruling in this case considering that, as shown above, PNB's negligence is the proximate cause of the loss while the issue as to FFCCI's contributory negligence has been settled with finality in G.R. No. 173278. Thus, the appellate court properly adjudged PNB to bear the greater part of the loss consistent with these rulings.

APPEARANCES OF COUNSEL

Dasal Laurel Llasos and Associates for petitioner.
Poblador Bautista & Reyes for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

As between a bank and its depositor, where the bank's negligence is the proximate cause of the loss and the depositor is guilty of contributory negligence, the greater proportion of the loss shall be borne by the bank.

This Petition for Review on *Certiorari* seeks to reverse and set aside the Court of Appeal's January 31, 2006 Decision[1] in CA-G.R. CV No. 81349, which modified the January 30, 2004

[1] *Rollo* (G.R. No. 173259), pp. 46-54; penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Mario L. Guariña III and Santiago Javier Ranada.

Decision[2] of the Regional Trial Court of Manila City, Branch 46 in Civil Case No. 97-84010, and the June 26, 2006 Resolution[3] denying petitioner's motion for reconsideration.

Factual Antecedents

The antecedents are aptly summarized by the appellate court:

In its complaint, it is alleged that [respondent F.F. Cruz & Co., Inc.] (hereinafter FFCCI) opened savings/current or so-called combo account No. 0219-830-146 and dollar savings account No. 0219-0502-458-6 with [petitioner Philippine National Bank] (hereinafter PNB) at its Timog Avenue Branch. Its President Felipe Cruz (or Felipe) and Secretary-Treasurer Angelita A. Cruz (or Angelita) were the named signatories for the said accounts.

The said signatories on separate but coeval dates left for and returned from the Unites States of America, Felipe on March 18, 1995 until June 10, 1995 while Angelita followed him on March 29, 1995 and returned ahead on May 9, 1995.

While they were thus out of the country, applications for cashier's and manager's [checks] bearing Felipe's [signature] were presented to and both approved by the PNB. The first was on March 27, 1995 for ₱9,950,000.00 payable to a certain Gene B. Sangalang and the other one was on April 24, 1995 for ₱3,260,500.31 payable to one Paul Bautista. The amounts of these checks were then debited by the PNB against the combo account of [FFCCI].

When Angelita returned to the country, she had occasion to examine the PNB statements of account of [FFCCI] for the months of February to August 1995 and she noticed the deductions of ₱9,950,000.00 and ₱3,260,500.31. Claiming that these were unauthorized and fraudulently made, [FFCCI] requested PNB to credit back and restore to its account the value of the checks. PNB refused, and thus constrained [FFCCI] filed the instant suit for damages against the PNB and its own accountant Aurea Caparas (or Caparas).

In its traverse, PNB averred lack of cause of action. It alleged that it exercised due diligence in handling the account of [FFCCI]. The applications for manager's check have passed through the standard

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[2] *Id.* at 57-70; penned by Judge Artemio S. Tipon.

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

bank procedures and it was only after finding no infirmity that these were given due course. In fact, it was no less than Caparas, the accountant of [FFCCI], who confirmed the regularity of the transaction. The delay of [FFCCI] in picking up and going over the bank statements was the proximate cause of its self-proclaimed injury. Had [FFCCI] been conscientious in this regard, the alleged chicanery would have been detected early on and Caparas effectively prevented from absconding with its millions. It prayed for the dismissal of the complaint.[4]

Regional Trial Court's Ruling

The trial court ruled that F.F. Cruz and Company, Inc. (FFCCI) was guilty of negligence in clothing Aurea Caparas (Caparas) with authority to make decisions on and dispositions of its account which paved the way for the fraudulent transactions perpetrated by Caparas; that, in practice, FFCCI waived the two-signature requirement in transactions involving the subject combo account so much so that Philippine National Bank (PNB) could not be faulted for honoring the applications for manager's check even if only the signature of Felipe Cruz appeared thereon; and that FFCCI was negligent in not immediately informing PNB of the fraud.

On the other hand, the trial court found that PNB was, likewise, negligent in not calling or personally verifying from the authorized signatories the legitimacy of the subject withdrawals considering that they were in huge amounts. For this reason, PNB had the last clear chance to prevent the unauthorized debits from FFCCI's combo account. Thus, PNB should bear the whole loss –

> WHEREFORE, judgment is hereby rendered ordering defendant [PNB] to pay plaintiff [FFCCI] ₱13,210,500.31 representing the amounts debited against plaintiff's account, with interest at the legal rate computed from the filing of the complaint plus costs of suit.
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> IT IS SO ORDERED.[5]

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[4] *Id.* at 46-48.

[5] *Id.* at 69.

Court of Appeal's Ruling

On January 31, 2006, the CA rendered the assailed Decision affirming with modification the Decision of the trial court, *viz*:

> WHEREFORE, the appealed Decision is **AFFIRMED** with the **MODIFICATION** that [PNB] shall pay [FFCCI] only 60% of the actual damages awarded by the trial court while the remaining 40% shall be borne by [FFCCI].
>
> SO ORDERED.[6]

The appellate court ruled that PNB was negligent in not properly verifying the genuineness of the signatures appearing on the two applications for manager's check as evidenced by the lack of the signature of the bank verifier thereon. Had this procedure been followed, the forgery would have been detected.

Nonetheless, the appellate court found FFCCI guilty of contributory negligence because it clothed its accountant/ bookkeeper Caparas with apparent authority to transact business with PNB. In addition, FFCCI failed to timely examine its monthly statement of account and report the discrepancy to PNB within a reasonable period of time to prevent or recover the loss. FFCCI's contributory negligence, thus, mitigated the bank's liability. Pursuant to the rulings in *Philippine Bank of Commerce v. Court of Appeals*[7] and *The Consolidated Bank & Trust Corporation v. Court of Appeals*,[8] the appellate court allocated the damages on a 60-40 ratio with the bigger share to be borne by PNB.

From this decision, both FFCCI and PNB sought review before this Court.

On August 17, 2006, FFCCI filed its petition for review on *certiorari* which was docketed as G.R. No. 173278.[9] On March 7, 2007, the Court issued a Resolution[10] denying said

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[6] *Id.* at 53.

[7] 336 Phil. 667 (1997).

[8] 457 Phil. 688 (2003).

[9] *Rollo* (G.R. No. 173278), pp. 9-46.

[10] *Id.* at 119-123.

petition. On June 13, 2007, the Court issued another Resolution[11] denying FFCCI's motion for reconsideration. In denying the aforesaid petition, the Court ruled that FFCCI essentially raises questions of fact which are, as a rule, not reviewable under a Rule 45 petition; that FFCCI failed to show that its case fell within the established exceptions to this rule; and that FFCCI was guilty of contributory negligence. Thus, the appellate court correctly mitigated PNB's liability.

On July 13, 2006, PNB filed its petition for review on *certiorari* which is the subject matter of this case.

Issue

Whether the Court of Appeals seriously erred when it found PNB guilty of negligence.[12]

Our Ruling

We affirm the ruling of the CA.

PNB is guilty of negligence.

