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SUPREME COURT

OF THE

PHILIPPINES

FROM

JULY 27, 2011 TO AUGUST 9, 2011

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MANILA
2014

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PHILIPPINE REPORTS
CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 675

IV. CITATIONS 697

PHILIPPINE REPORTS

Page

Abadiano, et al., Carol A. *vs*. Generoso B. Regalado, etc. 14
Abosta Shipmanagement Corporation *vs*.
Arnulfo R. Flores 136
Abosta Shipmanagement Corporation *vs*. National
Labor Relations Commission (First Division), et al. 136
Adiong, etc., Judge Santos B. – National Power Corporation,
represented by its President Cyril Del Callar *vs*. 21
Advent Capital and Finance Corporation *vs*.
Roland Young 538
Albano, etc., Ricardo R. – Golden Sun Finance
Corporation, etc. *vs*. 5
Andutan, Jr., Uldarico P. – Office of the Ombudsman *vs*. 169
Anico, Proserpina V. *vs*. Emerson B. Pilipiña, etc. 460
Arciaga, Sps. Elena and Rogelio – Loreta Luga
(Deceased), etc. *vs*. 294
Atok Big Wedge Company, Inc. *vs*. Jesus P. Gison 615
Bello, represented herein by his daughter and
Attorney-in-fact, Geraldine Bello-Ona, Francis *vs*.
Bonifacio Security Services, Inc., et al. 563
Bonifacio Security Services, Inc., et al. – Francis Bello,
herein by his daughter and Attorney-in-fact,
Geraldine Bello-Ona *vs*. 563
Bulilis, Ceriaco *vs*. Victorino Nuez, etc., et al. 665
Cabigas, etc., et al., The Heirs of Nicolas S. *vs*.
Melba L. Limbaco, et al. 274
Cadiz, et al., Jose Anselmo I. *vs*. Glenn C. Gacott 330
Cadiz, et al., Jose Anselmo I. *vs*. The Honorable Presiding
Judge, Br. 48, RTC-Puerto Princesa, et al. 330
Callangan, etc., and/or the Securities and Exchange
Commission, Justina – Philippine Veterans Bank *vs*. 570
Casimiro Development Corporation *vs*. Renato L. Mateo 311
Clapis, Jr., etc., Judge Hilarion P. –
Mayor Macario T. Humol *vs*. 36
Co, etc., et al., Jose – Go Giok Lun, etc., et al. *vs*. 551
Commissioner of Internal Revenue – Prudential Bank *vs*. 339
Cruz, Richard G. – The Civil Service Commission *vs*. 638
Del Fierro, et al., Cornelio *vs*. Rene Seguiran 577

Page

Dela Rosa, Sps. Gonzalo T. & Cristeta *vs*.
Heirs of Juan Valdez, et al. 97
Dumaguete Rural Bank, Inc. (DRBI) herein represented
by Mr. William D.S. Dichoso *vs*. Spouses Zosimo
Dy, Sr. and Natividad Chiu Dy, et al. 223
Dy, Sr., et al., Spouses Zosimo and Natividad Chiu –
Dumaguete Rural Bank, Inc. (DRBI) herein represented
by Mr. William D.S. Dichoso *vs*. 223
Dy, Sr., et al., Spouses Zosimo and Natividad Chiu –
Spouses Francisco D. Yap and Whelma S. Yap *vs*. 223
Electromat Manufacturing and Recording Corporation *vs*.
Hon. Ciriaco Lagunzad, etc., et al. 263
Electromat Manufacturing and Recording
Corporation *vs*. Nagkakaisang Samahan ng
Manggagawa ng Electromat-Wasto 263
Fermin *y* Gregorio, et al., Edgardo –
People of the Philippines *vs*. 511
Flores, Arnulfo R. – Abosta Shipmanagement
Corporation *vs*. 136
Funesto *y* Llospardas, Terencio –
People of the Philippines *vs*. 530
Gacott, Glenn C. – Jose Anselmo I. Cadiz, et al. *vs*. 330
Garayblas, et al., Atty. Emelita H. *vs*.
The Hon. Gregory Ong, et al. 484
Gison, Jesus P. – Atok Big Wedge Company, Inc. *vs*. 615
Go Giok Lun, etc., et al. *vs*. Jose Co, etc., et al. 551
Golden Sun Finance Corporation, etc. *vs*.
Ricardo R. Albano, etc. 5
Gonzales, et al., Augustus *vs*. Quirico Pe 597
Humol, Mayor Macario T. *vs*. Judge Hilarion P.
Clapis, Jr., etc. 36
Jobel Enterprises and/or Mr. Benedict Lim *vs*.
Eric Martinez, Sr. 630
Jobel Enterprises and/or Mr. Benedict Lim *vs*.
National Labor Relations Commission (Seventh Division,
Quezon City), et al. 630
Jumamoy, et al., Ciriaco – Philippine National Bank *vs*. 472
Juniat, et al., Alain – Union Bank of the Philippines *vs*. 438

Page

Lagunzad, etc., et al., Hon. Ciriaco – Electromat Manufacturing and Recording Corporation *vs.* 263
Land Bank of the Philippines *vs.* Severino Listana 190
Leynes, Maiah Angela – Nippon Housing Phils., Inc. and/or Yasuhiro Kawata *vs.* 495
Limbaco, et al., Melba L. – The Heirs of Nicolas S. Cabigas, etc., et al. *vs.* 274
Listana, Severino – Land Bank of the Philippines *vs.* 190
Loyola, etc., et al., Atty. Roy M. – Eloisa L. Tolentino *vs.* 50
Luga (Deceased), etc., Loreta *vs.* Sps. Elena and Rogelio Arciaga 294
Mapili, Jerry *vs.* Philippine Rabbit Bus Lines, Inc./Natividad Nisce 252
Martinez, Sr., Eric – Jobel Enterprises and/or Mr. Benedict Lim *vs.* 630
Masing and Sons Development Corporation, et al. *vs.* Gregorio P. Rogelio 120
Mateo, Renato L. – Casimiro Development Corporation *vs.* 311
Millora, Vicente D. – Jesus M. Montemayor *vs.* 209
Mirandilla, Jr., Felipe – People of the Philippines *vs.* 397
Montemayor, Jesus M. *vs.* Vicente D. Millora 209
Nagkakaisang Samahan ng Manggagawa ng Electromat-Wasto – Electromat Manufacturing and Recording Corporation *vs.* 263
National Food Authority (Region I), et al. – Thunder Security and Investigation Agency/Lourdes M. Lasala *vs.* 351
National Labor Relations Commission (First Division), et al. – Abosta Shipmanagement Corporation *vs.* 136
National Labor Relations Commission (Seventh Division, Quezon City), et al. – Jobel Enterprises and/or Mr. Benedict Lim *vs.* 630
National Power Corporation, represented by its President Cyril Del Callar *vs.* Judge Santos B. Adiong, etc. 21
New Sun Valley Homeowners' Association, Inc. *vs.* Sangguniang Barangay, Barangay Sun Valley, Parañaque City, et al. 67

Page

Nippon Housing Phils., Inc. and/or Yasuhiro Kawata *vs*. Maiah Angela Leynes 495
Nuez, etc., et al., Victorino – Ceriaco Bulilis *vs*. 665
Office of Administrative Services, Office of the Court Administrator *vs*. Leda O. Uri, etc. 1
Office of the Ombudsman *vs*. Uldarico P. Andutan, Jr. 169
Ong, et al., The Hon. Gregory – Atty. Emelita H. Garayblas, et al. *vs*. 484
Pabaus, etc., Heirs of Margarito *vs*. Heirs of Amanda Yutiamco, etc. 151
Pe, Quirico – Augustus Gonzales, et al. *vs*. 597
People of the Philippines – Glicerio Vios, Jr. *vs*. 448
People of the Philippines – Minda Villamor *vs*. 448
People of the Philippines *vs*. Edgardo Fermin *y* Gregorio, et al. 511
Terencio Funesto *y* Llospardas 530
Felipe Mirandilla, Jr. 397
Rosendo Rebucan *y* Lamsin 363
Philippine National Bank *vs*. Ciriaco Jumamoy, et al. 472
Philippine Rabbit Bus Lines, Inc./Natividad Nisce – Jerry Mapili *vs*. 252
Philippine Veterans Bank *vs*. Justina Callangan, etc., and/or the Securities and Exchange Commission 570
Pilipiña, etc., Emerson B. – Proserpina V. Anico *vs*. 460
Prudential Bank *vs*. Commissioner of Internal Revenue 339
Rebucan *y* Lamsin, Rosendo – People of the Philippines *vs*. 363
Regalado, etc., Generoso B. – Carol A. Abadiano, et al. *vs*. 14
Rogelio, Gregorio P. – Masing and Sons Development Corporation, et al. *vs*. 120
San Miguel Corporation Supervisors and Exempt Union – San Miguel Foods, Incorporated *vs*. 421
San Miguel Foods, Incorporated *vs*. San Miguel Corporation Supervisors and Exempt Union 421
Sangguniang Barangay, Barangay Sun Valley, Parañaque City, et al. – New Sun Valley Homeowners' Association, Inc. *vs*. 67

Page

Seguiran, Rene – Cornelio Del Fierro, et al. *vs.* 577
The Civil Service Commission *vs*. Richard G. Cruz 638
The Honorable Presiding Judge, Br. 48, RTC-Puerto
Princesa, et al. – Jose Anselmo I. Cadiz, et al. *vs.* 330
Thunder Security and Investigation Agency/Lourdes M.
Lasala *vs*. National Food Authority (Region I), et al. 351
Tolentino, Eloisa L. *vs*. Atty. Roy M. Loyola, etc., et al. 50
Union Bank of the Philippines *vs*. Alain Juniat, et al. 438
Uri, Leda O. – Office of the Administrative Services,
Office of the Court Administrator *vs*. 1
Valdez, et al., Heirs of Juan – Sps. Gonzalo T. Dela Rosa
& Cristeta Dela Rosa *vs*. 97
Villamor, Minda *vs*. People of the Philippines 448
Vios, Jr., Glicerio *vs*. People of the Philippines 448
Yap, Spouses Francisco D. and Whelma S. *vs.*
Spouses Zosimo Dy, Sr. and Natividad Chiu Dy, et al. 223
Young, Roland – Advent Capital and
Finance Corporation *vs.* 538
Yutiamco, etc., Heirs of Amanda – Heirs of Margarito
Pabaus, etc. *vs.* 151

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. P-10-2852. July 27, 2011]
(Formerly A.M. OCA IPI No. 09-3270-P)

OFFICE OF ADMINISTRATIVE SERVICES, OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **LEDA O. URI, Court Stenographer I, Municipal Trial Court, Alaminos, Laguna,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS AND EMPLOYEES; HABITUAL TARDINESS; MORAL OBLIGATIONS, PERFORMANCE OF HOUSEHOLD CHORES, TRAFFIC PROBLEMS, HEALTH CONDITIONS, DOMESTIC AND FINANCIAL CONCERNS ARE NOT SUFFICIENT REASONS TO EXCUSE HABITUAL TARDINESS.— In its Report dated June 8, 2010, the OCA found that Leda's explanation does not merit consideration to justify her habitual tardiness, citing *Re: Imposition of Corresponding Penalties* where we ruled that moral obligations, performance of household chores, traffic problems, health conditions, domestic and financial concerns are not sufficient reasons to excuse habitual tardiness. The OCA recommended that the case be redocketed as a regular administrative matter and that Leda be reprimanded for habitual tardiness with a warning that a repetition of the same or similar offense would warrant the imposition of a more severe penalty.

2. ID.; ID.; ID.; IMPOSABLE PENALTY.— Leda has acknowledged her infraction and has felt remorse for her tardiness in the months of July and August 2009. Considering that she has been in the service for fourteen (14) years and *had been suspended without pay for one month for her tardiness in September and October* 2009, we find the penalty of severe reprimand to be proper for the prior tardiness she committed in the earlier months of July and August 2009.

R E S O L U T I O N

BRION, *J.*:

On September 23, 2009, the Leave Division of the Office of the Court Administrator (*OCA*) reported on the tardiness incurred by Leda O. Uri, Court Stenographer I, Municipal Trial Court, Alaminos, Laguna. The report showed that Leda was tardy 13 times in July 2009 and 10 times in August 2009.[1] Attached to the report were copies of Leda's Daily Time Records for July and August 2009.[2]

Leda was asked to comment on the report of her tardiness in the OCA's 1st Indorsement dated October 23, 2009.[3] Leda submitted her comment where she did not deny her tardiness. She gave the following explanation:

In my defense, and honestly there is very little defensible ground for me to stand on here, notice that in some days where I was found tardy, a very little difference of something like one (1) or two (2) minutes made it so. This goes to show that in an ordinary given day, I would have timed in within the regulation time but some factors like uncontrollable traffic and others created hindrances. Still, in most instances, my duties as a mother to a two (2) years old daughter and as a wife, equally time-demanding as ever, not being satisfied with the care a house help could provide until personally seeing to it that my child and husband are well cared of every morning, paid

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[1] *Rollo*, p. 2.

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

[3] *Id.* at 5.

the price of coming to office at a later time. This make me consider requesting for a flexi-time schedule, if you may allow.

Finally, while being tardy is not what I willfully wanted to become, it is a lesson to be learned and rightfully so, I vow to immediately correct the same. And if it is of any worth, this is the first time in almost fourteen (14) years of dedicated service to the judiciary that I committed the infraction and I am so sorry about it.[4]

On February 12, 2010, Leda submitted a supplemental letter written in Tagalog[5] where she admitted that she had been tardy and that she understood that there was a penalty for it. She explained that she and her family used to rent a house close to her office, but in September 2008, for financial reasons, they moved to Sto. Angel in San Pablo City to live with her father who was already old and living alone. Because of the distance from San Pablo City to Alaminos, it also took her a longer time to reach the office. Leda added that she is the sole financial support of her husband who recently lost his job, her child, her father, her parent-in-law and her orphaned niece. To augment her income, she decided to open a small *sari-sari* store in Bay, Laguna, financed by her aunt abroad. At the times that she slept in Bay with her husband and her child, she left for San Pablo at 4:30 a.m. to check on her father and her niece. Only after she had taken care of the needs of her father and her niece would she go to work even if she was late. She would rather be late than absent. Leda wrote that it would be difficult for her to stop working now since her child is only two years old. She asked that she be given another chance to improve herself and to prove that she could make the necessary changes. She said that she would accept any penalty but asked for a lighter penalty, if possible.

In its Report dated June 8, 2010,[6] the OCA found that Leda's explanation does not merit consideration to justify her habitual

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[4] *Id*. at 7.

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

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

tardiness, citing *Re: Imposition of Corresponding Penalties*[7] where we ruled that moral obligations, performance of household chores, traffic problems, health conditions, domestic and financial concerns are not sufficient reasons to excuse habitual tardiness. The OCA recommended that the case be redocketed as a regular administrative matter and that Leda be reprimanded for habitual tardiness with a warning that a repetition of the same or similar offense would warrant the imposition of a more severe penalty.

On November 23, 2010, Leda submitted a Manifestation[8] that reads:

> This is in connection with A.M. No. P-10-2852 [Formerly A.M. OCA IPI No. 09-3270-P] for tardiness incurred on July and August, in 2009. I beg the good indulgence of this Honorable Court to reconsider if possible the above mentioned case, considering that I have already served a one (1) month suspension without pay, following the Decision in A.M. No. P-10-2845 [Formerly A.M. OCA IPI No. 10-3321-P], also for tardiness incurred on September and October, in 2009, which is much later than the present case. And that I am asking your Honor, to please give me another chance for I have learned my lesson from my suspension and I am so sorry for what happened.

Leda has acknowledged her infraction and has felt remorse for her tardiness in the months of July and August 2009. Considering that she has been in the service for fourteen (14) years[9] and *had been suspended without pay for one month for her tardiness in September and October* 2009, we find the penalty of severe reprimand to be proper for the prior tardiness she committed in the earlier months of July and August 2009.

WHEREFORE, premises considered, we find Leda O. Uri, Court Stenographer I, Municipal Trial Court, Alaminos, Laguna, *GUILTY* of habitual tardiness. She is hereby *SEVERELY REPRIMANDED*, with the *WARNING* that any future finding

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[7] 456 Phil. 183 (2003).

[8] *Rollo*, p. 18.

[9] *Id.* at 7.

of habitual tardiness, within the next two (2) years from notice of this Resolution, shall merit a penalty graver than the one-month suspension previously imposed on her.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-11-2888. July 27, 2011]
(Formerly A.M. OCA I.P.I. No. 09-3252-P)

GOLDEN SUN FINANCE CORPORATION, represented by RACHELLE L. MARMITO, *complainant, vs.* **RICARDO R. ALBANO, Sheriff III, Metropolitan Trial Court (MeTC), Branch 62, Makati City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF; A MORTGAGED PROPERTY MAY STILL BE LEVIED UPON BY THE SHERIFF TO SATISFY THE JUDGMENT DEBTOR'S OBLIGATIONS; CASE AT BAR.— Section 9(b), Rule 39 of the Rules of Court states the manner by which judgments for money may be satisfied by levy: x x x In determining properties to be levied upon, the

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

[**] Designated as Additional Member in lieu of Associate Justice Maria Lourdes P. A. Sereno per Special Order No. 1040 dated July 6, 2011.

Rules require the sheriff to levy only on those "properties of the judgment debtor" which are "not otherwise exempt from execution." For purposes of the levy, a property is deemed to belong to the judgment debtor if he holds a beneficial interest in such property that he can sell or otherwise dispose of for value. In a contract of mortgage, the debtor retains beneficial interest over the property notwithstanding the encumbrance, since the mortgage only serves to secure the fulfillment of the principal obligation. Indeed, even if the debtor defaults, this fact does not operate to vest in the creditor the ownership of the property; the creditor must still resort to foreclosure proceedings. Thus, a mortgaged property may still be levied upon by the sheriff to satisfy the judgment debtor's obligations, as what happened in the present case. After ascertaining the judgment debtor's (Reyes') interest over the car, the respondent properly enforced the levy thereon — an act that, to our mind, is in accordance with the Rules of Court. x x x The encumbrance, until foreclosed, will not in any way affect the judgment debtor's rights over the property or exempt the property from the levy. Even the pendency of the proceeding for replevin that the complainant instituted would not serve to prevent the sheriff from levying on the car, since Reyes' default and the complaint's right to foreclose still had to be settled in the proceeding.

2. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; DUTY TO EXECUTE A WRIT IS SIMPLY MINISTERIAL, SUSTAINED.— We emphasize that a sheriff's duty to execute a writ is simply ministerial, and he is bound to perform only those tasks stated under the Rules of Court and no more. Any interest a third party may have on the property levied upon by the sheriff to enforce a judgment is the third party's responsibility to protect through the remedies provided under Rule 39 of the Rules of Court. Thus, we can not hold the respondent liable on the ground that the complainant cites. If at all, the respondent should have required, as a matter of sound established practice, the production of the certificate of registration, but this is an altogether different matter that we do not here pass upon. x x x The administrative charges for negligence and grave misconduct against Ricardo R. Albano, Sheriff III, Metropolitan Trial Court, Branch 62, Makati City, are **DISMISSED**.

D E C I S I O N

BRION, *J.*:

Ricardo R. Albano (*respondent*), Sheriff III, Metropolitan Trial Court (*MeTC*), Branch 62, Makati City, was charged with negligence and grave misconduct by the Golden Sun Finance Corporation (*complainant*), represented by Rachelle L. Marmito, the complainant's Head Auditor.

THE COMPLAINT

In a verified letter-complaint dated September 1, 2009, the complainant alleged that on January 7, 2009, it filed a complaint for the recovery of a Honda Civic Sedan with the Regional Trial Court (*RTC*), Quezon City, Branch 81, against one Lucila S. Reyes, docketed as Civil Case No. 0964026. The subject motor vehicle, registered in the name of Reyes, was encumbered in its favor, as shown in the Certificate of Registration issued by the Land Transportation Office.

The RTC decided in favor of the complainant and issued a writ of replevin. However, the complainant found out that the motor vehicle had already been levied upon by the respondent by virtue of a writ of execution issued on March 27, 2009 by the MeTC, Makati City, Branch 62, in Criminal Case Nos. 353822-23 for violation of *Batas Pambansa Bilang* 22 against Reyes. It was sold at a public auction conducted by the respondent on April 29, 2009, with the Royal Makati Credit Resource as the highest bidder. On the same day, a Certificate of Sale was issued in favor of the Royal Makati Credit Resource.