Preliminarily, in G.R. No. 173278, we resolved with finality[13] that FFCCI is guilty of contributory negligence, thus, making it partly liable for the loss (*i.e.*, as to 40% thereof) arising from the unauthorized withdrawal of ₱13,210,500.31 from its combo account. The case before us is, thus, limited to PNB's alleged negligence in the subject transactions which the appellate court found to be the proximate cause of the loss, thus, making it liable for the greater part of the loss (*i.e.*, as to 60% thereof) pursuant to our rulings in *Philippine Bank of Commerce v. Court of Appeals*[14] and *The Consolidated Bank & Trust Corporation v. Court of Appeals*.[15]

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[11] *Id.* at 154.

[12] *Rollo* (G.R. No. 173259) p. 164.

[13] The March 7, 2007 Resolution became final and executory on August 29, 2007 as per entry of judgment [*id.* at 158 (G.R. No. 173278)].

[14] *Supra* note 7.

[15] *Supra* note 8.

PNB contends that it was not negligent in verifying the genuineness of the signatures appearing on the subject applications for manager's check. It claims that it followed the standard operating procedure in the verification process and that four bank officers examined the signatures and found the same to be similar with those found in the signature cards of FFCCI's authorized signatories on file with the bank.

PNB raises factual issues which are generally not proper for review under a Rule 45 petition. While there are exceptions to this rule, we find none applicable to the present case. As correctly found by the appellate court, PNB failed to make the proper verification because the applications for the manager's check do not bear the signature of the bank verifier. PNB concedes the absence[16] of the subject signature but argues that the same was the result of inadvertence. It posits that the testimonies of Geronimo Gallego (Gallego), then the branch manager of PNB Timog Branch, and Stella San Diego (San Diego), then branch cashier, suffice to establish that the signature verification process was duly followed.

We are not persuaded.

First, oral testimony is not as reliable as documentary evidence.[17] Second, PNB's own witness, San Diego, testified that in the verification process, the principal duty to determine the genuineness of the signature devolved upon the account analyst.[18] However, PNB did not present the account analyst to explain his or her failure to sign the box for signature and balance verification of the subject applications for manager's check, thus, casting doubt as to whether he or she did indeed verify the signatures thereon. Third, we cannot fault the appellate court for not giving weight to the testimonies of Gallego and San Diego considering that the latter are naturally interested in exculpating themselves from any liability arising from the failure to detect the forgeries in the subject transactions. Fourth, Gallego admitted that PNB's

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[16] TSN, November 27, 2001, p. 40.

[17] *Abella v. Court of Appeals*, 327 Phil. 270, 276 (1996).

[18] TSN, June 20, 2002, pp. 14-15, 18-19.

employees received training on detecting forgeries from the National Bureau of Investigation.[19] However, Emmanuel Guzman, then NBI senior document examiner, testified, as an expert witness, that the forged signatures in the subject applications for manager's check contained noticeable and significant differences from the genuine signatures of FFCCI's authorized signatories and that the forgeries should have been detected or observed by a trained signature verifier of any bank.[20]

Given the foregoing, we find no reversible error in the findings of the appellate court that PNB was negligent in the handling of FFCCI's combo account, specifically, with respect to PNB's failure to detect the forgeries in the subject applications for manager's check which could have prevented the loss. As we have often ruled, the banking business is impressed with public trust.[21] A higher degree of diligence is imposed on banks relative to the handling of their affairs than that of an ordinary business enterprise.[22] Thus, the degree of responsibility, care and trustworthiness expected of their officials and employees is far greater than those of ordinary officers and employees in other enterprises.[23] In the case at bar, PNB failed to meet the high standard of diligence required by the circumstances to prevent the fraud. In *Philippine Bank of Commerce v. Court of Appeals*[24] and *The Consolidated Bank & Trust Corporation v. Court of Appeals*,[25] where the bank's negligence is the proximate cause of the loss and the depositor is guilty of contributory negligence, we allocated the damages between the bank and the depositor on a 60-40 ratio. We apply the same ruling in this case considering that, as shown above, PNB's negligence is the proximate cause of the loss while the issue as to FFCCI's contributory negligence

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[19] TSN, November 27, 2001, p. 62.

[20] TSN, November 19, 1999, p. 5.

[21] *United Coconut Planters Bank v. Basco*, 480 Phil. 803, 819 (2004).

[22] *Id*.

[23] *Id*.

[24] *Supra* note 7 at 683.

[25] *Supra* note 8 at 712-713.

has been settled with finality in G.R. No. 173278. Thus, the appellate court properly adjudged PNB to bear the greater part of the loss consistent with these rulings.

WHEREFORE, the petition is *DENIED*. The January 31, 2006 Decision and June 26, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 81349 are *AFFIRMED.*

Costs against petitioner.

SO ORDERED.

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

EN BANC

[A.M. No. 07-9-214-MTCC. July 26, 2011]

RE: APPLICATION FOR INDEFINITE LEAVE AND TRAVEL ABROAD OF PRESIDING JUDGE FRANCISCO P. RABANG III, MUNICIPAL TRIAL COURT IN CITIES, COTABATO CITY

SYLLABUS

1. LEGAL ETHICS; DISCIPLINE OF JUDGES; SERIOUS CHARGES; FREQUENT AND PROLONGED LEAVES WITHOUT PERMISSION FROM THE COURT AND ABANDONMENT OF OFFICE HAVE BEEN CONSIDERED GROSS MISCONDUCT; PRESENT IN CASE AT BAR; IMPOSABLE PENALTY.— We have ruled that the absenteeism of judges or court employees and/or their irregular attendance at work is a serious charge that may warrant the imposition of the penalty of dismissal or suspension from service. Frequent and prolonged leaves without permission from

the Court and abandonment of office have been considered gross misconduct. Gross misconduct is a serious charge under Section 8, Rule 140 and may be punishable by dismissal from service, suspension from office without salary and other benefits for more than 3 but not exceeding 6 months, or a fine of more than ₱20,000 but not exceeding ₱40,000. In *Leaves of Absence Without Approval of Judge Calderon*, the Court considered Judge Calderon's frequent and prolonged absence for almost a straight period of three years to be inexcusable. The Court concluded that Judge Calderon had habitually abandoned his sala. Judge Calderon was found guilty of gross misconduct and abandonment of office and was consequently dismissed from the service with forfeiture of all benefits. In the present case, Judge Rabang has been absent without leave or AWOL for more than four years from the time he left for abroad in May 2007. There has been no word from him since then. Judge Rabang's attitude betrays his lack of concern for his office. It is clear that Judge Rabang has abandoned his office and committed gross misconduct.

2. ID.; ID.; CODE OF JUDICIAL CONDUCT; JUDGES ARE MANDATED TO ADMINISTER JUSTICE IMPARTIALLY AND WITHOUT DELAY; RATIONALE.— Rule 1.02, Canon 1 of the Code of Judicial Conduct mandates that a judge should administer justice impartially and without delay. Rule 3.05, Canon 3 of the same Code decrees that a judge shall dispose of the court's business promptly and decide cases within the required periods. Rule 3.09, Canon 3 further provides that a judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and required at all times the observance of high standards of public service and fidelity. In *Yu-Asensi v. Judge Villanueva*, the Court explained: x x x the Canons of Judicial Ethics (which) enjoin judges to be punctual in the performance of their judicial duties, recognizing that the time of litigants, witnesses and attorneys are of value, and that if the judge is not punctual in his habits, he sets a bad example to the bar and tend to create dissatisfaction in the administration of justice. The Code of Judicial Conduct decrees that a judge should administer justice impartially and *without* delay. A judge should likewise be imbued with a high sense of duty and responsibility in the discharge of his obligation to *promptly* administer justice. The trial court

> judges being the paradigms of justice in the first instance have, time and again, been exhorted to dispose of the court's business promptly and to decide cases within the required period because delay results in undermining the people's faith in the judiciary from whom the prompt hearing of their supplications is anticipated and expected, and reinforces in the minds of the litigants the impression that the wheels of justice grind ever so slowly. Unauthorized absence and irregular attendance are detrimental to the dispensation of justice and, more often than not, result in undue delay in the disposition of cases; they also translate to waste of public funds when the absent officials and employees are nevertheless paid despite their absence.

D E C I S I O N

***PER CURIAM*:**

Judge Francisco P. Rabang III (Judge Rabang), the Presiding Judge of the Municipal Trial Court in Cities (MTCC), Cotabato City, filed an application dated 16 May 2007 for indefinite leave and travel abroad. Judge Cader P. Indar, Al Haj (Judge Indar), the Executive Judge of the Regional Trial Court of Maguindanao and Cotabato City, sent a letter to then Deputy Court Administrator Reuben De la Cruz seeking guidance on Judge Rabang's application for indefinite leave. Judge Indar deferred action on the leave application due to the following reasons: (1) the leave was not specific as to the kind of leave applied for, the number of working days and where to spend it; and (2) Judge Rabang had not accounted for his absences from 2 to 10 April 2007 and from 25 April to 15 May 2007 when Judge Rabang neither performed his functions nor reported in office. Judge Indar further stated that Judge Rabang previously took a two-month leave of absence for the period February to March 2007 but returned to office only on 11 April 2007.

On 10 October 2007, this Court issued a Resolution directing Judge Rabang to explain in writing his failure to comply with Memorandum Order No. 14-2000.[1] In the same Resolution,

[1] Dated 6 November 2000, it provides that "x x x no official or employee of the Supreme Court in particular and the Judiciary in general, shall leave

the Court likewise disapproved Judge Rabang's application for indefinite leave of absence and his absences were considered unauthorized. The Court further directed Judge Rabang to immediately report back to work; otherwise, his name would be dropped from the Rolls. The Financial Management Office was directed to withhold his salaries and benefits.

On 24 October 2008, the Office of the Court Administrator (OCA) reported that, according to Presiding Judge Annabelle D. P. Piang of the MTCC, Cotabato City, Judge Rabang's residence at No. 8 Notre Dame Avenue, Rosary Heights, Cotabato City was always closed and a househelper only reports from time to time to clean the house, which is now on sale. Clerk of Court IV Wilfredo S. Guanzon, also of the MTCC, Cotabato City, notified the OCA that the 10 October 2007 Resolution was sent to Judge Rabang's father, who is a retired judge, through LBC, a private courier, because Judge Rabang was no longer reporting for duty.

On 9 February 2009, the Court directed the National Bureau of Investigation (NBI) to locate the whereabouts of Judge Rabang. The NBI reported that Judge Rabang left for Canada sometime in 2007 and is residing at 1265 Wilson Avenue, North York, Ontario Apartment 308 M3M 159, Canada. His wife, Bernadette, is working there as a Staff Nurse. Sometime in October 2008, one of Judge Rabang's sons died in Canada and his mother Athena went there to attend the wake.

In its Memorandum dated 15 February 2011, the OCA reported that Judge Rabang has been absent from his station and out of the country for more than three years already. The OCA opined that Judge Rabang violated Memorandum Order No. 14-2000 when he departed for abroad without the knowledge and permission of the Court. He has abandoned his sala for no justifiable reason. The OCA recommended that Judge Rabang be dismissed from the service for misconduct and abandonment of office with

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for any foreign country, whether on official business or official time or at one's own expenses, without first obtaining permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions pursuant to the Resolution in A.M. No. 99-12-08-SC."

forfeiture of his salaries and allowances as well as retirement benefits, except his accrued leave credits, and that he be barred from re-employment in all branches of the government, including government-owned and controlled corporations. The OCA further recommended that Judge Rabang's position in the MTCC, Cotabato City, be declared vacant.

The Office of Administrative Services of the OCA issued a Certification dated 1 February 2011 stating that Judge Rabang had 71.042 days vacation leave and 232.042 days sick leave credits as of 15 May 2007, and that Judge Rabang applied for vacation leave from 1 February to 31 March 2007. However, he did not submit any application for leave for his absences from 2 to 10 April 2007 and 25 April to 15 May 2007. His application for indefinite leave beginning 16 May 2007 was disapproved and considered unauthorized in the 10 October 2007 Resolution. His father, a retired judge, was sent a copy of the Resolution of 10 October 2007 which, among other things, directed Judge Rabang to report back to work. But Judge Rabang still has not complied with the Court's resolution. Up to this date, Judge Rabang has not returned to work. **Judge Rabang has been absent from his station and out of the country for more than four years now**. Efforts have been exerted to locate the whereabouts of Judge Rabang. The NBI, which assisted the Court in locating him, has reported that Judge Rabang is now residing in Canada. Judge Rabang should have been more conscious of his court duties. As a judge and a court official, Judge Rabang has the duty to perform his functions promptly and regularly. He should have been aware that, in frequently leaving his station, he has caused great disservice to many litigants and has denied them speedy justice.[2] Definitely, Judge Rabang's continued absence for more than four years now has caused great disservice to numerous litigants.

We have ruled that the absenteeism of judges or court employees and/or their irregular attendance at work is a serious charge that may warrant the imposition of the penalty of dismissal

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[2] *Leaves of Absence Without Approval of Judge Calderon*, 361 Phil. 763, 771 (1999); *Request of Judge Cartagena*, 347 Phil. 39, 44 (1997).

or suspension from service.[3] Frequent and prolonged leaves without permission from the Court and abandonment of office have been considered gross misconduct. Gross misconduct is a serious charge under Section 8, Rule 140 and may be punishable by dismissal from service, suspension from office without salary and other benefits for more than 3 but not exceeding 6 months, or a fine of more than ₱20,000 but not exceeding ₱40,000.

In *Leaves of Absence Without Approval of Judge Calderon*,[4] the Court considered Judge Calderon's frequent and prolonged absence for almost a straight period of three years to be inexcusable. The Court concluded that Judge Calderon had habitually abandoned his sala. Judge Calderon was found guilty of gross misconduct and abandonment of office and was consequently dismissed from the service with forfeiture of all benefits.

In the present case, Judge Rabang has been absent without leave or AWOL for more than four years from the time he left for abroad in May 2007. There has been no word from him since then. Judge Rabang's attitude betrays his lack of concern for his office. It is clear that Judge Rabang has abandoned his office and committed gross misconduct.

Judge Rabang is presumed to know his duties and responsibilities under the Code of Judicial Conduct. Rule 1.02, Canon 1 of the Code of Judicial Conduct mandates that a judge should administer justice impartially and without delay. Rule 3.05, Canon 3 of the same Code decrees that a judge shall dispose of the court's business promptly and decide cases within the required periods. Rule 3.09, Canon 3 further provides that a judge should organize and supervise the court personnel to ensure the prompt and efficiant dispatch of business, and required at all times the observance of high standards of public service and fidelity.