The complainant averred that the levy and sale of the motor vehicle by the respondent was illegal. It claimed that the respondent was negligent when he levied upon the motor vehicle and proceeded with the auction sale without looking into the car's Certificate of Registration to determine whether it was encumbered or not. The encumbrance on the motor vehicle having been made prior to the suit filed by the Royal Makati Credit Resource, the complainant posited that its claim should have priority over the former's claims.

Required by the Office of the Court Administrator (*OCA*) to comment on the charges against him,[1] the respondent contended that he had no knowledge that the car was encumbered because the Certificate of Registration was never shown to him. He also had no knowledge that the car was the subject of a writ of replevin in Civil Case No. 0964026.[2] Thus, the respondent asked for the dismissal of the complaint, stressing that he had acted within the scope of his duty as sheriff when he enforced the writ of execution.

THE OCA'S REPORT AND RECOMMENDATION

In a Memorandum Report dated November 3, 2010,[3] the OCA evaluated the complaint and submitted its findings:

> The encumbrance in the instant case has been properly recorded in the Land Transportation Office and, as attested to by the complainant, in the Register of Deeds of Rizal Province. Such record is constructive notice of its contents and all interests, legal and equitable, included therein. This presumption cannot be defeated by lack of notice or knowledge of what the public record contains any more than one may be permitted to show that he was ignorant of the provisions of law. Hence, the respondent is charged with knowledge of the duly registered encumbrance on the property he levied.
>
> In the case of *Caja vs. Nanquil*, the Court has declared that "the respondent sheriff's act of levying complainant's real property despite its being mortgaged is tantamount to negligence. As an officer of the court, he knew fully well that the property cannot be used to satisfy the judgment debt since the mortgagee is the preferred creditor in relation to the said property."
>
> In the instant administrative complaint, the respondent not only levied the encumbered vehicle, but sold it in an execution sale, the proceeds of which would not satisfy the judgment debt because of the existing encumbrance. Thus, the implementation of the writ of

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[1] 1st Indorsement dated October 6, 2009; *rollo*, p. 12.

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

[3] *Id.* at 45-48.

execution, although impressively carried out with such celerity and promptness, had been to naught. It must be pointed out that the recovery of the vehicle itself was the subject of Civil Case No. 0964026 filed by GSFC before the Quezon City Regional Trial Court, Branch 81.

The OCA recommended that — (1) the complaint be redocketed as a regular administrative matter, (2) the respondent be held administratively liable for simple neglect of duty, and (3) the respondent be suspended without pay for one (1) month and one (1) day, with a stern warning that the commission of the same or similar offense in the future shall be dealt with more severely.

The Court, as recommended, (a) directed that the complaint be redocketed as a regular administrative matter, and (b) required the parties to manifest whether they were willing to submit the case for decision based on the pleadings/records already filed and submitted.[4]

Both the complainant and the respondent complied, manifesting that they were submitting the case for decision based on the pleadings/records on file.[5]

THE COURT'S RULING

We disagree with the OCA's recommendation. We fail to find sufficient basis to declare the respondent administratively liable for simple neglect of duty.

Section 9(b), Rule 39 of the Rules of Court states the manner by which judgments for money may be satisfied by levy:

SEC. 9. *Execution of judgments for money, how enforced.* —

x x x x x x x x x

(b) *Satisfaction by levy.* — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode

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[4] *Id.* at 49.

[5] *Id.* at 51-53.

of payment acceptable to the judgment obligee, **the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution** giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. **If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.**

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

In determining properties to be levied upon, the Rules require the sheriff to levy only on those "properties of the judgment debtor" which are "not otherwise exempt from execution." For purposes of the levy, a property is deemed to belong to the judgment debtor if he holds a beneficial interest in such property that he can sell or otherwise dispose of for value.[6] In a contract of mortgage, the debtor retains beneficial interest over the property notwithstanding the encumbrance, since the mortgage only serves to secure the fulfillment of the principal obligation.[7] Indeed, even if the debtor defaults, this fact does not operate to vest in

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[6] Feria and Noche, *Civil Procedure Annotated*, Volume II (2001 ed.), p. 45, citing *Reyes v. Grey*, 21 Phil. 73, 76 (1911).

[7] CIVIL CODE, Article 2085(1). The following requisites are essential to the contracts of pledge and mortgage: (1) That they be constituted to secure the fulfillment of a principal obligation[.]

the creditor the ownership of the property;[8] the creditor must still resort to foreclosure proceedings. Thus, a mortgaged property may still be levied upon by the sheriff to satisfy the judgment debtor's obligations, as what happened in the present case. After ascertaining the judgment debtor's (Reyes') interest over the car, the respondent properly enforced the levy thereon — an act that, to our mind, is in accordance with the Rules of Court.

It was thus irrelevant for the complainant to argue that had the respondent checked the car's certificate of registration, the respondent would have been aware of the encumbrance. The encumbrance, until foreclosed, will not in any way affect the judgment debtor's rights over the property or exempt the property from the levy. Even the pendency of the proceeding for replevin that the complainant instituted would not serve to prevent the sheriff from levying on the car, since Reyes' default and the complainant's right to foreclose still had to be settled in the proceeding.[9]

The OCA's recommendation was based supposedly on our ruling in *Caja v. Nanquil.*[10] We find, however, that the OCA has read our ruling out of context. In that case, the Court held Sheriff Atilano Nanquil administratively liable, not so much for levying on the property of the judgment debtor that was already mortgaged to a third party, but for levying on the judgment debtor's real properties without checking if there were other personal properties that could satisfy the judgment debt. "[Sheriff Nanquil] should have exhausted all means before going after

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[8] CIVIL CODE, Article 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

[9] In *Fort Bonifacio Development Corporation v. Yllas Lending Corporation* (G.R. No. 158997, October 6, 2008, 567 SCRA 454, 471), we ruled:

When the mortgagee seeks a replevin in order to effect the eventual foreclosure of the mortgage, it is not only the existence of, but also the mortgagor's default on, the chattel mortgage that, among other things, can properly uphold the right to replevy the property.

[10] 481 Phil. 488 (2004).

the real property,"[11] as required under Section 9(b), Rule 39 of the Rules of Court. We also found Sheriff Nanquil liable for levying properties of the judgment debtor far from and in excess of the value of the judgment debt.[12]

We emphasize that a sheriff's duty to execute a writ is simply ministerial,[13] and he is bound to perform only those tasks stated under the Rules of Court and no more. Any interest a third party may have on the property levied upon by the sheriff to enforce a judgment is the third party's responsibility to protect through the remedies provided under Rule 39 of the Rules of Court.[14] Thus, we can not hold the respondent liable on the

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[11] *Id.* at 508.

[12] *Id.* at 512.

[13] *Philippine Bank of Communications v. Torio,* 348 Phil. 74, 84 (1998).

[14] SEC. 12. *Effect of levy on execution as to third persons.* — The levy on execution shall create a lien in favor of the judgment obligee over the right, title and interest of the judgment obligor in such property at the time of the levy, subject to liens and encumbrances then existing.

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SEC. 16. *Proceedings where property claimed by third person.* — If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

ground that the complainant cites. If at all, the respondent should have required, as a matter of sound established practice, the production of the certificate of registration, but this is an altogether different matter that we do not here pass upon.

WHEREFORE, premises considered, the administrative charges for negligence and grave misconduct against Ricardo R. Albano, Sheriff III, Metropolitan Trial Court, Branch 62, Makati City, are *DISMISSED*. Costs against the complainant Golden Sun Finance Corporation.

SO ORDERED.

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

When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.

[*] 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

[A.M. No. P-11-2944. July 27, 2011]
(Formerly OCA IPI No. 10-3342-P)

CAROL A. ABADIANO, CLEOFE ABADIANO-BONACHITA, RYAN M. ABADIANO and CHERRY MAE M. ABADIANO, *complainants, vs.* **GENEROSO B. REGALADO, Sheriff IV, Regional Trial Court, Branch 16, Cebu City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; THOSE WHO WORK IN THE JUDICIARY MUST ADHERE TO HIGH ETHICAL STANDARDS TO PRESERVE THE COURT'S GOOD NAME AND STANDING; RATIONALE.— Time and again, this Court has pointed out the burden and responsibility that bound every officer and staff of the Judiciary by reason of their exalted positions as keepers of the public's faith in the courts. They should, therefore, avoid any impression of impropriety, misdeed or negligence in the performance of their official functions. Indeed, those who work in the judiciary must adhere to high ethical standards to preserve the courts' good name and standing. They should be examples of integrity, competence and efficiency, and they must discharge their duties with due care and utmost diligence for they are officers of the court and agents of the law. Any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.

2. ID.; ID.; ID.; ID.; MOONLIGHTING ACTIVITY CONSTITUTES AN ACT OF IMPROPRIETY; ELUCIDATED.— Sheriffs, in particular, being officers of the court and agents of the law, are exacted to use prudence, due care, and diligence in the discharge of their official duties. Where rights of individuals are jeopardized by their actions, sheriffs may be properly fined, suspended, or dismissed from office by virtue of this Court's administrative supervision over the judicial branch of the

government. In the earlier case of *Biyaheros Mart Livelihood Association, Inc. v. Cabusao, Jr.*, a sheriff was suspended for one month without pay for accepting a position in a private entity. It was explained in that case that: The act of the respondent in accepting the position of an administrator/ trustee of a private entity and for continuously holding the same for a considerable period of time, aside from being violative of the aforesaid circulars, can be properly called as moonlighting. While **moonlighting** is not normally considered as a serious misconduct, nonetheless, by the very nature of the position held by respondent, it obviously amounts to malfeasance in office. Respondent, in engaging in other irrelevant activities, failed to observe and maintain that degree of dedication to the duties and responsibilities required of him as a deputy sheriff. More recently, another sheriff was suspended for receiving "sheriff's fees" without the court's knowledge and approval, and for *moonlighting by collecting rentals* for a domestic company. Although moonlighting was merely considered as an aggravating circumstance in that case, the Court pointed out, nonetheless, that it was a malfeasance in office. Thus, in the case of *Garcia v. Alejo*, it was stated: x x x there is a prohibition for all officials and employees of the judiciary to engage directly in any private business, vocation or profession even outside office hours. Alejo's acts can be considered as **moonlighting,** which, though not normally considered as a serious misconduct, amounts to malfeasance in office.

3. ID.; ID.; ID.; ID.; ID.;CONFLICT OF INTEREST PRESENT IN CASE AT BAR.— In the present case, Regalado's moonlighting activity is inescapably linked to his work as a sheriff. It is connected or somehow related to the performance of his official functions and duties as a sheriff. He was, after all, in charge of implementing the writ of possession over the property contested by the Abadianos and Genosolango. Yet, a special power of attorney was also issued in his favor to act for and on behalf of Genosolango. Undoubtedly, there is a conflict of interest. Given its complicities, this moonlighting activity of Regalado definitely constitutes an act of impropriety.

4. ID.; ID.; ID.; ID.; WHEN GUILTY OF MISCONDUCT; IMPOSABLE PENALTY.— Withal, Regalado is guilty of misconduct in the discharge of his official functions punishable

with suspension without pay for not less than one (1) month but not more than three (3) months, or a fine of not less than ten thousand pesos (₱10,000.00) but not exceeding twenty thousand pesos (₱20,000.00).

D E C I S I O N

MENDOZA, *J.*:

Subject of this disposition is the complaint of Carol A. Abadiano, Cleofe Abadiano-Bonachita, Ryan M. Abadiano, and Cherry Mae M. Abadiano *(complainants)* filed on February 4, 2010 before the Office of the Court Administrator[1] against respondent Generoso B. Regalado *(Regalado),* Sheriff-IV of the Regional Trial Court, Branch 16, Cebu City *(RTC-Branch 16),* for Grave Abuse of Authority, Oppression and Gross Misconduct.

The complainants are the legitimate heirs of the late spouses Pablo and Teodora Abadiano. In a decision rendered by the RTC, Branch 13, Cebu City *(RTC-Branch 13),* they were judicially recognized as entitled to their respective shares in the properties of the deceased. When their late father was hospitalized, medical and hospital expenses were incurred which prompted their brother, Armando Abadiano *(Armando),* to file a motion before the Court seeking permission to dispose or encumber certain properties of their father for the said expenses. On December 1, 2004, the RTC-Branch 13 granted the motion with a caveat that the proceeds should be used strictly for the purpose of defraying the late Pablo Abadiano's medical and hospital expenses.[2]

Without informing his siblings and without leave from the Court, Armando obtained a loan that exceeded the amount of the subject expenses and offered one of their late father's properties as security. About eight months into the mortgage, the mortgagee, Alfredo Genosolango *(Genosolango),* initiated a Petition for Extra-Judicial Foreclosure with RTC-Branch 16.

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[1] *Rollo,* p. 1.

[2] *Id.*

To protect their interests, the complainants filed a complaint for Declaration of Nullity of Loan Agreement, Real Estate Mortgage, Damages, and Attorney's Fees *(annulment case)* before the RTC Branch 23.

On January 25, 2008, while the annulment case was pending, Regalado served a Writ of Possession on the complainants and placed Genosolango in actual possession of the mortgaged property previously owned by the late Pablo Abadiano. Complainants immediately filed their Verified Motion/ Petition to Cancel Writ of Possession but the same was eventually denied by the RTC-Branch 16.[3]

On October 10, 2009, Regalado went to the subject property and prevented the complainants from collecting rentals from its occupants. He then threatened them with estafa if they would insist on collecting rentals. Regalado even arrogantly told the complainants that they already lost the case and that a motion for reconsideration would surely be denied. When challenged, Regalado openly showed a Special Power of Attorney executed by Genosolango authorizing him to do so.[4] This was the basis for the subject complaint.

In his Comment, Regalado denied the allegations in the complaint and claimed that all the proceedings in the implementation of the Writ of Possession were in accordance with law. He was merely performing his duty when he installed the new owner of the subject property. He denied using the Special Power of Attorney which he called a "stray paper," since it was Genosolango's lawyer who received the rentals on behalf of his client. He claimed that he was simply misquoted when he informed the complainants that Genosolango's lawyer might file a case for estafa if they would continue to collect the rentals.[5]

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

[4] *Id.* at 3.

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

After due evaluation, the OCA made the following pronouncements:

> On the parties conflicting accounts regarding the respondent's act as Attorney-in-Fact of Mr. Genosolango of collecting the monthly rentals from the lessees and to facilitate the implementation and enforcement of the Writ of Possession issued by the Regional Trial Court, Branch 16, Cebu City in relation to Lot 12-D, we find the complainants' version more credible.
>
> Respondent's bare denial cannot overcome the clear and categorical assertion of the complainants that he allowed himself to be the Attorney-in-Fact of Mr. Genosolango. The Special Power of Attorney, duly executed by the latter in favor of respondent sheriff whose signature appears thereon, is the evidence that pinned down the respondent.
>
> Moreover, the agreement entered into by respondent sheriff with Mr. Genosolango is without the knowledge and consent of the court which does not bode well of the conduct of a judicial employee. Verily, the act of the respondent sheriff being assailed of constitutes Conflict of Interest."[6]

Based on the foregoing, the OCA recommended that Regalado be found guilty of Conduct Prejudicial to the Best Interest of the Service and be fined in the amount of ₱10,000.00 with stern warning that a repetition of the same would be dealt with more severely.[7] The Court is in unison with the evaluation of the OCA, but finds itself unable to adopt its conclusion as to the offense imputed against Regalado.

Time and again, this Court has pointed out the burden and responsibility that bound every officer and staff of the Judiciary by reason of their exalted positions as keepers of the public's faith in the courts. They should, therefore, avoid any impression of impropriety, misdeed or negligence in the performance of their official functions. Indeed, those who work in the judiciary must adhere to high ethical standards to preserve the courts' good name and standing. They should be examples of integrity,

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[6] *Id.* at 81.

[7] *Id.* at 82.

competence and efficiency, and they must discharge their duties with due care and utmost diligence for they are officers of the court and agents of the law. Any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.[8]

Sheriffs, in particular, being officers of the court and agents of the law, are exacted to use prudence, due care, and diligence in the discharge of their official duties. Where rights of individuals are jeopardized by their actions, sheriffs may be properly fined, suspended, or dismissed from office by virtue of this Court's administrative supervision over the judicial branch of the government.[9]

In the earlier case of *Biyaheros Mart Livelihood Association, Inc. v. Cabusao, Jr.*,[10] a sheriff was suspended for one month without pay for accepting a position in a private entity. It was explained in that case that:

> The act of the respondent in accepting the position of an administrator/ trustee of a private entity and for continuously holding the same for a considerable period of time, aside from being violative of the aforesaid circulars, can be properly called as moonlighting. While **moonlighting** is not normally considered as a serious misconduct, nonetheless, by the very nature of the position held by respondent, it obviously amounts to malfeasance in office. Respondent, in engaging in other irrelevant activities, failed to observe and maintain that degree of dedication to the duties and responsibilities required of him as a deputy sheriff.[11] [Emphasis supplied]

More recently, another sheriff was suspended for receiving "sheriff's fees" without the court's knowledge and approval, and for *moonlighting by collecting rentals* for a domestic company. Although moonlighting was merely considered as an

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[8] *OCA v. Ramano*, A.M. No. P-90-488, January 25, 2011.

[9] *Calaunan v. Madolaria*, A.M. No. P-10-2810, February 8, 2011.

[10] A.M. No. P-93-811, June 2, 1994, 232 SCRA 707.

[11] *Id.* at 712.

aggravating circumstance in that case, the Court pointed out, nonetheless, that it was a malfeasance in office.[12] Thus, in the case of *Garcia v. Alejo*,[13] it was stated:

> x x x there is a prohibition for all officials and employees of the judiciary to engage directly in any private business, vocation or profession even outside office hours. Alejo's acts can be considered as **moonlighting**, which, though not normally considered as a serious misconduct, amounts to malfeasance in office.[14] [Emphasis supplied]

In the present case, Regalado's moonlighting activity is inescapably linked to his work as a sheriff. It is connected or somehow related to the performance of his official functions and duties as a sheriff.[15] He was, after all, in charge of implementing the writ of possession over the property contested by the Abadianos and Genosolango. Yet, a special power of attorney was also issued in his favor to act for and on behalf of Genosolango. Undoubtedly, there is a conflict of interest. Given its complicities, this moonlighting activity of Regalado definitely constitutes an act of impropriety.

Withal, Regalado is guilty of misconduct in the discharge of his official functions punishable with suspension without pay for not less than one (1) month but not more than three (3) months, or a fine of not less than ten thousand pesos (₱10,000.00) but not exceeding twenty thousand pesos (₱20,000.00).[16]

WHEREFORE, Generoso B. Regalado, Sheriff IV, Regional Trial Court, Branch 16, Cebu City, is found *GUILTY* of Misconduct and is hereby *FINED* in the amount of Ten Thousand Pesos (₱10,000.00) with a *STERN WARNING* that a repetition of the same or similar offense in the future would be dealt with more severely.

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[12] *Garcia v. Alejo*, A.M. No. P-09-2627, January 26, 2011.

[13] *Id*.

[14] *Id*.

[15] *Tenorio v. Perlas*, A.M. No. P-10-2817, January 26, 2011.

[16] *Id*.

SO ORDERED.

Carpio,[*] *Velasco, Jr., Peralta,* and *Abad, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-07-2060. July 27, 2011]
(Formerly OCA IPI No. 06-2498-RTJ)

NATIONAL POWER CORPORATION, represented by its President CYRIL DEL CALLAR, *complainant, vs.* **JUDGE SANTOS B. ADIONG, RTC, BRANCH 8, MARAWI CITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; MANDATORY CHARACTER OF PRE-TRIAL, SUSTAINED. — The mandatory character of pre-trial is embodied in Administrative Circular No. 3-99 dated January 15, 1999, and found its way in Section 2, Rule 18 of the Rules of Court, which imposes a duty upon the plaintiff to promptly move *ex parte* that the case be set for pre-trial. To further implement the pre-trial guidelines, this directive was reiterated in Administrative Matter No. 03-1-09-SC entitled "*Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures*" which recognized the importance of pre-trial and the deposition-discovery measures as vital components of case management in trial courts. To further show that the Court is serious in implementing the rules on pre-trial, in *Alviola v. Avelino* the Court imposed the penalty of suspension on a judge

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[*] Designated as additional member of the Third Division per Special Order No. 1042 dated July 6, 2011.

who merely failed to issue a pre-trial order within ten (10) days after the termination of the pre-trial conference as mandated by Paragraph 8, Title 1 (A) of A.M. No. 03-1-09-SC. Here, respondent judge failed to conduct the pre-trial conference itself. It is elementary and plain that the holding of such a pre-trial conference is mandatory and failure to do so is inexcusable. When the law or procedure is so elementary, such as the provisions of the Rules of Court, not to know it or to act as if one does not know it constitutes gross ignorance of the law. Such ignorance of a basic rule in court procedure, as failing to conduct pre-trial, sadly amounts to gross ignorance and warrants a corresponding penalty.

2. ID.; ID.; JUDGMENTS; EXECUTION PENDING APPEAL; "GOOD REASON", AS A REQUIREMENT THEREOF; EXPLAINED; NOT PRESENT IN CASE AT BAR.— As to the allegations of poor judgment and gross ignorance of basic legal principles in granting the motions for execution pending appeal for flimsy and unsupported reasons, we find that the particular reasons relied upon by respondent judge for issuing the writ of execution pending appeal are so unreliably weak and feeble that it highlights the lack of knowledge of respondent judge with regard to the proper appreciation of arguments. In *Florendo v. Paramount Insurance Corp.*, the Supreme Court held: x x x "Good reasons," it has been held, consist of compelling circumstances that justify immediate execution lest the judgment becomes illusory. The circumstances must be superior, outweighing the injury or damages that might result should the losing party secure a reversal of the judgment. Lesser reasons would make of execution pending appeal, instead of an instrument of solicitude and justice, a tool of oppression and inequity. "Good reason" as required by Section 2, Rule 39 of the Rules of Court does not necessarily mean unassailable and flawless basis but at the very least, it must be on solid footing. Dire financial conditions of the plaintiffs supported by mere self-serving statements as "good reason" for the issuance of a writ of execution pending appeal does not stand on solid footing. It does not even stand on its own.

3. JUDICIAL ETHICS; DISCIPLINE OF JUDGES; SERIOUS CHARGES; GROSS IGNORANCE OF THE LAW; PENALTIES.— Section 8, Rule 140 of the Rules of Court, as amended, classifies gross ignorance of the law as a serious

charge and Section 11 thereof penalizes it with any of the following sanctions: 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 more than ₱20,000[.00] but not exceeding ₱40,000.00.

4. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY FOR A DISMISSED JUDGE.— Considering, however, that in A.M. No. RTJ-04-1826, this Court has already dismissed Judge Adiong, the penalties of suspension from office without salary and dismissal from the service are no longer possible. Hence, the penalty of fine is more appropriate.

APPEARANCES OF COUNSEL

Ranao M. Datudacula for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is an administrative complaint[1] filed by the National Power Corporation (NPC) through its president Cyril C. Del Callar, charging respondent Judge Santos B. Adiong, Presiding Judge of the Regional Trial Court (RTC), Branch 8, Marawi City, with gross ignorance of the law, manifest partiality and conduct unbecoming a member of the Judiciary.

The complaint arose in connection with the following cases:

a. Civil Case No. 1918-03 entitled "*Ibrahim Abdo, et al. v. National Power Corporation*" for Damages;

b. Civil Case No. 1322-95 entitled "*Pacalna Sanggacala v. National Power Corporation*" for Damages;

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[1] *Rollo*, pp. 1-17.

c. Civil Case No 1332-95 entitled "*Ali Macaraya Mato v. National Power Corporation*" for Damages;

d. Civil Case No. 1367-95 entitled "*Camar Dipatuan v. National Power Corporation*" for Damages;

e. Civil Case No. 1361-95 entitled "*Casimra Sultan v. National Power Corporation*" for Damages; and

f. Civil Case No. 1355-95 entitled "*Mualam Dimatingcal v. National Power Corporation*" for Damages.

In Civil Case No. 1918-03, plaintiffs Ibrahim Abdo, *et al*. who styled themselves as a "group of farmers, fishermen, laborers, workers, vendors, household members, and businessmen," collectively sought to hold NPC liable for damages for operating seven Hydroelectric Power plants allegedly without due regard to the health and safety of the plaintiffs and other residents of Marawi City and the province of Lanao del Sur. The plaintiffs alleged that they and several others suffered ecological and economic disasters brought about by the operation of regulatory dams which affected the natural flow of Lake Lanao and destroyed their farms, properties, businesses and sources of livelihood. In addition to damages, the plaintiffs also sought the refund of millions of pesos from the Purchase Power Adjustment (PPA) collected by NPC from its electric consumers through the Lanao Del Sur Electric Cooperative.[2]

On October 21, 2003, said plaintiffs filed an *ex-parte* Motion for the Release of ₱640,000,000 worth of PPA and other generation charges. Judge Adiong granted the motion on November 9, 2004, but later set aside his order on November 24, 2005[3] after NPC filed a motion for reconsideration on the ground of lack of notice and due process. Judge Adiong then required the parties to present their respective evidence on December 8, 2005.

Subsequently, Judge Adiong issued a Resolution on February 28, 2006, ordering NPC to refund the amount of ₱114,000,000,

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[2] Report of Justice Ayson, *rollo*, p. 543.

[3] *Rollo*, pp. 36-42.

representing the Fuel Compensating Cost, Foreign Exchange, and Incremental Cost Charges collected from April 1991 to December 1995; to refund the amount of ₱176,000,000, representing the Fuel and Power Cost Adjustment and PPA collected from January 1996 to April 2003; and to pay the amount of ₱97,537,000 as attorney's fees.[4]

NPC sought reconsideration of the order alleging that no pre-trial was conducted and yet respondent judge already passed upon the merits of the case. NPC's motion, however, was denied by Judge Adiong. Judge Adiong reasoned that before issuing the questioned resolution, full-blown hearings were conducted and NPC was afforded all the opportunities to present its evidence and to participate actively in the hearings. Having done so, NPC has submitted itself to the court's jurisdiction and could no longer claim that no pre-trial was conducted. Later, Judge Adiong also directed Sheriff Otto Gomampong to implement the February 28, 2006 Resolution ratiocinating that the same has already become final.[5]

Thus, NPC filed the present administrative complaint, asserting that the issuance of the February 28, 2006 Resolution is contrary to and violative of the Rules of Court because said resolution was issued by respondent judge without first conducting the requisite pre-trial conference and despite the fact that no formal offer of exhibits was made by plaintiffs in support of their allegations. Also, NPC complains of respondent judge's failure to lay down the basis for granting the plaintiff's *ex-parte* motion to release the PPA refunds, and in awarding the exorbitant amount of ₱97,537,000.00 as attorney's fees.[6]

NPC further states that while it admits that judges are not to be administratively charged for acts committed in the exercise of their judicial functions, respondent judge had acted in violation of elementary rules that was equivalent to intolerable and inexcusable gross ignorance of the law.

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[4] Report of Justice Ayson, *rollo*, p. 544.

[5] *Id.*

[6] *Id.* at 545-546.

As regards Civil Case Nos. 1322-95, 1332-95, 1367-95, 1361-95, and 1355-95, said cases involve identical causes of action arising from the same facts and raising common issues. The plaintiffs in said cases sought to hold NPC liable for damages for its refusal to open the Agus regulation dams causing perennial flooding on their rice farmlands in 1979, 1984, 1986, 1989, 1993, 1994, 1995 and 1996. In all of these cases, respondent judge rendered judgments in favor of the plaintiffs. Later, respondent judge also issued Joint Special Order[7] dated January 25, 2006 granting the Joint Motion for the Issuance of the Writ of Execution Pending Appeal[8] filed by the plaintiffs in Civil Case Nos. 1367-95, 1361-95, and 1355-95 on January 2, 2006.[9]

A similar Order[10] granting execution pending appeal was likewise issued in the two other cases, Civil Case Nos. 1322-95 and 1332-95, on January 17, 2006. Nine days later, on January 26, 2006, a Joint Writ of Execution[11] for the two cases was issued.

NPC alleges that Judge Adiong's act of granting execution pending appeal failed to conform strictly to the rigid criteria outlined by jurisprudence for executions pending appeal. There was no special reason for the issuance of the writ, and the grant of the writ was whimsical and clearly manifested the partiality of respondent judge. Further, Judge Adiong's evident bias and unexplained interest to execute the decisions manifested when he immediately set for hearing a motion to cite in contempt a Land Bank personnel who allegedly refused to comply with the notice of garnishment despite the fact that the motion lacked the required notice of hearing and the failure of the plaintiffs to comply with Rule 71 of the Rules of Court.[12]

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[7] *Rollo*, pp. 98-100.

[8] *Id.* at 92-97.

[9] Report of Justice Ayson, *rollo*, pp. 546-547.

[10] *Rollo*, pp. 105-106.

[11] *Id.* at 107-110.

[12] Report of Justice Ayson, *rollo*, pp. 547-548.

In his Comment[13] dated June 1, 2006, respondent judge raised the following in his defense. With regard to the lack of pre-trial conference, respondent judge asserts that he has set the case for hearing on December 8 and 15, 2005, and January 12, 13, and 27, 2006. In all these hearings, the parties were allowed to present whatever evidence they had to support their claims. He also claims that the lack of pre-trial was never raised by NPC since the time it filed its answer on May 15, 2003 up to the time plaintiffs started presenting their evidence on December 8, 2005. It was only on February 14, 2006 that NPC belatedly filed a manifestation calling the court's attention to the lack of pre-trial, without formally asking or praying for the setting of one. In addition, the records show that the plaintiffs filed their pre-trial brief while defendant NPC did not. Thus, he argues that NPC is deemed to have waived the holding of a pre-trial conference. Perforce, Judge Adiong argues that he should not be held administratively liable for not conducting pre-trial.[14]

On the charge that he was biased and has unexplained interest to execute the Decisions in Civil Case Nos. 1322-95, 1332-95, 1367-95, 1361-95 and 1355-95, respondent judge denied the allegations and explained that he complied with the requirements for allowing an execution pending appeal. He asserts there was good reason for its issuance and there was evidence substantiating the need to issue the writ of execution which were clearly spelled out and stated in the Special Orders dated January 17, 2006 and January 25, 2006. Further, there is no reason to complain about the bank personnel being held for contempt, as said bank personnel was not even adjudged guilty of contempt.[15]

Respondent judge adds that he should be absolved from the charges against him. He argues that mere suspicion that a judge is partial to one of the parties to the case is not enough; there

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[13] *Rollo*, pp. 133-146.

[14] *Id.* at 136-137, 139.

[15] *Id.* at 142-144.

should be evidence to support the charge.[16] Also, he asserts that a judge cannot be held administratively liable for errors in the appreciation of evidence unless the errors are gross or made in bad faith.[17] When such errors of judgment are committed, complainants may avail themselves of the remedy of appeal or *certiorari* and not the filing of administrative charges against the judge who rendered the challenged decision.

On October 2, 2007, this Court referred the present complaint to the Court of Appeals, Cagayan De Oro City, for investigation, report and recommendation. Pursuant to the Rules of Court, now retired Associate Justice Ruben C. Ayson, to whom this case was assigned, sent notices to the parties informing them of the schedule of investigation and hearings. The case was heard for five days, from May 25 to 29, 2009, and the parties were required to present oral, as well as documentary evidence in support of their respective allegations and counter-allegations.

On July 10, 2009, Justice Ayson submitted his report finding respondent judge administratively liable. Justice Ayson did not delve into the correctness of the Resolution dated February 28, 2006, granting the refund of millions of pesos representing the PPA charges, as the resolution is now the subject of an appeal with this Court, docketed as G.R. No. 177288 entitled, *Ibrahim Abdo, et al. v. Court of Appeals and National Power Corporation.* Neither did he delve into the merits of all the other cases from which the administrative cases filed by NPC against Judge Adiong arose, for the reason that the proper venue for their review would be through the usual judicial process of review by appellate courts.[18]

The Investigating Justice also noted the well-entrenched rule that a judge may not be held administratively liable for every

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[16] *Id.* at 145, citing *Beltran v. Garcia*, No. L-30868, September 30, 1971, 41 SCRA 158.

[17] *Id.*, citing *Ramirez v. Corpuz-Macandog*, Adm. Matter Nos. R-351-RTJ, *etc.*, September 26, 1986, 144 SCRA 462.

[18] Report of Justice Ayson, *rollo*, p. 553.

erroneous decision he renders, for no person called upon to determine the facts or interpret the law in the administration of justice can be infallible. However, he also noted that there is a prominent exception to the rule, that is, when the law is so elementary that not to know it constitutes gross ignorance of the law.[19] In said cases, a judge committing such error may face administrative sanctions.

Specifically, Justice Ayson noted that in Civil Case No. 1918-03, Judge Adiong failed to conduct a pre-trial conference and erred in conducting the series of hearings in the case without determining the existence of necessary pre-conditions before the court could take cognizance of the case. Records revealed that Judge Adiong failed to resolve (1) the issue on the insufficiency of the complaint as a class suit; (2) the issue of nonpayment of docket fees necessary to vest the court with jurisdiction over the case; (3) the issue on forum-shopping allegedly committed by therein plaintiffs; and (4) the question regarding the alleged failure of therein plaintiffs to state with particularity their respective residences. Justice Ayson noted that without a proper resolution of these threshold jurisdictional questions, any decision in the case is premature and without factual and legal basis. In other words, the court would only be engaged in a useless exercise and would merely be wasting the time and resources of the parties.[20]

Further, the Investigating Justice stressed that the conduct of a pre-trial is mandatory. He explained that pre-trial is a procedural device whereby the court is called upon to compel the parties and their lawyers to appear before it and negotiate an amicable settlement or otherwise make a formal statement and embody in a single document the issues of fact and law involved in the action. Respondent judge asserts that NPC only called the attention of the court in passing in one of its hearings held sometime in December 8, 2005 and January 27, 2006.

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[19] *Agcaoili v. Ramos*, A.M. No. MTJ-92-6-251, February 7, 1994, 229 SCRA 705, 710.

[20] Report of Justice Ayson, *rollo*, pp. 554-555.

Judge Adiong alleges that he then advised NPC to file the appropriate pleading, but it was only after the case was terminated that NPC made a manifestation on the lack of pre-trial. Judge Adiong adds that the conduct of a pre-trial conference would have been a mere superfluity, and claims that the absence of pre-trial did not cause substantial prejudice or injury to the parties as the purpose of expediting the proceedings has been attained. However, Justice Ayson opined that under the circumstances, Judge Adiong should have scheduled the case for pre-trial as he was already aware of the procedural defect. His act of not minding the setting of pre-trial, when he had every opportunity and reasonable time to do so, can be characterized as negligent and imprudent, according to Justice Ayson. Justice Ayson added that respondent judge apparently failed to comply with the rules and failed to exercise the required initiative to set the case for pre-trial. Considering Judge Adiong's long years of service, a total of thirty-nine (39) years in the Judiciary, more than anyone else, he should be presumed to be conversant with the law and the rules. The law involved in this case being elementary, failure to consider it or to act as if he does not know it, constitutes gross ignorance of the law. Justice Ayson said,

> x x x Indeed, when the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and the title he holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.[21]

As to the granting of the motions for execution pending appeal, Justice Ayson pointed out that respondent judge gave flimsy and unsupported reasons to support his order to issue the writ of execution pending appeal.

In Civil Case No. 1367-95, respondent judge granted the execution pending appeal on the ground that the plaintiff therein suffered a stroke and allegedly needed to undergo an operation

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[21] *Id.* at 559-560.

costing millions of pesos. However, said allegations were based only on the self-serving testimony of the plaintiff's sister whose testimony was uncorroborated by any other evidence.

In Civil Case Nos. 1361-95 and 1355-95, Judge Adiong granted the motion for execution pending appeal based on the testimony of the plaintiff who testified on his medical condition as stated in his medical certificate. Said medical certificate, however, was never verified by the doctor who allegedly issued it. Hence, it was unreliable and was merely hearsay evidence.

Meanwhile, in Civil Case No. 1322-95, the motion for execution pending appeal was granted based on the plaintiff's claim that he is getting old and needed money to support his family of four wives and twenty-nine (29) children. But the plaintiff's allegation was not corroborated by any competent evidence.

In all these cases, respondent judge found justification that the financial conditions of the plaintiffs warranted the issuance of the writ of execution pending appeal. Justice Ayson, however, opined that while the power to grant or deny immediate or advance execution is addressed to the sound discretion of the court, it is required that good reason exists for granting execution pending appeal as provided under Section 2,[22] Rule 39 of the

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[22] Sec. 2. *Discretionary execution*.—

(a) *Execution of a judgment or final order pending appeal*.—On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

(b) *Execution of several, separate or partial judgments*.–A several, separate or partial judgment may be executed under the same terms and conditions as execution of a judgment or final order pending appeal.

Rules of Court. Absent any such good reason, the special order of execution must be struck down for having been issued with grave abuse of discretion.

Standing alone, the alleged dire financial distress of the plaintiffs in Civil Case Nos. 1918-03, 1322-95, 1332-95, 1367-95, 1361-95, 1355-95 cannot be taken as "good reason" for the immediate execution of respondent judge's decisions, according to Justice Ayson. Justice Ayson opined that indeed, when respondent judge acted hastily in granting the execution of his Decision pending appeal, his actuation did not indicate zeal to his duty but a clear disservice to the cause of justice. Indubitably, respondent judge showed poor judgment and gross ignorance of basic legal principles, added Justice Ayson.

After careful review of the records of this case, we find the above observations and findings of the Investigating Justice well taken.

Judge Adiong failed to conduct a pre-trial conference in Civil Case No. 1918-03 contrary to elementary rules of procedure which he should have known all too well considering his long years of service in the bench. The mandatory character of pre-trial is embodied in Administrative Circular No. 3-99[23] dated January 15, 1999, and found its way in Section 2,[24] Rule 18 of

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[23] Re: Pre-Trial Guidelines.

[24] SEC. 2. *Nature and purpose*. — The pre-trial is mandatory. The court shall consider:

(a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;

(b) The simplification of the issues;

(c) The necessity or desirability of amendments to the pleadings;

(d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;

(e) The limitation of the number of witnesses;

(f) The advisability of a preliminary reference of issues to a commissioner;

(g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;

the Rules of Court, which imposes a duty upon the plaintiff to promptly move *ex-parte* that the case be set for pre-trial. To further implement the pre-trial guidelines, this directive was reiterated in Administrative Matter No. 03-1-09-SC[25] entitled "*Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures"* which recognized the importance of pre-trial and the deposition-discovery measures as vital components of case management in trial courts.[26]

To further show that the Court is serious in implementing the rules on pre-trial, in *Alviola v. Avelino*[27] the Court imposed the penalty of suspension on a judge who merely failed to issue a pre-trial order within ten (10) days after the termination of the pre-trial conference as mandated by Paragraph 8,[28] Title I (A) of A.M. No. 03-1-09-SC.

Here, respondent judge failed to conduct the pre-trial conference itself. It is elementary and plain that the holding of such a pre-trial conference is mandatory and failure to do so is inexcusable. When the law or procedure is so elementary, such as the provisions of the Rules of Court, not to know it or to act as if one does not know it constitutes gross ignorance of the

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(h) The advisability or necessity of suspending the proceedings; and

(i) Such other matters as may aid in the prompt disposition of the action.

[25] Effective August 16, 2004.

[26] Report of Justice Ayson, *rollo*, p. 556.

[27] A.M. No. MTJ-P-08-1697, February 29, 2008, 547 SCRA 160.

[28] 8. The judge shall issue the required Pre-Trial Order within ten (10) days after the termination of the pre-trial. Said Order shall bind the parties, limit the trial to matters not disposed of and control the course of the action during the trial. x x x

However, the Court may opt to dictate the Pre-Trial Order in open court in the presence of the parties and their counsel and with the use of a computer, shall have the same immediately finalized and printed. Once finished, the parties and/or their counsel shall sign the same to manifest their conformity thereto.

law.[29] Such ignorance of a basic rule in court procedure, as failing to conduct pre-trial, sadly amounts to gross ignorance and warrants a corresponding penalty.