In *Yu-Asensi v. Judge Villanueva*,[5] the Court explained:

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[3] *Mercado v. Salcedo*, A.M. No. RTJ-03-1781 and A.M. No. RTJ-03-1782, 16 October 2009, 604 SCRA 4, 23-24.

[4] 361 Phil. 763 (1999).

[5] 379 Phil. 258, 268-269 (2000).

x x x the Canons of Judicial Ethics (which) enjoin judges to be punctual in the performance of their judicial duties, recognizing that the time of litigants, witnesses and attorneys are of value, and that if the judge is not punctual in his habits, he sets a bad example to the bar and tend to create dissatisfaction in the administration of justice.

The Code of Judicial Conduct decrees that a judge should administer justice impartially and *without* delay. A judge should likewise be imbued with a high sense of duty and responsibility in the discharge of his obligation to *promptly* administer justice. The trial court judges being the paradigms of justice in the first instance have, time and again, been exhorted to dispose of the court's business promptly and to decide cases within the required period because delay results in undermining the people's faith in the judiciary from whom the prompt hearing of their supplications is anticipated and expected, and reinforces in the minds of the litigants the impression that the wheels of justice grind ever so slowly.

Unauthorized absence and irregular attendance are detrimental to the dispensation of justice and, more often than not, result in undue delay in the disposition of cases; they also translate to waste of public funds when the absent officials and employees are nevertheless paid despite their absence.[6]

WHEREFORE, we *DISMISS* Judge Francisco P. Rabang III of the Municipal Trial Court in Cities, Cotabato City from the service for Gross Misconduct and Abandonment of Office, with *FORFEITURE* of all benefits due him, except accrued leave benefits, if any, with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations. His position in the Municipal Trial Court in Cities, Cotabato City is declared *VACANT*. This Decision is immediately executory.

SO ORDERED.

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

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[6] *Supra* note 3.

Perez, J., no part. Acted on matter as Court Administrator.

Del Castillo, J., on leave.

Sereno, J., on official leave.

EN BANC

[A.M. No. RTJ-11-2261. July 26, 2011]
(Formerly OCA IPI NO. 10-3386-RTJ)

ATTY. JOSE VICENTE D. FERNANDEZ, *complainant, vs.* **JUDGE ANGELES S. VASQUEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOTIONS FOR INHIBITION; ORDERS OF INHIBITION ARE JUDICIAL IN NATURE AND NOT ADMINISTRATIVE IN CHARACTER.— [T]he allegations of bias and partiality of respondent judge in connection with the denial of the motions of inhibition filed by complainant are matters which are judicial in character and may not be addressed in this administrative complaint. Orders of inhibition are not administrative in character; they are judicial in nature. Thus, the propriety of the action of the judge in denying the motions for inhibition should have been raised in a judicial proceeding and not in this administrative action.

2. JUDICIAL ETHICS; DISCIPLINE OF JUDGES; GROSS INEFFICIENCY; DELAY IN RESOLVING MOTIONS AND INCIDENTS PENDING BEFORE A JUDGE'S SALA WITHIN THE REGLEMENTARY PERIOD FIXED BY THE CONSTITUTION AND THE LAW IS NOT EXCUSABLE AND CANNOT BE CONDONED; RATIONALE.— The Court, in the exercise of its administrative supervision over

the lower courts, has the authority to look into the time spent by respondent judge in resolving the incident. As observed by the OCA, respondent judge failed to resolve the motion for his inhibition within the 90-day reglementary period. He acted on the first and second motions for inhibition, which were filed on 27 February 2006 and 28 February 2007, respectively, only on 13 March 2007, or more than a year after the filing of the first motion. In the orderly administration of justice, judges are required to act with dispatch in resolving motions filed in their court. The parties have the right to be properly informed of the outcome of the motions they have filed and the Constitutional right to a speedy disposition of their case. Taking into account the circumstances in this case, we find no reason for respondent judge's delayed action. Delay in resolving motions and incidents pending before a judge's sala within the reglementary period fixed by the Constitution and the law is not excusable and cannot be condoned. Under Section 15 (I) of Article VIII of the 1987 Constitution and Canon 3, Rule 3.05 of the Code of Judicial Conduct, judges are mandated to dispose of their cases promptly and decide them within the prescribed periods. The failure of a judge to decide a case seasonably constitutes gross inefficiency. It violates the norms of judicial conduct and is subject to administrative sanction.

3. ID.; ID.; ID.; IMPOSABLE PENALTY; FACTORS TO CONSIDER, CLARIFIED.— The imposable penalty for gross inefficiency varies depending on the attending circumstances of a case. In a Resolution dated 8 July 1998, this Court, through then Associate Justice Reynato S. Puno, exhaustively discussed the penalties that were imposed on several cases involving gross inefficiency. Thus: We have always considered the failure of a judge to decide a case within ninety (90) days as gross inefficiency and imposed either fine or suspension from service without pay for such. **The fines imposed vary in each case, depending chiefly on the number of cases not decided within the reglementary period and other factors, to wit: the presence of aggravating or mitigating circumstances—the damage suffered by the parties as a result of the delay, the health and age of the judge, *etc*.**

4. ID.; ID.; DISHONESTY; MAKING OF UNTRUTHFUL STATEMENTS IN THE PERSONAL DATA SHEET (PDS) AMOUNTS TO DISHONESTY AND FALSIFICATION OF

AN OFFICIAL DOCUMENT; PRESENT IN CASE AT BAR. — The making of untruthful statements in the PDS amounts to dishonesty and falsification of an official document. x x x The Book of Entry of Judgment of the City Court of Legazpi shows that: (1) respondent was accused of indirect bribery on 11 December 1974 by Assistant City Fiscal Amisola in Criminal Case No. 7911; (2) he posted a bail bond in the amount of ₱400.00; and (3) he was acquitted of the crime on 24 October 1977. It is, therefore, beyond question that respondent had been formally charged. Clearly, he failed to disclose the information when he answered "No" to Question No. 24 of the PDS, which he filed with the JBC in 2005. That respondent is guilty of dishonesty in accomplishing his PDS is impossible to refute. It was not mere inadvertence on his part when he answered "No" to that very simple question posed in the PDS. He knew exactly what the question called for and what it meant, and that he was committing an act of dishonesty but proceeded to do it anyway. x x x His being a judge makes the act all the more unacceptable. Clearly, there was an obvious lack of integrity, the most fundamental qualification of a member of the judiciary. x x x Such lack of candor has blemished the image of the judiciary. His contention that the indirect bribery case had been dismissed is immaterial, he was duty bound to disclose such information when he was applying for judicial position.

5. **ID.; ID.; ID.; DISHONESTY IS IN THE NATURE OF A GRAVE OFFENSE; PENALTY OF DISMISSAL FROM SERVICE, PROPER; EXCEPTIONS.—** Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification from reemployment in the government service. x x x The penalty of dismissal, however, is not exclusive. Section 11, Rule 140 of the Rules of Court, provides the following alternative sanctions against a judge found guilty of dishonesty or any other offense falling under the classification of a serious charge provided in Sec. 8 of the same Rule. x x x The recent case of *OCA v. Judge Aguilar* is very much instructive on this matter: xxx, Rule IV, Section 53 of the Civil Service Rules also provides that in the determination of the penalties to be imposed, extenuating, mitigating, aggravating or alternative circumstances

attendant to the commission of the offense shall be considered. Among the circumstances that may be allowed to modify the penalty are (1) length of service in the government, (2) good faith, and (3) other analogous circumstances. In several jurisprudential precedents, the Court has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the determination by the Court of the imposable penalty. For equitable and humanitarian reasons, the Court reduced the administrative penalties imposed in several cases.