As to the allegations of poor judgment and gross ignorance of basic legal principles in granting the motions for execution pending appeal for flimsy and unsupported reasons, we find that the particular reasons relied upon by respondent judge for issuing the writ of execution pending appeal are so unreliably weak and feeble that it highlights the lack of knowledge of respondent judge with regard to the proper appreciation of arguments.

In *Florendo v. Paramount Insurance Corp.*,[30] the Supreme Court held:

> x x x "Good reasons," it has been held, consist of compelling circumstances that justify immediate execution lest the judgment becomes illusory. The circumstances must be superior, outweighing the injury or damages that might result should the losing party secure a reversal of the judgment. Lesser reasons would make of execution pending appeal, instead of an instrument of solicitude and justice, a tool of oppression and inequity.

"Good reason" as required by Section 2, Rule 39 of the Rules of Court does not necessarily mean unassailable and flawless basis but at the very least, it must be on solid footing. Dire financial conditions of the plaintiffs supported by mere self-serving statements as "good reason" for the issuance of a writ of execution pending appeal does not stand on solid footing. It does not even stand on its own.

Section 8, Rule 140 of the Rules of Court, as amended, classifies gross ignorance of the law as a serious charge and Section 11 thereof penalizes it with any of the following sanctions:

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[29] See *Baculi v. Belen*, A.M. No. RTJ-09-2176, April 20, 2009, 586 SCRA 69, 79.

[30] G.R. No. 167976, January 20, 2010, 610 SCRA 377, 384-385, citing *Flexo Manufacturing Corporation v. Columbus Foods, Inc.*, 495 Phil. 254, 260 (2005) and *Heirs of Macabangkit Sangkay v. National Power Corp.*, G.R. No. 141447, May 4, 2006, 489 SCRA 401, 417.

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 more than ₱20,000[.00] but not exceeding ₱40,000.00.[31]

Considering, however, that in A.M. No. RTJ-04-1826, this Court has already dismissed Judge Adiong, the penalties of suspension from office without salary and dismissal from the service are no longer possible. Hence, the penalty of fine is more appropriate.

WHEREFORE, the now dismissed respondent Judge Santos B. Adiong of the Regional Trial Court of Marawi City, Branch 8 is, for gross ignorance of the law, *FINED* in the amount of ₱40,000.00 to be deducted from his retained/withheld accrued leave credits.

SO ORDERED.

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

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[31] *Pancho v. Aguirre, Jr.*, A.M. No. RTJ-09-2196, April 7, 2010, 617 SCRA 486, 489.

THIRD DIVISION

[A.M. No. RTJ-11-2285. July 27, 2011]
(Formerly OCA I.P.I. No. 10-3472-RTJ)

MAYOR MACARIO T. HUMOL, *complainant, vs.* **JUDGE HILARION P. CLAPIS, JR., Regional Trial Court, Branch 3, 11th Judicial Region, Nabunturan, Compostela Valley Province,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; DUTIES OF THE TRIAL JUDGE IN THE EVENT OF AN APPLICATION FOR BAIL IS FILED; OUTLINE.— In the case of *Basco v. Rapatalo*, where the Court outlined the duties of a trial judge in the event that an application for bail is filed: "(1) Notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation; (2) Conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion; (3) Decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution; (4) If the guilt of the accused is not strong, discharge the accused upon the approval of the bailbond. Otherwise, petition should be denied."

2. JUDICIAL ETHICS; DISCIPLINE OF JUDGES; DUTY OF JUDGES TO MAINTAIN PROFESSIONAL COMPETENCE AT ALL TIMES; UPHELD.— Judges are reminded that they have a duty to maintain professional competence at all times in order to preserve the faith of the public in the courts. Any error committed in the performance of their judicial functions which is attributable to their unfamiliarity with the laws and established jurisprudence only serves to erode the confidence of the community in the ability of the courts to dispense justice. The Court reiterates its statement in *Mutilan v. Adiong* that "A judge owes the public and the court the duty to be proficient

in the law and is expected to keep abreast of laws and prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice."

3. ID.; ID.; SERIOUS CHARGES; WHEN GUILTY OF GROSS IGNORANCE OF THE LAW; PENALTIES.— Gross ignorance of the law is considered a serious charge which warrants the imposition of any of the following sanctions: (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 more than ₱20,000.00 but not exceeding ₱40,000.00.

4. ID.; ID.; LESS SERIOUS CHARGES; WHEN GUILTY OF UNDUE DELAY IN RENDERING AN ORDER; PENALTIES.— The Rules of Court classifies undue delay in rendering an order as a less serious charge 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.

5. ID.; ID.; THE FILING OF AN ADMINISTRATIVE COMPLAINT AGAINST JUDGES IS NOT AN ALTERNATIVE TO JUDICIAL REMEDIES.— Time and again, this Court has ruled that the filing of an administrative complaint against a judge is not an alternative to other judicial remedies or complementary or supplementary to such actions. It is not a means by which the correctness of a decision by the trial court can be challenged. The law provides sufficient judicial remedies against error or irregularities committed by a judge. Ordinary remedies include a motion for reconsideration or an appeal, while extraordinary remedies can be the special civil actions of *certiorari*, prohibition or *mandamus*, a motion for inhibition, or a petition for change of venue, if applicable. x x x All available judicial remedies must be exhausted before resorting to other avenues to prosecute the judge for his actions, whether in a civil, criminal or administrative case.

D E C I S I O N

MENDOZA, *J.*:

This administrative case stemmed from a Complaint dated June 29, 2010 filed by Mayor Macario T. Humol (Mayor Humol) of the Municipality of Nabunturan, Compostela Valley Province, charging respondent Judge Hilarion P. Clapis, Jr. (Judge Clapis) of the Regional Trial Court, Branch 3, 11th Judicial Region, Nabunturan, Compostela Valley Province, with Gross Ignorance of the Law, Grave Abuse of Discretion and violations of the Code of Judicial Conduct and the Lawyer's Oath.[1]

The Facts

Mayor Humol alleges that he has received reports[2] that the orders and decisions rendered by Judge Clapis are unjust and biased.[3] In support of this accusation, he cites several instances where respondent judge purportedly made "biased, baseless and unjust orders and decisions with disregard of law, legal principles and Rules of Court."[4]

Criminal Case No. FC-1162
People of the Philippines v. Johnny Jusayan, Sr. alias Dodong (for Multiple Murder)

Mayor Humol alleges that Judge Clapis displayed gross ignorance of the law when he granted bail to the accused without hearing.[5] Judge Clapis counters that a hearing was in fact conducted on December 18, 2008, during which the court issued an order allowing the accused to post a bond in the amount of

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

[2] Mayor Humol filed this complaint for and in behalf of the residents of Nabunturan from whom he has received reports.

[3] *Rollo*, p. 3.

[4] *Id.*

[5] *Id.*

₱250,000.00.[6] He further adds that the matter has become irrelevant though because the private complainant, together with the surviving children of the victim, appeared in court and manifested that they were no longer interested in pursuing the case against the accused.[7] The bond posted by the accused was then released in favor of the private complainant.[8]

In reply, Mayor Humol insists that the hearing held on December 18, 2008 was not the hearing required under the law and jurisprudence. He cites Section 7, Rule 114 of the Rules of Court which provides that "No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution." He stresses that the order of Judge Clapis granting bail to the accused should have contained a summary of evidence for the prosecution, with a conclusion by the court on whether or not the evidence of guilt is strong.[9] It is evident in respondent's questioned order that only the motion filed by the accused and the argument of the counsel for the accused were considered in granting bail, contrary to the requirement that the court hear the evidence for the prosecution.[10]

It is the adamant opinion of Mayor Humol that the dismissal of the case against the accused by reason of the desistance of the private complainant in the said case should not serve to exculpate Judge Clapis for his capricious and whimsical act of granting bail to the accused in a capital offense case without the proper hearing.[11]

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[6] *Id.* at 123.

[7] *Id.*

[8] *Id.* at 124.

[9] *Id.* at 135.

[10] *Id.*

[11] *Id.*

Criminal Case No. 6041
People of the Philippines v. Rosalino Gonzales, et al.
(for Murder)

Judge Clapis initially denied the application for bail of the accused. Three months later, the accused moved for reconsideration alleging that there was no conspiracy between him and his co-accused. Judge Clapis granted the motion and allowed the accused to post bail. Mayor Humol asserts that Judge Clapis showed gross ignorance of the law, pointing out that it was unnecessary for the prosecution to show the existence of conspiracy between the two accused because they were being prosecuted separately as principals.[12]

Mayor Humol questions the order of Judge Clapis granting bail to the accused despite the success of the prosecution in proving that the guilt of both accused is strong because they pulled the trigger of their respective guns, causing the death of the victim. As such, he should not have considered the motion for reconsideration filed by the accused. On August 24, 2009, the prosecution filed a motion for reconsideration for the order granting bail. The motion remained unresolved until the execution of the affidavit of desistance by private complainants.[13]

Criminal Case No. 6266
People of the Philippines v. Calapan
(for Murder)

In the criminal case for murder filed against spouses Francisco and Teresita Calapan, Mayor Humol alleges that Judge Clapis showed wanton abuse of discretion for failing to issue a Warrant of Arrest against Teresita Calapan, in spite of the finding of probable cause and motion for issuance of the said warrant by the prosecution.[14]

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[12] *Id.* at 4.

[13] *Id.* at 136.

[14] *Id.* at 4.

Judge Clapis, for his part, claims that he issued the Warrant of Arrest against the accused Teresita Calapan on July 26, 2010. However, the accused remains at large.[15]

Mayor Humol underscores that fact that the warrant of arrest was issued more than a year after the information was filed against the accused on November 17, 2008, in blatant violation of Section 6, Rule 112 of the Rules of Court which requires that the warrant be issued within ten days from the filing of the information.[16]

Special Civil Case No. 898
Tabas, Jr., et al. v. Humol, et al.
(for Injunction with Application for Writ of Preliminary Injunction and Temporary Restraining Order)

On May 20, 2008, the Sangguniang Bayan of Nabunturan enacted Municipal Ordinance No. 2008-10, "An Ordinance Authorizing the Bond Flotation of the Municipality of Nabunturan, ComVal in the Amount of ₱90 Million to Finance the Planning, Design, Construction and the Development of the Proposed Nabunturan Public Market Project." Two members of the Sangguniang Bayan opposed the said enactment and filed Special Civil Case No. 898 for Injunction with Application for Writ of Preliminary Injunction and Temporary Restraining Order before the trial court, presided over by Judge Clapis.[17] The latter issued an order dated November 4, 2009 granting the preliminary injunction and enjoining the implementation of the ordinance.[18] Mayor Humol believes that Judge Clapis committed grave abuse of discretion in entertaining the case despite the trial court's lack of jurisdiction over it. He argues that the propriety of the passage of the ordinance involves a political question which is beyond the ambit of the court.[19]

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[15] *Id.* at 125.

[16] *Id.* at 136.

[17] *Id.* at 4-5.

[18] *Id.* at 6.

[19] *Id.* at 5.

Moreover, the injunction was issued on the basis of a highly irregular research conducted by the court and testimonies of resource persons invited by the court, without the parties presenting or offering their respective evidence. Instead of allowing the counsels of the parties to examine and cross-examine the resource persons, Judge Clapis alone propounded the questions.[20] As part of Judge Clapis' research study, he cited an article from the internet written by a party in the case. After this was pointed out by his (Mayor Humol's) counsel, Judge Clapis inhibited himself from the case, citing his good relationship with one of the parties as the reason. Mayor Humol, however, asserts that the belated inhibition made by Judge Clapis delayed the construction and development of the Nabunturan Public Market, to the detriment of the municipality and its inhabitants.[21] Mayor Humol believes these acts of Judge Clapis as violations of the Code of Judicial Conduct, specifically Canon 1, Rules 1.01 and 1.02, Canon 2, Rules 2.01 and 2.03 and Canon 3, Rule 3.05.[22]

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[20] *Id.* at 5-6.

[21] *Id.* at 7.

[22] Canon 1: A judge should uphold the integrity and independence of the judiciary.

Rule 1.01 — A judge should be the embodiment of competence, integrity, and independence.

Rule 1.02 — A judge should administer justice impartially and without delay.

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Canon 2: A judge should avoid impropriety and the appearance of impropriety in all activities.

Rule 2.01 — A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

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Rule 2.03 — A judge shall not allow family, social or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

x x x x x x x x x

Canon 3: A judge should perform official duties honestly, and with impartiality and diligence adjudicative responsibilities.

Finally, Mayor Humol states that Judge Clapis erred in granting the application for preliminary injunction notwithstanding the fact that the required bond was not posted and that there was no main action upon which the provisional remedy of preliminary injunction can be anchored.[23]

In his defense, Judge Clapis avers that the resource persons were *amici curiae*, persons who are experts in the field, invited by the court to shed light on the issues raised. Considering that he was not an authority on the matter of bond flotation, he sought the assistance of resource persons, which was allowed under the rules.[24]

As regards the issuance of the preliminary injunction, Judge Clapis argues that if Mayor Humol believed that he erred in granting the injunction, then the proper remedy was to file a motion for reconsideration, which the latter did. To Judge Clapis' mind, the filing of the administrative complaint against him is premature because Mayor Humol should have waited for the resolution of his motion for reconsideration.[25]

Lastly, Judge Clapis points out that his inhibition from the case on December 7, 2009 was not belated because the motion for inhibition was filed on November 24, 2009.[26]

In his Reply, Mayor Humol stresses that the statements of the resource persons invited by Judge Clapis should not have been the sole basis of the order granting the issuance of the writ of preliminary injunction. The rules require that the parties to the case must present and formally offer their evidence to the court before the court can render a decision. Mayor Humol is also of the view that Judge Clapis should not have waited for

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Rule 3.05 — A judge shall dispose of the court's business promptly and decide cases within the required periods.

[23] *Rollo*, p. 8.

[24] *Id.* at 126.

[25] *Id.* at 126.

[26] *Id.*

the motion for inhibition before inhibiting himself from the case[27] considering his relationship with one of the parties in the case.

Mayor Humol also brushes aside Judge Clapis' contention that the complaint is premature by arguing that the existence of remedies available to correct the issuance of the preliminary injunction by Judge Clapis is immaterial because the administrative case against the latter is anchored on his alleged abuse of discretion and his violation of the Rules of Court, the Code of Judicial Conduct and the Lawyer's Oath.[28]

Meanwhile, the Office of the Court Administrator (*OCA*) notes that Judge Clapis is the subject of the following pending administrative cases:

(1) OCA IPI No. 06-2518-RTJ *(OCA v. Judge Hilarion P. Clapis, Jr.* for Gross Misconduct);

(2) A.M. No. RTJ-10-2257 *(Criselda C. Gacad v. Judge Hilarion P. Clapis, Jr.* for Grave Misconduct, Corrupt Practices, Gross Ignorance of the Law, Grave Abuse of Discretion and Violation of the Code of Judicial Conduct);

(3) A.M. No. RTJ-09-2169 *(Raul A. Resma v. Judge Hilarion P. Clapis, Jr.* for Willful Failure to Pay Just Debt) and

(4) A.M. No. RTJ-09-2213 *(Gafar M. Hadji Maute v. Judge Hilarion P. Clapis, Jr.* for Bribery and Falsification)[29]

On March 15, 2011, the OCA found the complaint to be partly meritorious. It remarked that the alleged errors attributed to Judge Clapis in granting bail and preliminary injunction in Criminal Case No. 6041 and Special Civil Case No. 898, respectively, cannot be reviewed by the court in an administrative proceeding because such acts pertain to the exercise of his adjudicative functions.[30] It was of the view, however, that he

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[27] *Id.* at 137.

[28] *Id.*

[29] *Id.* at 303-304.

[30] *Id.* at 306.

can be held liable for gross ignorance of the law for failing to observe the basic rules in granting bail in relation to Criminal Case No. FC-1162 and for delaying the issuance of the warrant of arrest in Criminal Case No. 6266.[31] Hence, the OCA recommended that the administrative case be re-docketed as a regular administrative matter and that Judge Clapis be fined in the amount of ₱30,000.00, with a stern warning that a repetition of the same would be dealt with more severely.[32]

The Court's Ruling

The Court agrees with the findings and evaluation of the OCA.

Criminal Case No. FC-1162

In Criminal Case No. FC-1162, it is evident in the Order of Judge Clapis dated December 18, 2008 that he granted bail to the accused solely on the basis of the arguments of counsel for the accused:

> The Court, after considering the Omnibus Motion to Bail and/or to be State Witness and the arguments of Atty. Ruben D. Altamera, counsel for the accused, hereby grants the accused bail in the amount of Two Hundred Fifty Thousand (₱250,000.00) Pesos, Philippine Currency for his provisional liberty, provided that it will be in cash.[33]

Nothing in the questioned Order reveals the participation of the prosecution in the hearing for bail or the presentation of prosecution evidence. This is contrary to the requirements laid down in the case of *Basco v. Rapatalo*,[34] where the Court outlined the duties of a trial judge in the event that an application for bail is filed:

> (1) Notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation;

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[31] *Id.* at 305.

[32] *Id.* at 307.

[33] *Id.* at 151.

[34] 336 Phil. 214 (1997).

(2) Conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion;

(3) Decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution;

(4) If the guilt of the accused is not strong, discharge the accused upon the approval of the bailbond. Otherwise, petition should be denied.[35]

Judge Clapis displayed gross ignorance of the law in his failure to hear and consider the evidence of the prosecution against the accused in the hearing for bail. Judges are reminded that they have a duty to maintain professional competence at all times in order to preserve the faith of the public in the courts.[36] Any error committed in the performance of their judicial functions which is attributable to their unfamiliarity with the laws and established jurisprudence only serves to erode the confidence of the community in the ability of the courts to dispense justice. The Court reiterates its statement in *Mutilan v. Adiong*[37] that "A judge owes the public and the court the duty to be proficient in the law and is expected to keep abreast of laws and prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice."[38]

Gross ignorance of the law is considered a serious charge[39] which warrants the imposition of any of the following sanctions:

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[35] *Id.* at 237.

[36] *Villanueva v. Buaya*, A.M. No. RTJ-08-2131, November 22, 2010, citing *Gozun v. Liangco*, 393 Phil. 669, 681 (2000).

[37] 433 Phil. 26 (2002).

[38] *Mutilan v. Adiong*, 433 Phil. 26, 32 (2002), citing *Oporto, Jr. v. Monserate*, 408 Phil. 561 (2001) and *Espino, et al. v. Hon. Ismael Salubre*, 405 Phil. 331 (2001).

[39] Rules of Court (as amended by A.M. No. 01-8-10-SC effective October 1, 2001), Rule 140, Sec. 8.

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 more than ₱20,000.00 but not exceeding ₱40,000.00.[40]

Criminal Case No. 6266

As regards Criminal Case No. 6266, the OCA is correct in finding Judge Clapis guilty of delay in the issuance of the warrant of arrest against the accused. His non-observance of the recognized rules of procedure cannot be denied. The information against the accused Teresita Calapan was filed on November 17, 2008. Judge Clapis ordered her arrest only on July 26, 2010, exceedingly beyond the period required by Section 6, Rule 112 of the Revised Rules of Criminal Procedure, which states that:

Section 6. When warrant of arrest may issue. — (a) By the Regional Trial Court. — **Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.** (Emphases supplied)

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[40] Rules of Court (as amended by A.M. No. 01-8-10-SC effective October 1, 2001), Rule 140, Sec. 11.

The case of *Office of the Court Administrator v. Lerma*[41] is instructive on this issue. The Court in said case, found a trial judge liable for undue delay in rendering an order because he allowed 48 days to lapse, from the time the case was assigned to him, before issuing an order dismissing the case against the accused for lack of probable cause. For this, the Court imposed upon him a fine of ₱21,000.00.

Judge Clapis' flagrant disregard of the rules of criminal procedure governing the issuance of warrants of arrest cannot go unpunished. The Rules of Court[42] classifies undue delay in rendering an order as a less serious charge 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.[43]

Criminal Case No. 6041 and Special Civil Case No. 898

The Court also agrees with the OCA that the issues raised by Mayor Humol regarding the alleged errors committed by Judge Clapis in these cases are contentious issues which are judicial in nature, unlike in the two prior cases where his errors are blatant and undeniable. The propriety of granting bail to the accused in Criminal Case No. 6041 and issuing the writ of preliminary injunction and enjoining the implementation of Municipal Ordinance No. 2008-10 in Special Civil Case No. 898, cannot be questioned in an administrative case. These are judicial issues that will require an evaluation of the evidence presented during the trial and should be threshed out through the appropriate judicial remedy and not through this administrative action.

Time and again, this Court has ruled that the filing of an administrative complaint against a judge is not an alternative to

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[41] A.M. No. RTJ-07-2076, October 12, 2010.

[42] Rules of Court (as amended by A.M. No. 01-8-10-SC effective October 1, 2001), Rule 140, Sec. 9.

[43] Rules of Court (as amended by A.M. No. 01-8-10-SC effective October 1, 2001), Rule 140, Sec. 11 (B).

other judicial remedies or complementary or supplementary to such actions.[44] It is not a means by which the correctness of a decision by the trial court can be challenged.[45] The law provides sufficient judicial remedies against error or irregularities committed by a judge. Ordinary remedies include a motion for reconsideration or an appeal, while extraordinary remedies can be the special civil actions of *certiorari*, prohibition or *mandamus*, a motion for inhibition, or a petition for change of venue, if applicable.[46]

The proper recourse by the aggrieved parties in Criminal Case No. 6041 and Special Civil Case No. 898 should have been to file a motion for reconsideration or an appeal. All available judicial remedies must be exhausted before resorting to other avenues to prosecute the judge for his actions, whether in a civil, criminal or administrative case.[47]

WHEREFORE, respondent Judge Hilarion P. Clapis, Jr., is found *GUILTY* of Gross Ignorance of the Law and Undue Delay in Rendering an Order. Accordingly, the Court imposes upon him a total *FINE* of ₱30,000.00 with a *STERN WARNING* that a repetition of the same or similar act would be dealt with more severely.

SO ORDERED.

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

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[44] *Salcedo v. Bollozos*, A.M. No. RTJ-10-2236, July 5, 2010, 623 SCRA 27, 42, citing *Bello v. Diaz*, 459 Phil. 214, 221-222 (2003).

[45] *Orocio v. Roxas*, A.M. Nos. 07-115-CA-J and CA-08-46-J, August 19, 2008, 562 SCRA 347, 353.

[46] *Flores v. Abesamis*, 341 Phil. 299 (1997).

[47] *Id*.

[*] Designated as additional member of the Third Division per Special Order No. 1042 dated July 6, 2011.

[**] Designated as additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., who recused himself from the case due to close relations with one of the parties, per Raffle dated July 20, 2011.

FIRST DIVISION

[G.R. No. 153809. July 27, 2011]

ELOISA L. TOLENTINO, *petitioner, vs.* **ATTY. ROY M. LOYOLA, Municipal Mayor, DOMINGO C. FLORES, Municipal Budget Officer, ALICIA L. OLIMPO, Municipal Treasurer, ANNALIZA L. BARABAT, Municipal Accountant, AMADOR B. ALUNIA, Municipal Administrator, NENITA L. ERNACIO, Municipal Agriculturist, AMELIA C. SAMSON, Human Resource Officer IV, EDWIN E. TOLENTINO, Community Affairs Officer IV, DOMINGO R. TENEDERO and ROEL Z. MANARIN, Sangguniang Bayan (SB) Members, All from Carmona, Cavite,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; LAW OF THE CASE; A QUESTION ONCE DECIDED ON APPEAL BECOMES THE LAW OF THE CASE AT THE LOWER COURT AND IN ANY SUBSEQUENT APPEAL.— In *Padillo v. Court of Appeals*, we had occasion to explain this principle, to wit: *Law of the case* has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, *whether correct on general principles or not*, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. As a general rule, a decision on a prior appeal of the same case is held to be the law of the case *whether that question is right or wrong*, the remedy of the party deeming himself aggrieved being to seek a rehearing.

2. ID.; ID.; ID.; ID.; ID.; NOT APPLICABLE WHERE THE QUESTION SETTLED ON APPEAL INVOLVED A CRIMINAL PROCEEDING WHILE THE CASE BEFORE THE LOWER COURT IS AN ADMINISTRATIVE CASE; CASE AT BAR.— The concept of *law of the case* was further

elucidated in the 1919 case of *Zarate v. Director of Lands*, to wit: A well-known legal principle is that when an appellate court has once declared the law in a case, such declaration continues to be the law of that case even on a subsequent appeal. The rule made by an appellate court, while it may be reversed in other cases, cannot be departed from in subsequent proceedings in the same case. The "Law of the Case," as applied to a former decision of an appellate court, merely expresses the practice of the courts in refusing to reopen what has been decided. Such a rule is "necessary to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal." x x x Contrary to respondents' assertion, the *law of the case* doctrine does not find application in the case at bar simply because what was involved in G.R. No. 149534 was a criminal proceeding while what we have before us is an administrative case. Although both cases possess a similar set of facts, allegations and arguments, they do not serve the same objectives and do not require the same quantum of evidence necessary for a finding of guilt or conviction/liability which makes them entirely different cases altogether and, therefore, beyond the purview of the legal principle of *law of the case*.

3. ID.; EVIDENCE; QUANTUM OF EVIDENCE REQUIRED; ADMINISTRATIVE CASES DISTINGUISHED FROM CRIMINAL CASES.— In administrative cases, substantial evidence is required to support any finding. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming. While in criminal cases, the accused is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt. Proof beyond reasonable doubt does not mean evidence that which produces absolute certainty; only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.

4. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; A DECISION OF THE OMBUDSMAN ABSOLVING THE RESPONDENT OF AN ADMINISTRATIVE CHARGE IS

FINAL AND UNAPPEALABLE; SUSTAINED; APPLICATION IN CASE AT BAR.— On a procedural note, the assailed ruling of the Ombudsman obviously possesses the character of finality and, thus, not subject to appeal. The pertinent provision in this case is the old Section 7, Rule III of Ombudsman Administrative Order No. 7, Series of 1990 (*Rules of Procedure of the Office of the Ombudsman*), before it was amended by Ombudsman Administrative Order No. 17, Series of 2003 (*Amendment of Rule III, Administrative Order No. 7*), which states that: Sec. 7. FINALITY OF DECISION. — Where the respondent is absolved of the charge and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari* shall have been filed by him as prescribed in Section 27 of RA 6770. The basis for the said rule of procedure is Section 27 of Republic Act No. 6770 (*The Ombudsman Act*). x x x As shown by the aforementioned regulation and statute, a decision of the Ombudsman absolving the respondent of an administrative charge is final and unappealable. x x x In the case at bar, the petitioner did not file a petition for *certiorari* under Rule 65 of the Rules of Court and instead filed a petition for review under Rule 43 of the Rules of Court with the Court of Appeals. The latter is effectively an appeal to the Court of Appeals which is disallowed by the Rules of Procedure of the Office of the Ombudsman as well as the Ombudsman Act in case the respondent is exonerated by the Ombudsman for an administrative charge.

5. REMEDIAL LAW; APPEALS; FINDINGS OF THE OFFICE OF THE OMBUDSMAN; CONCLUSIVE UPON THE COURT; EXCEPTION.— Elementary is the rule that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when they are affirmed by the Court of Appeals. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made. x x x In the case at bar, the 24 new positions were included in Ordinance No. 006-98 enacting the 1999

Annual Budget. Subsequently, the Sangguniang Bayan later affirmed the creation of all questioned positions in separate resolutions and continued to include the said positions in the appropriations in subsequent budget ordinances. It is likewise undisputed that the questioned appointments were all approved by the Civil Service Commission.

APPEARANCES OF COUNSEL

Oscar L. Lindain for petitioner.
Franco L. Loyola for respondents.
Macario A. Agosila for Amador Alunia.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure seeking to reverse and set aside the Decision[1] dated December 3, 2001 of the Court of Appeals as well as its Resolution[2] dated May 28, 2002 in CA-G.R. SP No. 61841, entitled "*Eloisa L. Tolentino v. Atty. Roy M. Loyola, et al.*" The December 3, 2001 Decision of the Court of Appeals affirmed the Decision[3] dated May 23, 2000 of Ombudsman Aniano A. Desierto in OMB-ADM-1-99-1035, which dismissed the administrative complaint that petitioner filed against herein respondents. On the other hand, the May 28, 2002 Resolution of the Court of Appeals denied the motion for reconsideration filed by petitioner.

The facts of this case, as narrated in the assailed Court of Appeals ruling, are as follows:

On November 9, 1999, the petitioner filed a Complaint-Affidavit charging respondents with Violation of Section 3 (e) of R.A. 3019

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[1] *Rollo,* pp. 33-42; penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Candido V. Rivera and Juan Q. Enriquez, Jr., concurring.

[2] *Id.* at 52.

[3] *Id.* at 25-32.

otherwise known as the Anti-Graft and Corrupt Practices Act, for Malversation of Public Funds thru Falsification of Public Documents and, administratively, for Grave Misconduct, Dishonesty, Gross Neglect of Duty, and Falsification of Official Documents.

The complaint averred that in a letter dated October 6, 1998, respondent Municipal Mayor Roy M. Loyola requested the Sangguniang Bayan of Carmona, Cavite for the creation of twenty-four (24) unappropriated positions for the inclusion in the 1998 Plantilla, to wit:

x x x x x x x x x

OFFICE OF THE MAYOR

One (1) Computer Programmer III – SG – 18
One (1) Licensing Officer II – SG – 15

GENERAL SERVICE OFFICE

One (1) Supply Officer III – SG – 18
Eight (8) Driver I – SG – 3
Two (2) Utility I – SG – 1

HUMAN RESOURCE MANAGEMENT OFFICE

One (1) HRM Officer II – SG – 15

TREASURER'S OFFICE

One (1) Local Rev. Coll. Officer II – SG – 15

ACCOUNTING OFFICE

One (1) Bookkeeper II – SG – 9

ENRO

Two (2) Environment Mngt. Specialist II – SG – 15
One (1) Clerk III – SG – 6

DA

Agriculture Chief Center IV – SG – 18
Farm Foreman – SG – 6
Three (3) Farm Worker II – SG – 4

On November 23, 1998, the Sangguniang Bayan of Carmona, Cavite passed Municipal Resolution No. 061-98 approving the creation of only 19 out of the 24 requested positions, under the different offices

of the Municipality of Carmona for inclusion in the 1998 Plantilla of Personnel. The following proposed positions were [allegedly] set aside:

x x x x x x x x x

DA

Agriculture Chief Center IV – SG – 18
Farm Foreman – SG – 6
Three (3) Farm Worker II – SG – 4

Despite the disapproval of the aforesaid positions, on April 5, 1999, the Personnel Selection Board presided by the respondent Municipal Mayor as Chairman with Amelia C. Samson, HRMO V, as Secretary, together with the following respondents – Board Members: Edwin E. Tolentino, Domingo R. Tenedero and Roel Z. Manarin, filled-up the aforesaid inexistent positions and appointed the following:

1. Irene C. Paduyos – Farm Foreman
2. Mustiola A. Mojica – Farm Worker II
3. Ma. Cecilia F. Alumia – Farm Worker II
4. Lilibeth R. Bayugo – Farm Worker II

The appointment papers of the aforesaid personnel were subsequently approved by the Civil Service Commission.

Thereafter, respondents Budget Officer Domingo C. Flores, Municipal Treasurer Alicia L. Olimpo, Municipal Accountant Annaliza L. Barabat, Municipal Agriculturist Nenita L. Ernacio and Municipal Administrator Amador B. Alumia, allowed and caused the payment of salaries of the aforesaid employees.

The petitioner further alleged that by the respondents' concerted efforts to make it appear that the inexistent positions were created, causing the unlawful payment of salaries to illegally appointed employees, the respondents are liable for malversation of public funds thru falsification of public documents. Likewise, the respondents are allegedly liable administratively for gross neglect of duty, grave misconduct, dishonesty and falsification of official documents.

The respondents filed their respective Counter-Affidavits on February 16, 2000, alleging among others that the Appropriation Ordinance No. 006-98 which is the Annual Budget of the Municipality of Carmona for the year 1999 carries with it the 24 positions requested in the letter-request dated October 6, 1998 of the

respondent Mayor for the inclusion of such 24 positions in the proposed 1998 Annual Budget. The approval of the budget was in the form of an ordinance. Moreover, the appointments were approved by the Civil Service Commission and the salaries were paid out of savings.

On March 9, 2000, the petitioner filed a Consolidated Reply refuting the allegations in the respondents' Counter-Affidavits, to which respondent Mayor Loyola filed a Rejoinder-Affidavit. On April 3, 2000, the petitioner submitted a Consolidated Rebuttal.

On May 23, 2000, upon recommendation of the OIC Deputy Ombudsman for Luzon Emilio A. Gonzales III, Ombudsman Aniano A. Desierto ordered the dismissal of the instant administrative Complaint for lack of merit. The respondent moved for a reconsideration of the aforesaid Decision which the respondents opposed. The said motion for reconsideration was however denied.[4]

Petitioner appealed the Ombudsman's dismissal order to the Court of Appeals but the appellate court merely affirmed the assailed ruling in its December 3, 2001 Decision. Undaunted, petitioner moved for reconsideration but this was denied by the Court of Appeals in its May 28, 2002 Resolution.

Hence, the instant petition.

Petitioner submits the following issues for consideration:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE QUESTIONED POSITIONS WERE CREATED BY CIRCUMSTANCES

II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENTS SHOULD BE DISMISSED FROM THE SERVICE FOR GRAVE MISCONDUCT, GROSS NEGLECT OF DUTY, DISHONESTY AND FALSIFICATION OF PUBLIC DOCUMENTS[5]

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[4] *Id.* at 34-37.

[5] *Id.* at 8.

Petitioner, then Vice-Mayor of Carmona, Cavite filed the present case against respondent Mayor, members of the Sangguniang Bayan, and municipal officials to expose the alleged malfeasance committed by the respondents. She maintains that when Appropriation Ordinance No. 006-98,[6] otherwise known as the 1999 Annual Budget for the Municipal Government of Carmona, Cavite was passed, the same did not create the 24 government positions at issue. Aside from the fact that no express provision for the creation of the government positions at issue can be found in the said ordinance, no intent on the part of the Sangguniang Bayan to include said positions can be gleaned from the Minutes of the Sangguniang Bayan Session held on November 9, 1998 when the said ordinance was passed. The Minutes would allegedly show that the proposed creation of 19 government positions was deferred until such time that the copy of the proposed 1999 *Plantilla* of Positions was submitted by respondent Amelia C. Samson to the Sangguniang Bayan.

On November 23, 1998, Municipal Resolution No. 061-98 was passed, mentioning the creation of 19 government positions out of the 24 government positions requested by respondent Roy M. Loyola (Loyola), who was then the Municipal Mayor. Thus, it was petitioner's theory that 5 of the 24 positions requested by respondent Loyola for inclusion in the plantilla were not validly created. When the 1999 *Plantilla* of Positions was submitted together with the Appropriation Ordinance No. 006-98 to the Sangguniang Panlalawigan for approval, the *Plantilla* or Personnel Schedule for the Department of Agriculture was allegedly drastically changed by respondents Loyola, Samson and Domingo Flores, making it appear that the five questioned positions were created and vacant. This was made possible because the preparation of the *Plantilla* or Personnel Schedule for the different offices of the Municipal Government of Carmona, Cavite was undertaken by respondent Samson, reviewed by respondent Flores, and approved by respondent Loyola.

Petitioner alleges that this is a clear case of falsification because the 1999 *Plantilla* allegedly did not indicate a specific amount

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[6] *Id.* at 53-54.

allocated for the created but vacant government positions at issue in the Proposed Budget for January-December 1999. Consequently, as purportedly admitted by respondent Flores, the funding for the government positions at issue was sourced from the savings of the municipal budget for 1999.

In the same manner, petitioner argued that the enactment of Appropriation Ordinance No. 001-99 (Annual Budget for 2000) on November 8, 1999 with the government positions at issue again reflected to have been created and funded, is also an act of falsification committed by respondents. The said continuing act of falsification prompted the petitioner to bring the same to the attention of the Sangguniang Bayan during its regular session on November 8, 1999. However, the Sangguniang Bayan members did not deliberate on such unwarranted inclusion. Hence, petitioner wrote a letter to the Presiding Officer of the Sangguniang Panlalawigan on November 16, 1999.

Petitioner likewise asserts that the approval by the Civil Service Commission of the questioned appointments is tainted with illegality; hence, void *ab initio*. In her view, what were approved are falsified and uncreated government positions; therefore, the confirmation or approval of the invalid appointments has no force and effect. Moreover, contrary to the Ombudsman's findings, whatever flaw that attended the creation of the government positions at issue had not been cured by Municipal Resolution No. 012-00 dated March 13, 2000 passed by the Sangguniang Bayan, affirming the creation of the assailed positions. The said Resolution is also allegedly an act of falsification committed by the Sangguniang Bayan members because they made it appear that the said positions were created.

On the other hand, respondents counter petitioner's assertions by asserting that the dismissal of the criminal case, which involved the same set of facts, allegations and arguments as the administrative case at bar, by the Ombudsman and later affirmed successively by the Court of Appeals *via* a Decision[7] dated

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[7] *Id.* at 77-87.

June 8, 2001 in CA-G.R. SP No. 61840 and by this Court in a minute Resolution[8] dated September 25, 2001 in G.R. No. 149534, effectively barred the review of the dismissal of the administrative complaint before this Court because of the application of the *law of the case* doctrine.

Respondents further argue that, as per jurisprudence on the matter, the reelection of respondent Loyola as Mayor of the Municipality of Carmona, Cavite during the May 14, 2001 local election had the effect of automatically abating the administrative charge leveled against him for an offense allegedly committed during his preceding term.

Moreover, respondents aver that under Section 7, Rule III of the Ombudsman Rules of Procedure, the decision of the Ombudsman in an administrative case absolving a respondent of the charge filed against him is final and unappealable, thus, the petition before the Court of Appeals and, subsequently, this Court should have been disallowed. In any case, the appeal before the Court of Appeals was filed beyond the reglementary period. Lastly, respondents contend that it is axiomatic that the factual findings of the Ombudsman and the Court of Appeals should be accorded great weight and finality.

After a careful review of the records, we find the petition to be without merit.

Before proceeding to the discussion on why the petitioner's contentions fail to convince, it is appropriate to restate here the *law of the case* doctrine in light of respondents' erroneous appreciation of the same.

In *Padillo v. Court of Appeals*,[9] we had occasion to explain this principle, to wit:

Law of the case has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule or decision between the

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[8] *Id.* at 88.

[9] 422 Phil. 334 (2001).

same parties in the same case continues to be the law of the case, *whether correct on general principles or not,* so long as the facts on which such decision was predicated continue to be the facts of the case before the court. As a general rule, a decision on a prior appeal of the same case is held to be the law of the case *whether that question is right or wrong,* the remedy of the party deeming himself aggrieved being to seek a rehearing.[10]

The concept of *law of the case* was further elucidated in the 1919 case of *Zarate v. Director of Lands*,[11] to wit:

A well-known legal principle is that when an appellate court has once declared the law in a case, such declaration continues to be the law of that case even on a subsequent appeal. The rule made by an appellate court, while it may be reversed in other cases, cannot be departed from in subsequent proceedings in the same case. The "Law of the Case," as applied to a former decision of an appellate court, merely expresses the practice of the courts in refusing to reopen what has been decided. Such a rule is "necessary to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal." Again, the rule is necessary as a matter of policy to end litigation. "There would be no end to a suit if every obstinate litigant could, by repeated appeals, compel a court to listen to criticisms on their opinions, or speculate of chances from changes in its members." x x x.[12]

The *law of the case* doctrine applies in a situation where an appellate court has made a ruling on a question on appeal and thereafter remands the case to the lower court for further proceedings; the question settled by the appellate court becomes the *law of the case* at the lower court and in any subsequent appeal.[13]

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[10] *Id.* at 351.

[11] 39 Phil. 747 (1919).

[12] *Id.* at 749.

[13] *Vios v. Pantangco, Jr.*, G.R. No. 163103, February 6, 2009, 578 SCRA 129, 143.

Contrary to respondents' assertion, the *law of the case* doctrine does not find application in the case at bar simply because what was involved in G.R. No. 149534 was a criminal proceeding while what we have before us is an administrative case. Although both cases possess a similar set of facts, allegations and arguments, they do not serve the same objectives and do not require the same quantum of evidence necessary for a finding of guilt or conviction/liability which makes them entirely different cases altogether and, therefore, beyond the purview of the legal principle of *law of the case*.