D E C I S I O N

PEREZ, *J.*:

This is an administrative complaint for gross dishonesty and falsification of an official document against Judge Angeles S. Vasquez, Regional Trial Court (RTC), Branch 13, Ligao City.

The Antecedents

In a complaint[1] received by the Office of the Court Administrator (OCA) on 7 March 2010, Atty. Jose Vicente D. Fernandez stated that he was the counsel of Dr. Maria Susan L. Rañola in several cases instituted for the recovery of the properties the latter conjugally owned with her late husband Ronald O. Rañola. The cases were against Spouses Fernando and Maria Concepcion Rañola (Spouses Rañola). Spouses Rañola also instituted an ejectment case against Dr. Rañola. These cases were docketed as S.P. No. 431 (*Petition for Letters of Administration and Settlement of Estate*), Civil Case No. 2400 (*Fernando and Ma. Concepcion Rañola vs. Ma. Susan Rañola*),

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

Civil Case No. 2352 (*Ma. Susan Rañola, et al. vs. Spouses Fernando and Ma. Concepcion Rañola*), and *People vs. Fernando and Ma. Concepcion Rañola, et al*. All these were raffled to the court presided over by respondent Judge Vasquez.

Complainant reported that during the first week of February 2006, he was asked by respondent judge to file a motion for his inhibition in Civil Case No. 2352 on the ground that respondent judge was the counsel, prior to his appointment as public prosecutor, of the Rañola family. Hence, complainant filed a Motion for Inhibition[2] dated 23 February 2006 seeking for the recusal of the judge but citing as a ground instead, his blood relationship with respondent judge. Complainant is closely related by blood with respondent judge since his late paternal grandmother is also a Vasquez, from the Vasquez clan to which respondent belongs.

No action was taken by respondent judge on the Motion. It was only after a year, *i.e.*, 28 February 2007, after complainant filed a Supplemental Motion for Inhibition,[3] on the ground of manifest bias, partiality and inexcusable delay in the proceedings, that respondent judge ruled and denied the two motions in an Order[4] dated 13 March 2007.

According to complainant, the Supplemental Motion for Inhibition was triggered by the apparent bias of respondent judge for the Spouses Rañola. This partiality was allegedly manifested in the following instances: (1) respondent's undue insistence that complainant's client unconditionally agree to his proposed compromise agreement which is downright unfavorable to them; (2) concluding the pre-trial proceedings more than a year after it was started; (3) ordering complainant's client to pay docket fees beyond that prescribed by the Rules; and (4) requiring the payment of a ₱5,000.00 witness fee before a hostile witness could be compelled to take the witness stand.

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[2] *Id.* at 21-22.

[3] *Id.* at 23-29.

[4] *Id.* at 30-33.

Complainant asserts that the partiality of respondent towards Spouses Rañola is well-rooted, as detailed in the sworn statement[5] of Buenconsejo B. Quides. The said affidavit narrated respondent's "transactional" relationship with the Spouses Rañola which started when he was still an assistant provincial prosecutor, and continued to his present position as presiding judge of RTC, Branch 13, Ligao City. In exchange of favors, respondent allegedly used the coercive power of his public office to serve the private interests of the spouses.

Claiming that the allegations in the motions for his inhibition were lies and an affront to his integrity, respondent judge filed on 24 April 2007 a Petition with the Commission on Bar Discipline to seek the disbarment of complainant. In a Notice of Resolution[6] dated 6 February 2008, the IBP Commission on Bar Discipline resolved to dismiss the disbarment case. In view of such dismissal, a Petition for Review was filed by respondent before this Court, docketed as A.C. No. 7884.

Complainant laments that despite the filing of the disbarment case, respondent still refused, on a third Motion for Inhibition, to recuse himself. Instead of inhibiting himself from the case, respondent in his 12 June 2007 Order[7] denied the motion and suggested that complainant withdraw his appearance as counsel in the case, as well as in other related cases.

Another matter that complainant emphasized in his complaint was the dishonesty allegedly committed by respondent when he accomplished his Personal Data Sheet (PDS) for the Judicial and Bar Council (JBC). Complainant alleged that when respondent filed his application to the Judiciary in 2005, he placed an "x" in the box indicating a "No" answer to the question: *"Have you been charged with or convicted of or otherwise imposed a sanction of any law, decree, ordinance or regulation by any court, tribunal, or any other government office, agency or*

[5] *Id.* at 37-40.

[6] *Id.* at 36.

[7] *Id.* at 52-54.

instrumentality in the Philippines or any foreign country, or found guilty of an administrative offense or imposed any administrative sanction? (Question No. 24), and Have you ever been retired, dismissed or forced to resign from employment? (Question No. 25)."

Complainant submitted that respondent lied by answering "No" to these questions since he had been criminally charged for indirect bribery in the early 1970s. He alleged that this fact is evidenced by the record in Criminal Case No. 7911, filed on 11 December 1974, before the City Court of Legazpi, indicting respondent for Indirect Bribery. With regard to Question No. 25, respondent allegedly likewise lied because he tendered his resignation from his position as clerk of court to evade the administrative case that may arise from the indirect bribery incident.

Complainant asserted that in brazenly giving untruthful statements in his PDS, respondent committed dishonesty and falsification of public documents. Thus, he filed the instant administrative case with the prayer that respondent be dismissed from the Judiciary.

In his Comment[8] dated 4 May 2010, respondent prayed that the administrative complaint filed against him be dismissed. He clarified that the in-chamber conferences held in Civil Case No. 2352 resulted in the amicable settlement of the case based on the stipulation of the parties. As to the question of docket fees, he explained that he merely followed Section 7, Rule 141 of the Rules. He also explained that in requiring complainant's client to pay ₱5,000.00 witness fee, he was merely being sensitive to the needs of the accountant who was based in Naga City and who had to spend for the trip and meals in coming over to the court, not to mention her loss of income.

He denied that he favored the causes of the Spouses Rañola. He explained that while he was then a prosecutor in Ligao, he had to handle all criminal cases within his assigned jurisdiction. Unavoidably, he had to pass upon cases filed and prosecuted by the Rañolas. Respondent maintained that the fact that the

[8] *Id.* at 64-73.

Spouses Rañola cases were filed in his sala, does not necessarily mean that he is biased in their favor.

As to the affidavit of Quides, respondent claimed that this is self-serving and mere hearsay, devoid of any materiality and ought not to be admitted.

On the issue of dishonesty, respondent averred that in answering Questions 24 and 25, there was no attempt on his part to falsify or perjure his PDS. He does not deny the fact that he was charged with indirect bribery. He explained that what he could vaguely recall of the embarrassing, traumatic and grueling incident which led to his having been charged with indirect bribery was that it was due to his "leftist" association and leaning. He alleged that the dictatorship then wanted to silence everyone, more so, the young professionals of government bureaus and offices.[9] As he could not be hailed to a court martial for his supposed "communist" stance, he was set up with a "planted" evidence to pave the way for the filing of a criminal case against him for indirect bribery.[10] He emphasized that he was never caught in *flagrante delicto.* The evidence against him, to reiterate, were merely set up by the military, thus, his acquittal.

Contrary to complainant's assertions, respondent maintained that he was not forced to resign as a clerk of court. He noted that the indirect bribery case was filed on 11 December 1974 while he resigned as a clerk of court on 30 April 1973 (more than one year before the indirect bribery case was filed). He allegedly resigned out of disgust and conviction that the government he was serving was not protecting its own civil servants but was out to silence anyone so that its stranglehold could be perpetrated.[11]

Respondent bemoans the struggles his family had to go through because of the trumped up charge for indirect bribery. He alleged

[9] *Id.* at 68.

[10] *Id.* at 69.

[11] *Id.* at 69-70.

that in his resolute attempt to forever bury the scandal from his memory, he was so successful that he has absolutely forgotten the matter, only to be revived after a lapse of 36 years, with the filing of the instant administrative case. He was sort of enveloped by amnesia as far as the incident was concerned, so much so that in answering Question No. 24 in his PDS, he automatically and without a blink of an eye, checked the word "No."[12]

In a Reply[13] dated 17 May 2010, complainant stated that respondent's defense of amnesia of the selective kind is a defense already thrown out by jurisprudence. He insisted that respondent misrepresented and falsified his PDS to conceal the information that would have hurt his eligibility for the position he was applying for.

Complainant furnished the Court with a copy of the 31 October 2008 Decision[14] of the Court of Appeals (CA) in CA-G.R. SP No. 101266 which declared null and void for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction respondent's Orders dated 16 May 2007 on the issue of filing fees and 13 June 2007 and 14 August 2007 on the issue of witness fee.

OCA's Report and Recommendation

In its Report[15] dated 3 November 2010, the OCA found respondent administratively liable for: (a) his failure to act with dispatch on the motion for his inhibition in Civil Case No. 2352; and (b) dishonesty. The OCA did not sustain respondent's flimsy defense of amnesia in concealing from his PDS the fact that he was charged with indirect bribery. Being charged with a crime is an incident in one's life that cannot be easily forgotten, especially when the same is made in connection with the performance of one's duty. In the instant case, respondent was charged with

[12] *Id.* at 71.

[13] *Id.* at 97-112.

[14] *Id.* at 113-132.

[15] *Id.* at 133-140.

the said crime when he was still a clerk of court. The OCA noted the fact that though respondent claims that he has forgotten said charge, he can still vividly remember the incident and the circumstances that he claims to have led to his arrest. Accordingly, the OCA recommended that respondent be fined in the amount of Forty Thousand (₱40,000.00) Pesos.

Our Ruling

We agree with the findings of the OCA on respondent's gross inefficiency and dishonesty although we differ with respect to the penalty imposed.

On the other hand, we see no reason for this Court to look into the rest of the allegations of the complainant. The issue concerning the assessment of witness and filing fees had already been passed and ruled upon by the CA in a judicial proceeding. Also, the allegations of bias and partiality of respondent judge in connection with the denial of the motions of inhibition filed by complainant are matters which are judicial in character and may not be addressed in this administrative complaint. Orders of inhibition are not administrative in character; they are judicial in nature.[16] Thus, the propriety of the action of the judge in denying the motions for inhibition should have been raised in a judicial proceeding and not in this administrative action.

On Respondent's Gross Inefficiency

The Court, in the exercise of its administrative supervision over the lower courts, has the authority to look into the time spent by respondent judge in resolving the incident. As observed by the OCA, respondent judge failed to resolve the motion for his inhibition within the 90-day reglementary period. He acted on the first and second motions for inhibition, which were filed on 27 February 2006 and 28 February 2007, respectively, only on 13 March 2007, or more than a year after the filing of the first motion.

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[16] Supreme Court Circular No. 7, 10 November 1980 and Administrative Circular No. 1, 28 January 1988.

In the orderly administration of justice, judges are required to act with dispatch in resolving motions filed in their court. The parties have the right to be properly informed of the outcome of the motions they have filed and the Constitutional right to a speedy disposition of their case. Taking into account the circumstances in this case, we find no reason for respondent judge's delayed action. Delay in resolving motions and incidents pending before a judge's sala within the reglementary period fixed by the Constitution and the law is not excusable and cannot be condoned.

Under Section 15(1)[17] of Article VIII of the 1987 Constitution and Canon 3, Rule 3.05[18] of the Code of Judicial Conduct, judges are mandated to dispose of their cases promptly and decide them within the prescribed periods.[19] The failure of a judge to decide a case seasonably constitutes gross inefficiency.[20] It violates the norms of judicial conduct and is subject to administrative sanction.

The imposable penalty for gross inefficiency varies depending on the attending circumstances of a case. In a Resolution[21] dated 8 July 1998, this Court, through then Associate Justice Reynato S. Puno, exhaustively discussed the penalties that were imposed on several cases involving gross inefficiency. Thus:

We have always considered the failure of a judge to decide a case within ninety (90) days as gross inefficiency and imposed either fine or suspension from service without pay for such. **The fines imposed vary in each case, depending chiefly on the number of**

[17] "Section 15(1). All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four (24) months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve (12) months for all collegiate courts, and three (3) months for all other lower courts."

[18] "Rule 3.05. A judge shall dispose of the court's business promptly and decide cases within the required periods."

[19] *Re: Judge Danilo M. Tenerife*, A.M. No. 94-5-42-MTC, 20 March 1996, 255 SCRA 184, 187.

[20] *Id*.

[21] *Re: Report on the Judicial Audit Conducted in RTC, Branches 29 and 59, Toledo City*, A.M. No. 97-9-278-RTC, 8 July 1998, 292 SCRA 8.

cases not decided within the reglementary period and other factors, to wit: the presence of aggravating or mitigating circumstances— the damage suffered by the parties as a result of the delay, the health and age of the judge, *etc*. Thus, in one case, we set the fine at ten thousand pesos (₱10,000.00) for failure of a judge to decide 82 cases within the reglementary period, taking into consideration the mitigating circumstance that it was the judge's first offense. In another case, the fine imposed was sixty thousand pesos (₱60,000.00), for the judge had not decided about 25 or 27 cases. Still in other cases, the fines were variably set at fifteen thousand pesos (₱15,000.00), for nineteen (19) cases left undecided, taking into consideration that it was the judge's first offense; twenty thousand pesos (₱20,000.00), for three (3) undecided criminal cases; eight thousand pesos (₱8,000.00), for not deciding a criminal case for three (3) years; forty thousand pesos (₱40,000.00), for not deciding 278 cases within the prescribed period, taking note of the judge's failing health and age; and ten thousand pesos (₱10,000.00), for belatedly rendering a judgment of acquittal in a murder case, after one and one-half years from the date the case was submitted for decision. In another case, suspension without pay for a period of six (6) months was imposed since, besides the judge's failure to timely decide an election protest for eight (8) months, the judge submitted false certificates of service and was found guilty of habitual absenteeism.[22] *(Emphasis supplied.)*

The following pronouncements in *OCA v. Judge Quilatan*[23] further illustrated the flexibility of the parameters in the determination of the amount of fine that may be imposed on judges for gross inefficiency:

Under the Revised Rules of Court, undue delay in rendering a decision is a less serious offense punishable by suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months, or a fine of more than PhP 10,000 but not exceeding PhP 20,000.