In administrative cases, substantial evidence is required to support any finding. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming.[14] While in criminal cases, the accused is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt.[15] Proof beyond reasonable doubt does not mean evidence that which produces absolute certainty; only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.[16]

Having disposed of that issue, we now proceed to discuss the reasons why the instant petition must fail.

On a procedural note, the assailed ruling of the Ombudsman obviously possesses the character of finality and, thus, not subject to appeal. The pertinent provision in this case is the old Section 7, Rule III of Ombudsman Administrative Order No. 7, Series of 1990 (*Rules of Procedure of the Office of the Ombudsman*), before it was amended by Ombudsman Administrative Order

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[14] *Orbase v. Office of the Ombudsman*, G.R. No. 175115, December 23, 2009, 609 SCRA 111, 126.

[15] Rules of Court, Rule 133, Section 2.

[16] *Cadiao-Palacios v. People*, G.R. No. 168544, March 31, 2009, 582 SCRA 713, 727.

No. 17, Series of 2003 (*Amendment of Rule III, Administrative Order No. 7*), which states that:

> Sec. 7. FINALITY OF DECISION. — Where the respondent is absolved of the charge and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari* shall have been filed by him as prescribed in Section 27 of RA 6770.

The basis for the said rule of procedure is Section 27 of Republic Act No. 6770 (*The Ombudsman Act*), to wit:

> Section 27. *Effectivity and Finality of Decisions*. — (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory.
>
> x x x x x x x x x
>
> Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

As shown by the aforementioned regulation and statute, a decision of the Ombudsman absolving the respondent of an administrative charge is final and unappealable.

The Court categorically upheld this principle in *Reyes, Jr. v. Belisario*,[17] to wit:

> Notably, exoneration is not mentioned in Section 27 as final and unappealable. However, its inclusion is implicit for, as we held in *Barata v. Abalos*, if a sentence of censure, reprimand and a one-month suspension is considered final and unappealable, so should exoneration.
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> The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an administrative complaint the right

[17] G.R. No. 154652, August 14, 2009, 596 SCRA 31.

to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case. The complainant, therefore, is not entitle to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or a fine equivalent to one month salary.

The absence of any *statutory* right to appeal the exoneration of the respondent in an administrative case does not mean, however, that the complainant is left with absolutely no remedy. *Over and above our statutes* is the Constitution whose Section 1, Article VIII empowers the courts of justice to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. This is an overriding authority that cuts across all branches and instrumentalities of the government and is implemented through the petition for *certiorari* that Rule 65 of the Rules of Court provides. A petition for *certiorari* is appropriate when a tribunal, clothed with judicial or quasi-judicial authority, acted without jurisdiction (*i.e.*, without the appropriate legal power to resolve a case), or in excess of jurisdiction (*i.e.*, although clothed with the appropriate power to resolve a case, it oversteps its authority as determined by law, or that it committed grave abuse of its discretion by acting either outside the contemplation of the law or in a capricious, whimsical, arbitrary or despotic manner equivalent to lack of jurisdiction). The Rules of Court and its provisions and jurisprudence on writs of *certiorari* fully apply to the Office of the Ombudsman as these Rules are suppletory to the Ombudsman's Rules. The Rules of Court are also the applicable rules in procedural matters on recourses to the courts and hence, are the rules the parties have to contend with in going to the CA.[18]

In the case at bar, the petitioner did not file a petition for *certiorari* under Rule 65 of the Rules of Court and instead filed a petition for review under Rule 43 of the Rules of Court with the Court of Appeals. The latter is effectively an appeal to the Court of Appeals which is disallowed by the Rules of Procedure of the Office of the Ombudsman as well as the

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

Ombudsman Act in case the respondent is exonerated by the Ombudsman for an administrative charge.

In any event, the instant petition failed to show any grave abuse of discretion or any reversible error on the part of the Ombudsman in issuing its assailed administrative decision, as affirmed by the Court of Appeals, which would compel this Court to overturn it.

Elementary is the rule that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when they are affirmed by the Court of Appeals. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made. In reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. It is not the function of this Court to analyze and weigh the parties' evidence all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result.[19]

The Court quotes with approval the findings and conclusion of the assailed Ombudsman ruling which was also adopted by the Court of Appeals:

> We believe that the questioned positions had been created under the circumstances. Evidence shows that on October 6, 1998, respondent Mayor Loyola requested the Sanggunian to create twenty-four (24) positions by including the same in the 1998 plantilla. Such creation has been taken up by the Sanggunian in its session and traces of favorable action thereon has been shown in the minutes of the Sanggunian session held on November 19, 1998 when the 1999 Annual Budget was taken up (pp. 3-4, Complainants Consolidated Reply). Though the four (4) positions had not been created by a separate ordinance, its creation has been made when the Sanggunian included

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[19] *Bascos, Jr. v. Taganahan*, G.R. No. 180666, February 18, 2009, 579 SCRA 653, 674-675.

them in the 1999 Plantilla of Positions under Ordinance No. 006-98 enacting the 1999 Annual Budget.

The positions having been created, personnel were appointed thereto by the respondent Mayor which appointments were confirmed by the Civil Service Commission. Since the appointments were confirmed/ approved by the CSC all questions pertaining thereto including the validity of the creation of positions has been rendered moot and academic. It is the CSC which is empowered to look into the validity of creation of positions and appointments thereto. Also, such confirmation further strengthened the presumption of regularity of official functions particularly the creation of position.

There being a valid appointment confirmed by CSC and the concerned personnel having rendered services, payment of their salaries is proper and legal. Thus, respondent Flores, as Budget Officer; Olimpo as Treasurer; Barabat as Accountant; Alumia as Administrator and Ernacio as the Agriculturist/Head of Office acted in accordance with law when they processed and allowed the payment of salaries to the four (4) employees. The payment of salaries to the employees who has rendered service to the government does not constitute grave misconduct, neglect of duty and dishonesty.

The appointments made by respondent Loyola including the selection and screening of employees by the Selection Board could not be considered grave misconduct and dishonesty by respondents who compose the Board. There were vacant positions caused by the creation of positions and the exigencies of the service demand that these vacancies should be filled up. There is misconduct if there is a transgressi[on] of some established and definite rule of action (Phil. Law Dictionary, 3rd Edition, Federico B. Moreno). In the instant case, evidence show that respondents did not transgress some established and definite rule of action. Had there been a transgression in the creation of positions and appointments thereto, the Civil Service Commission should have so stated when the appointments were submitted for approval/confirmation.

Since the appointed personnel has already rendered service, the processing and payment of their salaries was but legal and proper and does not constitute dishonesty, falsification and neglect of duty on the part of the respondents responsible therefore. Had respondents refused to pay the salaries of the concerned employees, they could have been held liable for neglect of duty.

In sum, respondents could not be held administratively liable since their official actions starting from the creation of positions to selection of personnel, appointment, and ultimately payment of salaries were all in accordance with the law.[20]

To reiterate, the Court is not a trier of facts. As long as there is substantial evidence in support of the Ombudsman's decision, that decision will not be overturned.[21] We are also guided by the ruling in *Cortes v. Bartolome*,[22] which similarly dealt with a purportedly invalid appointment to an allegedly inexistent office, to wit:

It is undisputed that on January 1, 1976, there was no existing position of "Sangguniang Bayan" Secretary in the organizational set-up of the municipal Government of Piddig, Ilocos Norte. Neither was there any appropriation for the said position in the municipal budget for 1975-1976 although an appropriation for the position of Municipal Secretary was retained in said budget.

Respondent took his oath of office before Mayor Aquino on February 1, 1976.

In a special session held on February 23, 1976, the "Sangguniang Bayan" of Piddig passed Resolution No. 1 creating the position of "Sangguniang Bayan" Secretary as a "vital" position, and Resolution No. 2 revalidating the appointment of respondent as such.

x x x x x x x x x

While it may be that at the time of appointment, no position of "Sangguniang Bayan" Secretary formally existed, **whatever defect there may have been initially was cured subsequently by the creation of said position and the revalidation of respondent's appointment**. That appointment **was ultimately approved by the Civil Service Commission** on May 11, 1976 thus **giving it the stamp of finality**. x x x[23] (Emphases supplied.)

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[20] *Rollo*, pp. 30-31.

[21] *Francisco, Jr. v. Desierto*, G.R. No. 154117, October 2, 2009, 602 SCRA 50, 125, citing *Morong Water District v. Office of the Deputy Ombudsman*, 385 Phil. 45, 58 (2000).

[22] 188 Phil. 148 (1980).

[23] *Id.* at 150-154.

In the case at bar, the 24 new positions were included in Ordinance No. 006-98 enacting the 1999 Annual Budget. Subsequently, the Sangguniang Bayan later affirmed the creation of all questioned positions in separate resolutions and continued to include the said positions in the appropriations in subsequent budget ordinances. It is likewise undisputed that the questioned appointments were all approved by the Civil Service Commission.

In view of the foregoing, petitioner's underlying premise for her administrative complaint, *i.e.*, the alleged non-creation of the subject positions, cannot be upheld and thus, it is no longer necessary to pass upon the remaining corollary issues of the instant petition.

WHEREFORE, premises considered, the petition is hereby *DENIED*. The assailed Decision dated December 3, 2001 as well as the Resolution dated May 28, 2002 of the Court of Appeals in CA-G.R. SP No. 61841 are *AFFIRMED*. The assailed Decision dated May 23, 2000 of the Ombudsman in OMB-ADM-1-99-1035 is likewise *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, del Castillo, and *Villarama, Jr., JJ.*, concur.

FIRST DIVISION

[G.R. No. 156686. July 27, 2011]

NEW SUN VALLEY HOMEOWNERS' ASSOCIATION, INC., *petitioner, vs.* **SANGGUNIANG BARANGAY, BARANGAY SUN VALLEY, PARAÑAQUE CITY, ROBERTO GUEVARRA IN HIS CAPACITY AS PUNONG BARANGAY and MEMBERS OF THE SANGGUNIANG BARANGAY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; VALIDITY OF DISMISSAL, UPHELD.— The Court of Appeals passed upon petitioner's claims as to the validity of the dismissal in this wise: We do not agree. Although the Motion to Dismiss was filed on the same day, but after, the Amended Petition was filed, the same cannot be considered as directed merely against the original petition which Appellant already considers as non-existing. The records will show that Appellant's Amended Petition contained no material amendments to the original petition. Both allege the same factual circumstances or events that constitute the Appellant's cause of action anent the Appellee's alleged violation of Appellant's propriety rights over the subdivision roads in question. Corollarily, the allegations in Appellees' Motion to Dismiss, as well as the grounds therefore predicated on lack of cause of action and jurisdiction, could very well be considered as likewise addressed to Appellant's Amended Petition. x x x It bears stressing that due process simply means giving every contending party the opportunity to be heard and the court to consider every piece of evidence presented in their favor (*Batangas Laguna Tayabas Bus Company versus Benjamin Bitanga*, G.R. Nos. 137934 & 137936[)]. In the instant case, Appellant cannot be said to have been denied of due process. As borne by the records, while Appellees' Motion to Dismiss did not set the time for the hearing of the motion, the day set therefore was the same date set for the hearing of Appellant's prayer for the issuance of a writ of preliminary injunction – that is, November 20, 1998, with the precise purpose of presenting evidence in support of the motion to dismiss on the same said scheduled hearing date and time when Appellant and its counsel would be present. Moreover, Appellant's predication of lack of due hearing is belied by the fact that the hearing held on November 20, 1999 took up not only the matter of whether or not to grant the injunction, but also tackled the jurisdictional issue raised in Appellees' Motion to Dismiss, which issues were intertwined in both incidents.

2. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; RATIONALE; DISMISSAL OF THE CASE FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES, PROPER.—

Petitioner's recourse in questioning BSV Resolution No. 98-096 should have been with the Mayor of Parañaque City, as clearly stated in Section 32 of the Local Government Code x x x We do not see how petitioner's act could qualify as an exception to the doctrine of exhaustion of administrative remedies. We have emphasized the importance of applying this doctrine in a recent case, wherein we held: The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed. It is the Mayor who can best review the *Sangguniang Barangay*'s actions to see if it acted within the scope of its prescribed powers and functions. Indeed, this is a local problem to be resolved within the local government. Thus, the Court of Appeals correctly found that the trial court committed no reversible error in dismissing the case for petitioner's failure to exhaust administrative remedies, as the requirement under the Local Government Code that the closure and opening of roads be made pursuant to an ordinance, instead of a resolution, is not applicable in this case because the subject roads belong to the City Government of Parañaque.

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; THE PARTY MAKING ALLEGATIONS HAS THE BURDEN OF PROVING THE ALLEGATIONS BY PREPONDERANCE OF EVIDENCE; NOT ESTABLISHED IN CASE AT BAR.— In civil cases, it is a basic rule that the party making allegations has the burden of proving them by a preponderance of evidence. Parties must rely on the strength of their own evidence and not upon the weakness of the defense offered by their opponent. Petitioner dared to question the *barangay*'s ownership over the subject roads when it should have been the one to adduce evidence to support its broad claims of exclusivity and privacy. Petitioner did not submit an iota of proof to support its acts of ownership, which, as pointed out by respondents, consisted of closing the subject roads that belonged to the then

Municipality of Parañaque and were already being used by the public, limiting their use exclusively to the subdivision's homeowners, and collecting fees from delivery vans that would pass through the gates that they themselves had built. It is petitioner's authority to put up the road blocks in the first place that becomes highly questionable absent any proof of ownership.

4. ID.; ID.; JUDICIAL NOTICE, WHEN MANDATORY; CRIMINAL ACTIVITIES CLAIMED TO BE PART OF JUDICIAL KNOWLEDGE ARE NOT FOUND IN THE RULES; CASE AT BAR.— [Petitioner] even wants this Court to take "judicial knowledge that criminal activities such as robbery and kidnappings are becoming daily fares in Philippine society." This is absurd. The Rules of Court provide which matters constitute judicial notice, to wit: Rule 129 WHAT NEED NOT BE PROVED SECTION 1. *Judicial notice, when mandatory.*— A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. The activities claimed by petitioner to be part of judicial knowledge are not found in the rule quoted above and do not support its petition for injunctive relief in any way.

APPEARANCES OF COUNSEL

Law Firm of Villanueva Nuñez & Associates for petitioner.
Ceferino Padua for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court against the **Decision**[1] dated October 16,

[1] *Rollo*, pp. 39-47; penned by Associate Justice Candido V. Rivera with Associate Justices Godardo A. Jacinto and Associate Justice Mariano C. del Castillo (now a member of this Court), concurring.

2002 in **CA-G.R. CV No. 65559** and the **Resolution**[2] dated January 17, 2003, both of the Court of Appeals.

The facts are as follows:

The *Sangguniang Barangay* of *Barangay* Sun Valley (the "BSV *Sangguniang Barangay*") issued **BSV Resolution No. 98-096**[3] on October 13, 1998, entitled "Directing the New Sun Valley Homeowners Association to Open Rosemallow and Aster Streets to Vehicular and Pedestrian Traffic," the pertinent portions of which read as follows:

> NOW, THEREFORE, be it resolved as it is hereby resolved by the Sangguniang Barangay in session assembled that —
>
> 1. Pursuant to its power and authority under the Local Government Code of 1991 (Rep. Act No. 7160), the New Sun Valley Homeowners Association (NSVHA) is hereby directed to open Rosemallow and Aster Sts. to vehicular (private cars only) and pedestrian traffic at all hours daily except from 11 p.m. to 5 a.m. at which time the said streets may be closed for the sake of the security of the residents therein.
>
> 2. The *Barangay* government take steps to address the security concerns of the residents of the area concerned, including the possible assignment of a *barangay* tanod or traffic enforcer therein, within the limits of the authority and financial capability of the *Barangay*.
>
> 3. This Resolution shall become executory within 72 hours upon receipt hereof by the Association or any of its members.[4]

The New Sun Valley Homeowners Association, Inc. (NSVHAI), represented by its President, Marita Cortez, filed a **Petition**[5] for a "Writ of Preliminary Injunction/Permanent Injunction with prayer for issuance of TRO" with the Regional Trial Court (RTC) of Parañaque City. This was docketed as **Civil Case No. 98-0420**. NSVHAI claimed therein that the implementation

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[2] *Id.* at 37.

[3] *Id.* at 53-54.

[4] *Id.* at 53.

[5] *Id.* at 55-58.

of BSV Resolution No. 98-096 would "cause grave injustice and irreparable injury" as "[the] affected homeowners acquired their properties for strictly residential purposes";[6] that the subdivision is a place that the homeowners envisioned would provide them privacy and "a peaceful neighborhood, free from the hassles of public places";[7] and that the passage of the Resolution would destroy the character of the subdivision. NSVHAI averred that contrary to what was stated in the BSV Resolution, the opening of the gates of the subdivision would not in any manner ease the traffic congestion in the area, and that there were alternative routes available. According to NSVHAI, the opening of the proposed route to all kinds of vehicles would result in contributing to the traffic build-up on Doña Soledad Avenue, and that instead of easing the traffic flow, it would generate a heavier volume of vehicles in an already congested choke point. NSVHAI went on to state that a deterioration of the peace and order condition inside the subdivision would be inevitable; that the maintenance of peace and order in the residential area was one of the reasons why entry and exit to the subdivision was regulated by the Association and why the passing through of vehicles was controlled and limited; and that criminal elements would take advantage of the opening to public use of the roads in question.[8]

NSVHAI further contested the BSV Resolution by submitting the following arguments to the RTC:

> 12. The road network inside the subdivision and drainage system is not designed to withstand the entry of a heavy volume of vehicles especially delivery vans and trucks. Thus, destruction of the roads and drainage system will result. The safety, health and well-being of the residents will face continuous danger to their detriment and prejudice;
>
> 13. When the residents bought their residential properties, they also paid proportionately for the roads and the park in then subdivision.

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[6] *Id.* at 56.

[7] *Id.*

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

They have therefore an existing equity on these roads. To open the roads to public use is a violation of the rights and interests to a secure, peaceful and healthful environment;

14. Aside from the availability of a better route to be opened, there are other ways to ease traffic flow. The continuous presence of traffic enforcers on all identified traffic choke points will prevent snarls which impede smooth travel. The strict enforcement of traffic rules and regulations should be done;

15. There are a lot of undisciplined drivers of tricycles, jeepneys, trucks and delivery [vans], which contribute to the traffic congestion. The *barangay* should require these drivers to observe road courtesy and obedience to traffic rules[.][9]

Executive Judge Helen Bautista-Ricafort of the RTC issued a **Temporary Restraining Order**[10] **(TRO)** in Civil Case No. 98-0420 on October 30, 1998. Said Order provides:

Acting on the Application for Writ of Preliminary Injunction/ Permanent Injunction with Prayer for Issuance of a Temporary Restraining Order, filed by plaintiff and considering that there is extreme urgency, such that unless the same is issued, plaintiff would suffer grave injustice and/or irreparable injury, let a Temporary Restraining Order issue directing the Sangguniang Barangay as represented by Punong Barangay Roberto Guevarra to cease and desist from the implementation of Resolution No. 98-096 or otherwise maintain the *status quo* until further Orders of this Court.

This Temporary Restraining Order shall be effective for seventy two (72) hours from issuance hereof, unless extended by another Order of this Court.

Let this case be set for special raffle and conference on November 3, 1998 at 10:30 in the morning.

On November 3, 1998, the RTC issued another **Order**[11] stating that, by agreement of the parties, the *status quo* shall be

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[9] *Id.* at 57.

[10] *Id.* at 67.

[11] *Id.* at 68.

maintained for seventeen (17) more days, and that the case was set for hearing on the prayer for the issuance of a writ of preliminary injunction on November 20, 1998 at 8:30 a.m.