There were cases, however, in which the Court did not strictly apply the Rules, imposing fines below or more than the maximum amount allowed, thus:

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[22] *Id.* at 23-24.

[23] A.M. No. MTJ-09-1745, 28 September 2010, 631 SCRA 425.

> In two cases, we imposed a fine of five thousand pesos (₱5,000) on a judge who was suffering from cancer, for failing to decide five (5) cases within the reglementary period and failing to decide pending incidents in nine (9) cases; and xxx. In one case, the judge was fined twenty-five thousand pesos (₱25,000) for undue delay in rendering a ruling and for making a grossly and patently erroneous decision. In another case, the judge was fined forty thousand pesos (₱40,000) for deciding a case only after an undue delay of one (1) year and six (6) months and for simple misconduct and gross ignorance of the law, considering also that said undue delay was his second offense. Finally, the fine of forty thousand pesos (₱40,000) was also imposed in a case for the judge's failure to resolve one (1) motion, considering that he was already previously penalized in two cases for violating the Code of Judicial Conduct and for Gross Ignorance of Procedural Law and Unreasonable Delay. (citations omitted)[24]

In the case at bar, respondent resolved the pending incident only after more than a year from the date the motion was filed. It bears stressing that the incident does not even involve a complex issue, it being a mere motion for inhibition. On a positive note, an examination of the records with the Legal Office of the OCA would show that this is the first time that he has been administratively charged. Under the foregoing circumstances, for gross inefficiency, we find the imposition of fine in the amount of Ten Thousand (₱10,000.00) Pesos reasonable.

On Respondent's Dishonesty

The making of untruthful statements in the PDS amounts to dishonesty and falsification of an official document.[25]

In *Plopinio v. Zabala-Cariño*,[26] this Court had the occasion to identify the reckoning point when a specific charge should

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[24] *Id.* at 428-429.

[25] *Ratti v. Mendoza-De Castro*, A.M. No. P-04-1844, 23 July 2004, 435 SCRA 11, 21 citing *Civil Service Commission v. Sta. Ana* , 386 SCRA 1 (2002) *further* citing *People v. Po Giok To*, 96 Phil. 913 (1955).

[26] A.M. No. P-08-2458, 22 March 2010, 616 SCRA 269.

be reflected in the PDS. Thus, a person is considered formally charged:

> (1) In administrative proceedings – xxx.
>
> **(2) In criminal proceedings – (a) upon the finding of the existence of probable cause by the investigating prosecutor and the consequent filing of an information in court with the required prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombdusman or his deputy**; (b) upon the finding of the existence of probable cause by the public prosecutor or by the judge in cases not requirng(sic) a preliminary investigation nor covered by the Rule on Summarry (sic) Procedure; or (c) upon the finding of cause or ground to hold the accused for trial pursuant to Section 13 of the Revised Rule on Summary Procedure.[27] *(Emphasis supplied.)*

The Book of Entry of Judgment[28] of the City Court of Legazpi shows that: (1) respondent was accused of indirect bribery on 11 December 1974 by Assistant City Fiscal Amisola in Criminal Case No. 7911; (2) he posted a bail bond in the amount of ₱400.00; and (3) he was acquitted of the crime on 24 October 1977.

It is, therefore, beyond question that respondent had been formally charged. Clearly, he failed to disclose the information when he answered "No" to Question No. 24 of the PDS, which he filed with the JBC in 2005.

That respondent is guilty of dishonesty in accomplishing his PDS is impossible to refute. It was not mere inadvertence on his part when he answered "No" to that very simple question posed in the PDS. He knew exactly what the question called for and what it meant, and that he was committing an act of dishonesty but proceeded to do it anyway.[29]

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[27] *Id.* at 278-279.

[28] *Rollo*, p. 60.

[29] *Samson v. Caballero*, A.M. No. RTJ-08-2138, 5 August 2009, 595 SCRA 423, 429.

Respondent, a judge, knows (or should have known) fully well the consequences of making a false statement in his PDS. Being a former public prosecutor and a judge now, it is his duty to ensure that all the laws and rules of the land are followed to the letter. His being a judge makes the act all the more unacceptable. Clearly, there was an obvious lack of integrity, the most fundamental qualification of a member of the judiciary.[30]

As visible representation of the law, respondent judge should have conducted himself in a manner which would merit the respect of the people to him in particular and to the Judiciary in general. He should have acted with honesty in accomplishing his PDS, instead of deliberately misleading the JBC in his bid to be considered and eventually appointed to his present position. Such lack of candor has blemished the image of the judiciary. His contention that the indirect bribery case had been dismissed is immaterial, he was duty bound to disclose such information when he was applying for judicial position. Had it not been for this administrative complaint, such matter would have escaped the attention of this Court.

Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification from reemployment in the government service.[31]

Thus, in *Office of the Court Administrator v. Estacion, Jr.*,[32] respondent judge was dismissed from the service for withholding the information in his application for appointment the fact that he was facing criminal charges for homicide and attempted homicide. This Court ratiocinated:

> His record did not contain the important information in question because he deliberately withheld and thus effectively hid it. His lack of candor is as obvious as his reason for the suppression of such a vital fact, which he knew would have been taken into account against him if it had been disclosed.

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[30] *Id.* at 430.

[31] *Ratti v. Mendoza-De Castro, supra* note 25 at 21.

[32] A.M. No. RTJ-87-104, 11 January 1990, 181 SCRA 33.

xxx [I]t behooves every prospective appointee to the [j]udiciary to apprise the appointing authority of every matter bearing on his fitness for judicial office, including such circumstances as may reflect on his integrity and probity. He did not discharge that duty.[33]

Respondent judge in *Gutierrez v. Belan*,[34] was likewise dismissed from the service for indicating in his PDS submitted to the JBC that there was no pending criminal or administrative case against him notwithstanding that he had been indicted in a criminal case which then remained pending.[35]

The penalty of dismissal, however, is not exclusive. Section 11, Rule 140[36] of the Rules of Court, provides the following alternative sanctions against a judge found guilty of dishonesty or any other offense falling under the classification of a serious charge provided in Sec. 8 of the same Rule:

1. Dismissal from the 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 (3) but not exceeding six (6) months; or**

3. **A fine of not less than ₱20,000.00 but not exceeding ₱40,000.00.** *(Emphasis supplied.)*

The recent case of *OCA v. Judge Aguilar*[37] is very much instructive on this matter:

xxx, Rule IV, Section 53 of the Civil Service Rules also provides that in the determination of the penalties to be imposed, extenuating,

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[33] *Id.* at 37.

[34] A.M. No. MTJ-95-1059, 7 August 1998, 294 SCRA 1.

[35] *Id.* at 16.

[36] As amended by A.M. No. 01-8-10-SC, effective 1 October 2001.

[37] A.M. No. RTJ-07-2087, 7 June 2011.

mitigating, aggravating or alternative circumstances attendant to the commission of the offense shall be considered. Among the circumstances that may be allowed to modify the penalty are (1) length of service in the government, (2) good faith, and (3) other analogous circumstances.