NSVHAI submitted an **Amended Petition**[12] on November 13, 1998, at about 11:10 a.m., wherein it claimed that the BSV *Sangguniang Barangay* had no jurisdiction over the opening of Rosemallow and Aster Streets (the "subject roads"). NSVHAI likewise attached to its Amended Petition its Position Paper[13] dated July 21, 1998, which set forth its objection to the opening of the subject roads for public use and argued that a ***Barangay* Resolution** cannot validly cause the opening of the subject roads because under the law, an **ordinance** is required to effect such an act.[14]

The BSV *Sangguniang Barangay* filed its **Motion to Dismiss**[15] likewise on November 13, 1998. The copy provided by petitioner to the Court indicates the time of receipt by NSVHAI as 11:00 a.m.[16]

The RTC heard the case on November 20, 1998, as scheduled, and thereafter submitted the matter for decision.[17] On the same date, the RTC issued the following **Order**[18]:

Acting on the prayer for the issuance of a writ of preliminary injunction filed by petitioner, it appearing that petitioner may suffer grave injustice or irreparable injury, let a writ of preliminary injunction issue prohibiting the Sangguniang Barangay represented

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[12] *Id.* at 69-72. The Amended Petition, although stamped received on November 13, 1998, was dated October 28, 1998. The copy submitted to the court was marked (SIGNED) by the representative of NSVHAI, but no signature appears on the document.

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

[14] *Id.* at 70.

[15] *Id.* at 79-85.

[16] *Id.* at 79.

[17] *Id.* at 314-315.

[18] *Id.* at 95.

by Punong Barangay Roberto Guevarra from implementing Resolution No. 98-096 until further orders from this Court.

Petitioner is directed to file a bond in the amount of ONE HUNDRED THOUSAND (₱100,000.00) PESOS (*sic*) to answer for damages to defendants in the event the Court finds petitioner is not entitled to said injunction.

The BSV *Sangguniang Barangay* filed on December 4, 1998 a **Motion for Reconsideration and to Dissolve Preliminary Injunction (with Memorandum of Authorities)**.[19]

NSVHAI then filed an **Urgent Ex-Parte Motion to Expunge** on December 10, 1998, moving to declare the above motion of the BSV *Sangguniang Barangay* as a mere scrap of paper for being filed out of time and for failure to serve a copy thereof to the counsel of petitioner.

The RTC subsequently dismissed the case in an **Order**[20] dated August 17, 1999, stating as follows:

Defendant Barangay Sun Valley moves to dismiss the instant case on the grounds that the complaint states no cause of action and the court has no jurisdiction over the subject matter. In summary, defendant alleges that the subject streets Aster and Rosemallow inside Sun Valley Subdivision are owned by the local government. Such streets have long been part of the public domain and beyond the commerce of man. In support of this, defendant cited the case of *White Plains Association, Inc. vs. Legaspi*, 193 SCRA 765 wherein it was held that road lots of subdivisions constitute a part of the mandatory open space reserved for public use; ownership of which is automatically vested in the Republic of the Philippines although it is still registered in the name of the developer/owner, its donation to the government is a mere formality." The power or authority to close or open the said streets is vested in the local government units and not on homeowner's associations, pursuant to Section 21 of the local Government Code (RA 7160) quoted as follows: "Section 21. Closure and Opening of Roads. (a) A local government unit may, pursuant to an ordinance, permanently or temporarily close or open any local

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[19] *Id.* at 96-101.

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

road, alley, park, or square falling within its jurisdiction x x x." In view thereof, Resolution No. 98-096 was passed by the Sangguniang Barangay. Hence there is no right whatsoever on the part of Plaintiff NSVHAI entitled to the protection of the law. Further, defendant contends that petitioner failed to exhaust administrative remedies as ordained in Sections 32 and 57 of the Local Government Code giving the city mayor the supervisory power, and the power of review by the Sangguniang Panlungsod, respectively.

No opposition to the motion to dismiss was filed by the Plaintiff.

Same defendant seeks to reconsider the order granting the issuance of the writ of preliminary injunction alleging that there is a pending motion to dismiss and Plaintiff has not been able to establish an actually existing right.

Plaintiff has not filed an opposition thereto, instead it filed an urgent *ex-parte* motion to expunge the motion for reconsideration on the ground that its counsel has not been furnished with a copy of the motion for reconsideration, but the record shows that Maria Cortez (plaintiff's representative) has received a copy of said motion.

After considering the arguments of the parties in their respective pleadings, this court hereby resolves as follows:

1. The "Motion for Reconsideration" and the "Urgent *Ex-parte* Motion to Expunge (motion for reconsideration)" are Denied being devoid of merit; and

2. The "Motion to Dismiss" is hereby Granted for failure of the plaintiff to exhaust the administrative remedies under Sections 32 and 57 of the Local Government Code.

WHEREFORE, let this case be as it is hereby ordered Dismissed. The writ of preliminary injunction is hereby lifted.[21]

NSVHAI filed a **Motion for Reconsideration**[22] of the above-quoted Order but this was denied by the RTC for lack of merit in an **Order**[23] dated September 21, 1999.

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[21] *Id*.

[22] *Id.* at 107-116.

[23] *Id*. at 52.

NSVHAI raised the matter to the Court of Appeals and the case was docketed as **CA-G.R. CV No. 65559**. NSVHAI alleged that "despite the lack of the required hearing"[24] and without any order requiring it to submit its Comment/Opposition to the BSV *Sangguniang Barangay*'s Motion to Dismiss or that of submitting said Motion for resolution, Judge Bautista-Ricafort issued an Order which, to NSVHAI's complete surprise, granted the Motion. NSVHAI argued that the RTC gravely erred in taking cognizance of, and thereafter ruling on, said Motion and refusing to exercise jurisdiction over the subject matter of Civil Case No. 98-0420. Petitioner likewise argued that the RTC committed serious errors which, if not corrected, would cause grave or irreparable injury to petitioner and cause a violation of law.[25]

The BSV *Sangguniang Barangay*, Roberto Guevarra in his capacity as *Punong Barangay*, and members of the *Sangguniang Barangay* (hereinafter, "respondents"), in their Appellees' Brief, argued as follows:

I

THE TRIAL COURT DID NOT ERR IN GRANTING DEFENDANTS-APPELLEES' MOTION TO DISMISS DUE TO LACK OF CAUSE OF ACTION AND JURISPRUDENCE OVER THE SUBJECT MATTER AND APPELLANT'S FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES. AS NOTED BY THE COURT, NO OPPOSITION TO THE MOTION TO DISMISS WAS EVER FILED BY APPELLANT.

II

THE TRIAL COURT'S DISMISSAL OF THE ACTION ASSAILING ITS SUBJECT-MATTER, BARANGAY RESOLUTION NO. 98-096, CONSISTING OF A DIRECTIVE OF AN LGU TO A DEFIANT PRIVATE ORGANIZATION WITHIN ITS JURISDICTION, IS JUDICIAL RECOGNITION OF THE SOLE COMPETENCE AND WISE DISCRETION OF THE BARANGAY OVER A LOCAL TRAFFIC PROBLEM.

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[24] *Id.* at 131.

[25] *Id.* at 126.

III

THE TRIAL COURT DID NOT COMMIT ANY SERIOUS ERROR, PROCEDURAL OR SUBSTANTIVE, AS FOUND BY THE COURT *A QUO*. IT IS APPELLANT THAT HAS COMMITTED THE ERROR OF NOT EXHAUSTING ADMINISTRATIVE REMEDIES. HENCE, NO GRAVE OR IRREPARABLE INJURY CAN BE CAUSED TO APPELLANT FOR IT HAS NO RIGHT TO PROTECT.[26]

Respondents claimed that Barangay Resolution No. 98-096 was simply a directive to petitioner, "a private aggrupation of some self-seeking homeowners,"[27] and was just a measure of internal policy among residents; that the opening of roads for traffic reasons was "within the sole competence of the *barangay* to determine";[28] and the Mayor could have chosen, as it was within his power to do so, to cause the demolition of the gates, which were illegally built by petitioner and therefore were obstructions on the road, even without a *Barangay* resolution. Respondents likewise claimed that the BSV's action could be considered a political question, which should be essentially withdrawn from judicial cognizance, and constitutional law doctrine provides that the courts would not interfere with political issues unless grave abuse of discretion is shown, of which there was none on the part of the *Barangay*. Respondents argued that petitioner did not have any actual legal right entitled to the protection of the law.[29]

Respondents attached to their Appellees' Brief six documents, labeled as Annexes "2" to "7", all stamped "Certified True Copy" by a certain Roman E. Loreto, Legal Officer II of Legal Department.[30] The detailed information contained in each of the documents that comprise respondents' Annexes "2" to "7" is copied below:

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[26] *Id.* at 161-162.

[27] *Id.* at 163.

[28] *Id.* at 164.

[29] *Id.* at 163-165.

[30] *Id.* at 179-184.

1. **1st Indorsement**[31] from the Office of the Mayor of Parañaque dated May 20, 1988, signed by Luzviminda A. Concepcion, Administrative Officer II**,** stating as follows:

> Respectfully indorsed to Atty. Antonio G. Cruz, Municipal Attorney, of this municipality the herein attached "Original Copies of Transfer Certificate of Title for Sun Valley Open Space and Road Lots" with TCT Nos. 133552, 119836, and 122443 for your appropriate actions.

2. **Letter**[32] dated December 27, 1990 from Francisco B. Jose, Jr., Municipal Attorney of Parañaque, addressed to the Municipal Council Secretary, which reads:

> This has reference to your request dated December 18, 1990 relative to the letter of inquiry of the Barangay Captain of Barangay Sun Valley dated December 13, 1990.
>
> We wish to inform you that based on the available records of our office the open space and road lots of Sun Valley Subdivision is already owned by the Municipal Government of Parañaque as evidenced by TCT NOS. 133552, 119836, and 122443. Copies of which are hereto attached for your ready reference.
>
> Considering that the Municipality of Parañaque is the registered owner of the road lots of Sun Valley Subdivision, we are of the opinion that the roads become public in use and ownership, and therefore, use of the roads by persons other than residents of the Subdivision can no longer be curtailed. However, should the Municipal Government decides to delegate its right to regulate the use of the said roads to the Sun Valley Homeowner's Association or Sun Valley Barangay Council, such right may be exercise[d] by said association or council.

3. **Certification**[33] dated October 8, 1990 issued by Francisco B. Jose, Jr. under the letterhead of the Office of the Municipal Attorney of Parañaque, which reads:

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[31] *Id.* at 179.

[32] *Id.* at 180.

[33] *Id.* at 181.

This is to certify that based on the available records of this Office, the open space and road lots of Sun Valley Subdivision has been donated and now owned by the Municipality of Parañaque, as evidenced by TCT Nos. 133552, 119836, and 122443 copies of which are hereto attached.

This certification is being issued upon the request of Mr. Mario Cortez, President of Sun Valley Homeowners Association.

4. Certification[34] dated June 13, 1994, again signed by Francisco B. Jose, Jr., of the Office of the Municipal Attorney, providing as follows:

This is to certify that based on the available records of this Office, the only road lots in Sun Valley Subdivision titled in the name of the Municipality of Parañaque are those covered by Transfer Certificates of Title Nos. 133552 and 122443.

This certification is being issued upon the request of Coun. Manuel T. De Guia.

5. Certification[35] dated March 2, 1995 issued by Rodolfo O. Alora, OIC, Asst. Municipal Legal Officer, which reads:

This is to certify that based on the available records of this Office, the open space within Sun Valley Subdivision has already been donated to the Municipality as evidenced by Transfer Certificate of Title No. 119836, copy of which is hereto attached.

This certification is being issued upon the request of Atty. Rex G. Rico.

6. Certification[36] dated October 26, 1998 issued by Ma. Riza Pureza Manalese, Legal Researcher, Office of the Municipal Attorney, Parañaque City, which reads:

This is to certify that based on the available records of this Office, road lots of Sun Valley Subdivision have already been donated to the Municipality of Parañaque as evidenced by TCT NO. 133552, 119836, and 122443.

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[34] *Id.* at 182.

[35] *Id.* at 183.

[36] *Id.* at 184.

This certification is being issued upon the request of **MR. WILLIAM UY**.

The Court of Appeals issued a **Decision** dated October 16, 2002 denying the appeal and affirming the Orders of the RTC dated August 17, 1999 and September 21, 1999. The Court of Appeals likewise denied NSVHAI's Motion for Partial Reconsideration in its **Resolution** promulgated on January 17, 2003, stating that after a thorough study of the Motion for Reconsideration, it found no sufficient reason to deviate from its findings and conclusion reached in its decision.

Thus, NSVHAI (hereinafter, "petitioner") went to this Court.

Arguments of Petitioner

Petitioner alleges that the decision of the Court of Appeals was based on "facts that [were] outside of the original Petition and Amended Petition and on supposed findings of facts that are not even evidence offered before the court *a quo.*"[37] Petitioner likewise alleges that the facts used by the Court of Appeals in dismissing the case were contrary to the records of Civil Case No. 98-0420.

Petitioner lists the following as its Questions of Law:

A

In sustaining the dismissal of Civil Case No. 98-0420, the Honorable Court of Appeals sanctioned the departure of the Regional Trial Court from the accepted and usual course of judicial proceedings

B

Whether or not the issuance of the Resolution promulgated January 17, 2003 and the Decision promulgated October 16, 2002 by the Former 4th Division and the 4th Division of the Court of Appeals sustaining the validity of dismissal of Civil Case No. 98-0420 is not in accord with law or with the applicable decisions of this Honorable Supreme Court

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[37] *Id.* at 17.

C

Whether or not the Honorable Court of Appeals, with due respect, departed from the accepted and usual course of judicial proceedings by making findings of fact not supported by evidence of record[38]

Petitioner avers that the hearing for the respondents' Motion to Dismiss was set on November 20, 1998, without indication as to time and that during the hearing on such date, counsel for respondents moved that their Motion to Dismiss be heard over the objection of counsel for petitioner, who explained that there was an urgency in ruling on the prayer for the issuance of a writ of preliminary injunction in view of the expiration of the temporary restraining order (TRO).[39]

Petitioner quotes the transcript of stenographic notes (TSN) from the November 20, 1998 hearing before the RTC in the following manner:

Atty. Herrera:

Then, Your Honor, I files [*sic*] a motion petitioning to dismiss this instant case, which should be resolved first before hearing this case.

Atty. Nuñez:

Your Honor, please, with due respect to the opposing counsel, the hearing today is supposed to be on the presentation of petitioner's evidence in support of its prayer for preliminary injunction. In connection with the amended complaint, I guess **it is a matter of right to amend its pleading. What happened here, the amended petition was filed before this Honorable Court on November 13 at 11:10 a.m. but I think the motion to dismiss was filed by the respondent on November 13 at 11:20 a.m.. Therefore, it is the right of the petitioner insofar as the case is concerned.**

And therefore, this Court should proceed with the hearing on the preliminary injunction instead of entertaining this matter. The temporary restraining order will expire today and we have the right to be heard.

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[38] *Id.* at 18.

[39] *Id.* at 13.

Court:

We will proceed first with the hearing (referring to the scheduled hearing of the prayer for the issuance of the writ of preliminary injunction). (*Transcript of Stenographic Notes, November 20, 1998)* (Underscoring and explanation petitioner's.)[40]

Petitioner claims that the RTC proceeded to hear the prayer for the issuance of a preliminary injunction and no hearing was conducted on the Motion to Dismiss. Petitioner reiterates its earlier claim that it did not receive an order requiring it to submit its Comment/Opposition to the Motion to Dismiss or informing it that said Motion had been submitted for resolution.[41]

Petitioner alleges that the dismissal of Civil Case No. 98-0420 arose from the grant of respondents' Motion to Dismiss. Petitioner claims that it filed its Amended Petition on November 13, 1998 at 11:10 a.m., or before respondents served any responsive pleading, or before they had filed their Motion to Dismiss on the same date at about 11:20 a.m.[42] Petitioner avers that the filing of said Amended Petition was a matter of right under Section 2, Rule 10 of the 1997 Rules of Civil Procedure, and had the effect of superseding the original petition dated October 28, 1998. Petitioner concludes that the Motion to Dismiss was therefore directed against a non-existing Petition.[43]

Petitioner argues that the RTC's ruling on the Motion to Dismiss is contrary to procedural law because no hearing was conducted on said Motion to Dismiss; that said motion violated Section 5, Rule 10 of the 1997 Rules of Civil Procedure for failing to set the time of hearing thereof; and that instead of being resolved, said motion should have been declared as a mere scrap of worthless paper.[44]

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[40] *Id.* at 24.

[41] *Id.* at 14.

[42] *Id.* at 12.

[43] *Id.* at 22-23.

[44] *Id.* at 23.

Petitioner claims that during the proceedings before the RTC on November 20, 1998, both parties manifested that the Motion to Dismiss was never set for hearing, and that when Judge Bautista-Ricafort said, "We will proceed first with the hearing,"[45] she was referring to the scheduled hearing of the prayer for the issuance of the writ of preliminary injunction. Petitioner claims that it is crystal clear that it was deprived due process when a ruling was had on the Motion to Dismiss despite the clear absence of a hearing. Petitioner concludes that the Court of Appeals was manifestly mistaken when it ruled that due process was observed in the issuance of the assailed Orders of Judge Bautista-Ricafort, despite the lack of opportunity to submit a comment or opposition to the Motion to Dismiss and the lack of issuance of an order submitting said motion for resolution. Petitioner alleges that the Court of Appeals sanctioned the ruling of the RTC that violated both substantial and procedural law.[46]

Moreover, petitioner avers that contrary to the ruling of the Court of Appeals, the RTC had jurisdiction to hear and decide the Amended Petition, and the doctrine of exhaustion of administrative remedies was not applicable. This is because, according to petitioner, such doctrine "requires that were a remedy before an administrative agency is provided, relief must first be sought from the administrative agencies prior to bringing an action before courts of justice."[47] Petitioner claims that when it filed Civil Case No. 98-08420, it did not have the luxury of time to elevate the matter to the higher authorities under Sections 32 and 57 of the Local Government Code. Petitioner alleges that the tenor of BSV Resolution No. 98-096 necessitated the immediate filing of the injunction case on October 29, 1998, to forestall the prejudicial effect of said resolution that was to take effect two days later. Thus, petitioner claims that it had

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[45] *Id.* at 24.

[46] *Id.* at 26-27.

[47] *Id.* at 20; citing De Leon and De Leon, Jr., Administrative Law: Text and Cases (1993 Edition), p. 320.

no other plain, speedy, and adequate remedy except to file the case.[48]

Anent the question of whether the *Sangguniang Barangay* should have passed an ordinance instead of a resolution to open the subject roads, petitioner alleges that the Court of Appeals should not have relied on respondents' claim of ownership, as this led to the erroneous conclusion that there was no need to pass an ordinance. Petitioner insists that the supposed titles to the subject roads were never submitted to the RTC, and the respondents merely attached certifications that the ownership of the subject roads was already vested in the City Government of Parañaque City as Annexes to their Appellees' Brief before the Court of Appeals. Those annexes, according to petitioner, were not formally offered as evidence.[49]

Petitioner avers that the records of Civil Case No. 98-0420 clearly show that there was no proof or evidence on record to support the findings of the Court of Appeals. This is because, allegedly, the dismissal of said case was due to the grant of a motion to dismiss, and the case did not go to trial to receive evidence.[50] Petitioner avers that a motion to dismiss hypothetically admits the truth of the facts alleged in the complaint.[51] In adopting the annexes as basis for its findings of fact, the Court of Appeals allegedly disregarded the rules on Evidence.

Petitioner raises the following grounds for the issuance by this Court of a temporary restraining order and/or writ of preliminary injunction:

Sangguniang Barangay Resolution No. 98-096 is repugnant to the proprietary rights of the affected homeowners who are members of petitioner NSVHAI, such rights undoubtedly protected by the Constitution.

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[48] *Id.* at 21-22.

[49] *Id.* at 28.

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

[51] Citing Justice Florenz Regalado, *Remedial Law Compendium*, Volume 1 (Sixth Revised Edition), p. 242.

As there is no proof otherwise (except the baseless findings of fact by the Honorable Court of Appeals) that the streets encompassed by the concerned subdivision, Sun Valley Subdivision, are all private properties. As such, the residents of Sun Valley Subdivision have all the right to regulate the roads and open spaces within their territorial jurisdiction.

This Honorable Supreme Court can take judicial knowledge that criminal activities such as robbery and kidnappings are becoming daily fares in Philippine society. Residents have invested their lifetime's savings in private subdivision since subdivision living afford them privacy, exclusivity and foremost of all, safety. Living in a subdivision has a premium and such premium translates into a comparatively more expensive lot because of the safety, among others, that subdivision lifestyle offers.

But, with the enactment and intended implementation of Sangguniang Barangay Resolution No. 98-096 to open Rosemallow and Aster Streets for public use, it is indubitable that, instead of promoting the safety of resident of Sun Valley Subdivision, respondents are endangering the life and property of the residents of the said subdivision as they will now be exposed to criminal and lawless elements.