In several jurisprudential precedents, the Court has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the determination by the Court of the imposable penalty. For equitable and humanitarian reasons, the Court reduced the administrative penalties imposed in [several] cases[.]

This Court proceeded to discuss a number of cases[38] on dishonesty to show the variation in penalties actually imposed. In sum, most respondents received either a penalty of six (6) months suspension or one (1) year suspension without pay on account of the presence of mitigating circumstances. On the other hand, there were two (2) isolated cases mentioned where respondents (a branch clerk of court of the Metropolitan Trial Court and an Executive Assistant of the Court of Appeals) were only fined in the amount of ₱5,000.00 and ₱10,000.00, respectively.

For failure to disclose in her PDS the following: (a) that she has been formally charged for falsification, perjury and estafa; (b) that there was a pending administrative case against her before the Office of the Ombudsman; and (c) that she was later adjudged guilty of misconduct in the same administrative case, respondent judge in *Aguilar* was correspondingly suspended

[38] *Id.* citing the following cases: *OCA v. Flores*, A.M. No. P-07-2366, 16 April 2009, 585 SCRA 82; *Concerned Employees of the Municipal Trial Court of Meycauayan, Bulacan v. Paguio-Bacani,* A.M. No. P-06-2217, 30 July 2009, 594 SCRA 242; *Concerned Employee v. Valentin*, 498 Phil. 347 (2005); *Re: Administrative Case for Dishonesty against Elizabeth Ting*, 502 Phil. 264 (2005); *Reyes-Domingo v. Morales*, 396 Phil. 150 (2000); *Floria v. Sunga*, 420 Phil. 637 (2001); *Concerned Taxpayer v. Doblada*, 507 Phil. 222 (2005); and *de Guzman v. Mendoza*, 493 Phil. 690 (2005) .

from the service for six (6) months without pay. In the imposition of the penalty of suspension, this Court considered, among others, the following: (a) that the criminal complaint and the administrative cases involve the notarization of private documents, which had no relation to the performance of her official functions; (b) her length of government service; and (c) that the charge was the first and only administrative complaint brought before the Judiciary for which she was found guilty.

This Court distinguished *Aguilar* from *Office of the Court Administrator v. Judge Estacion, Jr.*, *Gutierrez v. Belan* and *Re: Non-Disclosure before the Judicial and Bar Council of the Administrative Case Filed Against Judge Jaime Quitain*, where the respondents were meted the extreme penalty of dismissal from the service, in the following manner:

> In *Estacion,* the respondent judge failed to disclose his pending criminal cases for homicide and attempted homicide when he applied to the Judiciary; while in *Belan,* the respondent judge failed to previously disclose a pending criminal case for reckless imprudence resulting in serious physical injuries. In *Quitain*, the previous administrative case which the respondent judge failed to disclose upon his application for judgeship was one for grave misconduct for which he was **dismissed** from the service with forfeiture of benefits prior to his application to the Judiciary. The seriousness of the case or cases which respondent judges failed to disclose in their PDS or applications for judgeship, and the absence of mitigating circumstances, sufficiently differentiate *Estacion*, *Belan*, and *Quitain*, from the one at bar.

In the present case, respondent judge similarly failed to disclose in his application the serious charge of indirect bribery against him. We rule as we did in *Yalung v. Judge Enrique M. Pascua*,[39] where this Court fined and suspended respondent judge for six (6) months for gross inefficiency and dishonesty.[40]

As in the present case, the dishonesty of respondent judge in *Yalung* also involved misrepresentation in accomplishing his

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[39] A.M. No. MTJ-01-1342, 21 June 2001, 359 SCRA 241.

[40] *Id.* at 250 citing *Bolalin v. Occiano*, 266 SCRA 203(1997).

PDS submitted to the JBC. In particular, respondent in that case, in answering Question No. 24[41] in the negative, "made it appear that he had never been charged with any violation of the law, decree, ordinance, or regulation"[42] when he had been previously charged for bribery/extortion. Also, both respondents in *Yalung* and the present case have been in the government service for a considerable length of time. Respondent has served the judiciary for five (5) years after his retirement from the Office of the City of Prosecutor, Ligao City. In addition, both have no prior administrative record. A six-month suspension from office is, ordinarily, in order.

We must, however, of necessity consider the compulsory retirement of respondent on 12 October 2010. The penalty of suspension can thus no longer be implemented. In lieu thereof, the penalty of fine may still be imposed,[43] the determination of the amount of which is subject to the sound discretion of the court.

In *Pleyto v. Philippine National Police Criminal Investigation and Detection Group*,[44] for negligence in accomplishing his Statement of Assets and Liabilities for the year 2002, this Court held:

> xxx And since petitioner is already compulsorily retired, he can no longer serve his suspension; yet, this Court can still order, in lieu of such penalty, the **forfeiture of the amount equivalent to petitioner's salary for six months from his retirement benefits**.[45] *(Emphasis supplied.)*

However, in *Judge Basilla v. Ricafort*,[46] for dishonesty, this Court opted to impose upon respondent Legal Researcher a

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[41] "24. Have you ever been charged with or convicted of or otherwise imposed a sanction for violation any law, decree, ordinance or regulation by any court, quasi-judicial office or tribunal of the Philippines or in any foreign country, or found guilty of an administrative offense?" *Id.* at 248.

[42] *Id.* at 249.

[43] *OCA v. Judge Leonida*, A.M. No. RTJ-09-2198, 18 January 2011; *Atty. Bautista v. Judge Causapin*, A.M. No. RTJ-07-2044, 22 June 2011.

[44] G.R. No. 169982, 23 November 2007, 538 SCRA 534.

[45] *Id.* at 595.

[46] A.M. No. P-06-2233, 26 September 2008, 566 SCRA 425.

fine of Twenty Thousand (₱20,000.00) Pesos to be deducted from her retirement benefits. It ratiocinated:

> Section 52, Rule IV of the Uniform Rules on Administrative Cases provides that dishonesty is a grave offense and punishable by dismissal even on the first time of commission.
>
> Taking into account respondent's forty (40) years of service in the government, the OCA submits that the penalty imposable upon her is suspension. Considering, however, that suspension can no longer be imposed due to respondent's retirement on February 14, 2007, We opt to impose upon her a **fine of Twenty Thousand Pesos (₱20,000.00)**.[47] *(Emphasis supplied.)*

In the case at bar, while we note that respondent is covered by the exacting standards of judicial conduct even while he was still applying for a judicial position, we cannot ignore respondent's heretofore unblemished judicial service and the fact that this is his first offense.

All considered, we deem it sufficient to impose the penalty of fine in the amount of Fifty Thousand (₱50,000.00) Pesos in lieu of the penalty of six (6) months suspension from office. The total amount of fines in this case is Sixty Thousand (₱60,000.00) Pesos, which includes the fine of Ten Thousand (₱10,000.00) Pesos for gross inefficiency.

WHEREFORE, for gross inefficiency and dishonesty, respondent Judge Angeles S. Vasquez, RTC, Branch 13, Ligao City, is hereby ordered to pay a FINE of SIXTY THOUSAND (₱60,000.00) PESOS to be deducted from his retirement benefits.

SO ORDERED.

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

Sereno, J., on official leave.

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[47] *Id.* at 434.

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