It is respectfully submitted that Sangguniang Barangay Resolution No. 98-096 has a place only in an authoritarian government where proprietary rights and privacy are alien concepts. Lest it be forgotten, ours is a democratic society and therefore, it should not be ruled in a manner befitting of a despotic government.

Petitioner NSVHAI, in protection of the rights and interest of the residents of Sun Valley Subdivision and in order to ensure that public officials will not abuse governmental powers and use them in an oppressive and arbitrary manner, invokes the judicial power of this Honorable Supreme Court and pray that a writ of preliminary injunction be issued and, after hearing, be declared permanent.[52]

A perusal of the documents attached by petitioner as Annexes revealed to the Court the following, **which were not discussed in the body of the petition**:

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[52] *Rollo,* pp. 31-32.

1. A **letter**[53] dated January 25, 2003 signed by Sonia G. Sison, President of NSVHAI, to Mayor Joey P. Marquez, the pertinent portions of which provide:

We admit that we erred in not going to you directly because at that time, the NSVHA received the letter-order of Brgy. Capt. Guevara two days before the effectivity of the order. Aside from this, there was a long holiday (long weekend prior to November 1). Thus, the Board of Governors had no other recourse but to seek a TRO and thereafter a permanent injunction.

We now would like to seek your assistance concerning this urgent problem. For your information there are already two (2) gates in and out of Sun Valley Subdivision.

Under P.D. 957, the Homeowners Association is mandated to protect the interest of the homeowners and residents especially in so far as it affects the security, comfort and the general welfare of the homeowners.

Thank you and because of the urgency of the matter, we anticipate your prompt and favorable action. (Emphasis ours.)

2. A **letter**[54] signed by Parañaque City Mayor Joey Marquez dated January 27, 2003, addressed to Mr. Roberto Guevara, Office of the Barangay Captain, Barangay Sun Valley, which reads in part:

> This refers to your intended implementation of Barangay Sun Valley Resolution No. 98-096 entitled, "A RESOLUTION DIRECTING THE NEW SUN VALLEY HOMEOWNERS ASSOCIATION TO OPEN ROSEMALLOW AND ASTER STREETS TO VEHICULAR AND PEDESTRIAN TRAFFIC."
>
> In this regard and pursuant to the provisions of Sec. 32 of the Local Government Code of 1991 which vests upon the city mayor the right to exercise general supervision over component *barangays*, to ensure that said barangays act within the scope of their prescribed powers and functions, you are hereby directed to defer your implementation of the subject ordinance based on the following grounds:

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[53] *Id.* at 239.

[54] *Id.* at 240-241.

1. The roads subject of your resolution is a municipal road and not a *barangay* road;

2. The opening or closure of any local road may be undertaken by a local government unit pursuant to an ordinance and not through a mere resolution as provided under Sec. 21 of the Local Government Code of 1991;

3. There is no more need to order the opening of the aforementioned roads in view of the fact that Gelia and State Ave., have already been opened by the subdivision to the general public to accommodate vehicular and pedestrian traffic in the area;

4. There is a need to conduct public hearings, as in fact we shall be conducting public hearings, on the matter to enable us to arrive at an intelligent resolution of the issues involved.

3. A **letter**[55] dated January 31, 2003 addressed to Mayor Joey Marquez, signed by counsel for respondents, wherein the latter wrote:

> We regret to observe that all the reasons that you have cited in your letter as grounds for your order of non-implementation of the Barangay Resolution have been passed upon and decided by the Court of Appeals, which lately denied the NSVHA Motion for Reconsideration x x x.
>
> x x x x x x x x x
>
> The Decision of the Court of Appeals is now the subject of an appeal taken by the NSVHA to the Supreme Court. In deference to the high Court, you would do well to reconsider your order to the Barangay and not pre-empt the high Court on its decision. x x x.

Arguments of Respondents

Respondents filed their **Comment**[56] on July 17, 2003. They manifest that the petition is substantially a reproduction of petitioner's brief filed with the Court of Appeals, and consists of almost identical issues which have already been ventilated and decided upon by the said court.

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

[56] *Id.* at 294-306.

Respondents claim that the hearing held on November 20, 1998, as found by the Court of Appeals, covered both the injunction and dismissal incidents, and that the motion to dismiss on issues of jurisdiction was a prejudicial matter. Respondents confirm that the RTC said it will proceed first with the hearing, but the lower court did not specify if the hearing was going to take up the prayer for the issuance of preliminary injunction or the motion to dismiss. Respondents further claim that by the end of the hearing, after Atty. Florencio R. Herrera's manifestation on the donated public roads, counsels for both parties were asked by the court if they were submitting, and both of them answered in the affirmative.[57] Respondents aver that petitioner's reply to its charge of misleading the Court was an admission that counsel had tampered without authority with the TSN, and that the phrase "referring to the scheduled hearing of the prayer for the issuance of the writ of preliminary injunction"[58] was said counsel's own mere footnote.

Respondents allege that the issuance of the titles in favor of Parañaque over all the roads in Sun Valley Subdivision was an official act by the land registration office of the City of Parañaque, and was perfectly within the judicial notice of the Courts, pursuant to Rule 129, Section 1 of the Rules of Court.[59] Respondents likewise allege that the gates were earlier built illegally on the roads by the Association, and while petitioner may lend a helping hand to the *barangay*, it cannot control the latter's discretion as to the wisdom of its traffic policies within the *barangay*. They maintain that petitioner had no business putting up road blocks in the first place; that this matter is purely a local government determination; and that it is even doubtful if courts would encroach upon this autonomous determination for local constituents of the *Barangay* in deference to the doctrine of separation of powers.

Respondents claim that since the subject matter of the case is a directive of the *Barangay* to the petitioner, the requirement

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[57] *Id.* at 297.

[58] *Id.*

[59] *Id.* at 300.

for an ordinance would not be necessary, as there was no legislative determination in the *Barangay* resolution regarding what class of roads to open or what to close by way of general policy.[60]

Respondents contend that the *Barangay* Resolution was internal and temporary, passed to solve a traffic problem. They propose a reason why petitioner allegedly wants to control the subject roads, as follows:

> The directive of the *Barangay* is certainly a declaration of an intention expressed by resolution on complaints of residents for a convenient outlet of cars and pedestrians during certain hours of the [day] or night. This need not be the subject of an ordinance. It is addressed to a special group of residents, and not to the general community. It refers to particular roads and at certain hours only, not to all the roads and at all hours.
>
> Hence, the Barangay Resolutions (*sic*) is but temporary in character, being a solution to a momentary traffic problem then visualized by the *Barangay* and encouraged by the MMDA. There is no legal question involved that is of any concern to the NSVHA. The prevailing reason why the NSVHA desires to control the roads is the monetary consideration it gains by its unilateral requirement of car stickers and of substantial fees exacted from delivery vans and trucks for bringing in cargo into the subdivision. And yet, the residents who, never gave their consent to this activities (*sic*), are busy people and have merely tolerated this for a long time now. This tolerance did not of course give legality to the illegal act. x x x.[61]

As regards petitioner's argument that the BSV *Sangguniang Barangay* should have passed an ordinance instead of a resolution, respondents present their counter-argument as follows:

> Hence, even assuming for the sake of argument that a legal question exists on whether it be a resolution or ordinance that should contain the Barangay directive, such an issue is of no moment as plaintiff-appellant failed to exhaust the necessary administrative remedies

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[60] *Id.* at 301.

[61] *Id.* at 302-303.

before resorting to court action, as found by the trial court and the Court of Appeals. Section 32, R.A. 7160 (Local Government Code of 1991) provides for a remedy from Barangay actions to the Mayor under the latter's power of general supervision.[62]

With regard to the Mayor's involvement in this case, respondents have this to say:

The Mayor's act of interfering in Barangay Sun Valley affairs stemmed out of a long-standing political feud of the Mayor with the Punong Barangay. Its general supervision did not extend to pure *Barangay* matters, which the *Barangay* would be x x x in a better position to determine.

Furthermore, the general supervision of the Mayor is limited to the overseeing authority that the Barangays act within the scope of their prescribed powers and functions. Sadly, there is nothing in this Mayor's letter x x x that would as much as show a deviation by the Barangay Sun Valley from any prescribed powers or function. The Mayor's directive to the *Barangay* is of doubtful legality.

It was mainly the mounting traffic problem progressively experienced through the years that prompted the *Barangay* to resolve to open Rosemallow and Aster Streets in accordance with its power under Section 21 of R.A. 7160 to "temporarily open or close any local road falling within its jurisdiction". This Resolution x x x was decided upon after the Barangay Council made the necessary investigation and conducted hearings in consultation with affected residents. In order to maintain some kind of cordial relationship with the NSVHA, the *Barangay* by its resolution, opted to give the NSVHA the chance to open the roads, which it earlier closed by means of arbitrarily putting up steel gates without any apparent authority.[63]

Furthermore, respondents aver that the trial court and the appellate court have ruled that only a local government unit (LGU), in this case the *Barangay*, can open or close roads, whether they be public or private, in accordance with Section 21 of the Local Government Code. Respondents contend that

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[62] *Id.* at 303.

[63] *Id.* at 304-305.

Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.,[64] wherein the Court discussed the power of LGUs to open and close roads, is substantially in point.[65]

After the submission of the parties' respective memoranda,[66] this case was submitted for decision.

The issues before us are:

1. Whether or not petitioner has a right to the protection of the law that would entitle it to injunctive relief against the implementation of BSV Resolution No. 98-096; and
2. Whether or not petitioner failed to exhaust administrative remedies.

The Ruling of the Court

The Court of Appeals passed upon petitioner's claims as to the validity of the dismissal in this wise:

> We do not agree. Although the Motion to Dismiss was filed on the same day, but after, the Amended Petition was filed, the same cannot be considered as directed merely against the original petition which Appellant already considers as non-existing. The records will show that Appellant's Amended Petition contained no material amendments to the original petition. Both allege the same factual circumstances or events that constitute the Appellant's cause of action anent the Appellee's alleged violation of Appellant's propriety rights over the subdivision roads in question. Corollarily, the allegations in Appellees' Motion to Dismiss, as well as the grounds therefore predicated on lack of cause of action and jurisdiction, could very well be considered as likewise addressed to Appellant's Amended Petition.
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> x x x x x x x x x
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> It bears stressing that due process simply means giving every contending party the opportunity to be heard and the court to consider

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[64] 385 Phil. 586 (2000).

[65] *Rollo,* p. 305.

[66] *Id.* at 358-403, 415-435.

every piece of evidence presented in their favor (*Batangas Laguna Tayabas Bus Company versus Benjamin Bitanga*, G.R. Nos. 137934 & 137936[)]. In the instant case, Appellant cannot be said to have been denied of due process. As borne by the records, while Appellees' Motion to Dismiss did not set the time for the hearing of the motion, the day set therefore was the same date set for the hearing of Appellant's prayer for the issuance of a writ of preliminary injunction — that is, November 20, 1998, with the precise purpose of presenting evidence in support of the motion to dismiss on the same said scheduled hearing date and time when Appellant and its counsel would be present. Moreover, Appellant's predication of lack of due hearing is belied by the fact that the hearing held on November 20, 1999 took up not only the matter of whether or not to grant the injunction, but also tackled the jurisdictional issue raised in Appellees' Motion to Dismiss, which issues were intertwined in both incidents.[67]

We see no reason to depart from these findings by the Court of Appeals. Petitioner's recourse in questioning BSV Resolution No. 98-096 should have been with the Mayor of Parañaque City, as clearly stated in Section 32 of the Local Government Code, which provides:

Section 32. ***City and Municipal Supervision over Their Respective Barangays.*** **—** The city or municipality, through the city or municipal mayor concerned, shall exercise general supervision over component *barangays* to ensure that said *barangays* act within the scope of their prescribed powers and functions.

We do not see how petitioner's act could qualify as an exception to the doctrine of exhaustion of administrative remedies. We have emphasized the importance of applying this doctrine in a recent case, wherein we held:

The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel

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[67] *Id.* at 43-44.

courts of justice to shy away from a dispute until the system of administrative redress has been completed.[68]

It is the Mayor who can best review the *Sangguniang Barangay*'s actions to see if it acted within the scope of its prescribed powers and functions. Indeed, this is a local problem to be resolved within the local government. Thus, the Court of Appeals correctly found that the trial court committed no reversible error in dismissing the case for petitioner's failure to exhaust administrative remedies, as the requirement under the Local Government Code that the closure and opening of roads be made pursuant to an ordinance, instead of a resolution, is not applicable in this case because the subject roads belong to the City Government of Parañaque.

Moreover, being the party asking for injunctive relief, the burden of proof was on petitioner to show ownership over the subject roads. This, petitioner failed to do.

In civil cases, it is a basic rule that the party making allegations has the burden of proving them by a preponderance of evidence. Parties must rely on the strength of their own evidence and not upon the weakness of the defense offered by their opponent.[69]

Petitioner dared to question the *barangay*'s ownership over the subject roads when it should have been the one to adduce evidence to support its broad claims of exclusivity and privacy. Petitioner did not submit an iota of proof to support its acts of ownership, which, as pointed out by respondents, consisted of closing the subject roads that belonged to the then Municipality of Parañaque and were already being used by the public, limiting their use exclusively to the subdivision's homeowners, and collecting fees from delivery vans that would pass through the gates that they themselves had built. It is petitioner's authority to put up the road blocks in the first place that becomes highly questionable absent any proof of ownership.

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[68] *Universal Robina Corp. (Corn Division) v. Laguna Lake Development Authority*, G.R. No. 191427, May 30, 2011.

[69] *Heirs of Pedro De Guzman v. Perona*, G.R. No. 152266, July 2, 2010, 622 SCRA 653, 661.

On the other hand, the local government unit's power to close and open roads within its jurisdiction is clear under the Local Government Code, Section 21 of which provides:

Section 21. Closure and Opening of Roads. — (a) A local government unit may, pursuant to an ordinance, permanently or temporarily close or open any local road, alley, park, or square falling within its jurisdiction: *Provided, however,* That in case of permanent closure, such ordinance must be approved by at least two-thirds (2/3) of all the members of the sanggunian, and when necessary, an adequate substitute for the public facility that is subject to closure is provided.

We quote with approval the ruling of the Court of Appeals in this regard, as follows:

Contrary, however, to Appellant's position, the above-quoted provision, which requires the passage of an ordinance by a local government unit to effect the opening of a local road, can have no applicability to the instant case since the subdivision road lots sought to be opened to decongest traffic in the area — namely Rosemallow and Aster Streets — have already been donated by the Sun Valley Subdivision to, and the titles thereto already issued in the name of, the City Government of Parañaque since the year 1964 (Annexes "2" to "7" of Appellees' Brief). This fact has not even been denied by the Appellant in the proceedings below nor in the present recourse. Having been already donated or turned over to the City Government of Parañaque, the road lots in question have since then taken the nature of public roads which are withdrawn from the commerce of man, and hence placed beyond the private rights or claims of herein Appellant. Accordingly, the Appellant was not in the lawful exercise of its predicated rights when it built obstructing structures closing the road lots in question to vehicular traffic for the use of the general Public. Consequently, Appellees' act of passing the disputed *barangay* resolution, the implementation of which is sought to be restrained by Appellant, had for its purpose not the opening of a private road but may be considered merely as a directive or reminder to the Appellant to cause the opening of a public road which should rightfully be open for use to the general public.[70]

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[70] *Rollo,* pp. 45-46.

Petitioner wants this Court to recognize the rights and interests of the residents of Sun Valley Subdivision but it miserably failed to establish the legal basis, such as its ownership of the subject roads, which entitles petitioner to the remedy prayed for. It even wants this Court to take "judicial knowledge that criminal activities such as robbery and kidnappings are becoming daily fares in Philippine society."[71] This is absurd. The Rules of Court provide which matters constitute judicial notice, to wit:

Rule 129

WHAT NEED NOT BE PROVED

SECTION 1. *Judicial notice, when mandatory.*—A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.(1a)

The activities claimed by petitioner to be part of judicial knowledge are not found in the rule quoted above and do not support its petition for injunctive relief in any way.

As petitioner has failed to establish that it has any right entitled to the protection of the law, and it also failed to exhaust administrative remedies by applying for injunctive relief instead of going to the Mayor as provided by the Local Government Code, the petition must be denied.

WHEREFORE, premises considered, the petition is hereby *DENIED*. The Court of Appeals' *DECISION* dated October 16, 2002 and its *RESOLUTION* dated January 17, 2003 in *CA-G.R. CV No. 65559* are both *AFFIRMED*.

SO ORDERED.

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[71] *Id.* at 31.

Corona, C.J. (Chairperson), Peralta,[*] *Bersamin,* and *Villarama, Jr.,* concur.

FIRST DIVISION

[G.R. No. 159101. July 27, 2011]

SPS. GONZALO T. DELA ROSA & CRISTETA DELA ROSA, *petitioners, vs.* **HEIRS OF JUAN VALDEZ and SPOUSES POTENCIANO MALVAR AND LOURDES MALVAR,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; DEFINED; KINDS.— A preliminary injunction is merely a provisional remedy, adjunct to the main case and subject to the latter's outcome. It is not a cause of action in itself. A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order. It may be: (1) a prohibitory injunction, which commands a party to refrain from doing a particular act; or (2) a mandatory injunction, which commands the performance of some positive act to correct a wrong in the past.

2. ID.; ID.; ID.; GROUNDS FOR ISSUANCE THEREOF.— Section 3, Rule 58 of the Revised Rules of Court, enumerates the grounds for the issuance of a writ of preliminary injunction, whether prohibitive or mandatory: SEC. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established: (a) That the applicant is entitled to the relief demanded, and the whole or part of

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[*] Per Raffle dated July 25, 2011.

such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

3. ID.; ID.; ID.; PRELIMINARY MANDATORY INJUNCTION; ISSUANCE OF THE WRIT THEREOF, WHEN JUSTIFIED.— A preliminary mandatory injunction is more cautiously regarded than a mere prohibitive injunction since, more than its function of preserving the *status quo* between the parties, it also commands the performance of an act. Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute. When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of a writ of preliminary mandatory injunction is improper. While it is not required that the right claimed by applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.

4. ID.; ID.; ID.; GRANT OR DENIAL OF THE WRIT RESTS ON THE SOUND DISCRETION OF THE COURT; EXERCISE OF JUDICIAL DISCRETION MUST NOT BE INTERFERED WITH EXCEPT WHEN THERE IS GRAVE ABUSE OF DISCRETION; EXPLAINED.— *Sine dubio*, the grant or denial of a writ of preliminary injunction in a pending case, rests on the sound discretion of the court taking cognizance of the case since the assessment and evaluation of evidence towards that end involve findings of facts left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with except when there is grave abuse of discretion. Grave abuse of discretion in the issuance of writs of preliminary injunction 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 instant Petition, the Court finds that the RTC did not commit grave abuse of discretion in issuing the writ of preliminary mandatory injunction in favor of the spouses Valdez and spouses Malvar. Consequently, the Court of Appeals did not commit any reversible error in dismissing the spouses Dela Rosa's Petition for *Certiorari*.

5. ID.; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT ARE ENTITLED TO GREAT WEIGHT AND SHOULD NOT BE DISTURBED ON APPEAL, UNLESS STRONG AND COGENT REASONS DICTATE OTHERWISE.— Evidently, there are ample justifications for the grant by the RTC of a writ that places the subject property in the possession of the spouses Valdez and spouses Malvar for the duration of the trial of Civil Case No. 00-6015. x x x There is no reason for the Court to deviate from the foregoing findings of the RTC, as affirmed by the Court of Appeals. It is worth stressing that the assessment and evaluation of evidence in the issuance of the writ of preliminary injunction involves findings of facts ordinarily left to the trial court for its conclusive determination. The Court has time and again ruled that conclusions and findings of fact of the trial court are entitled to great weight and should not be disturbed on appeal, unless strong and cogent reasons dictate otherwise. This is because the trial court is in a better position to examine the real evidence, as well as to observe the demeanor of the witnesses while testifying in the case.

6. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; THE FINDINGS AND OPINION OF A COURT WHEN ISSUING THE WRIT ARE INTERLOCUTORY IN NATURE.— There is likewise no merit in the spouses Dela Rosa's contention that the RTC Orders dated December 16, 2002 and February 28, 2003 amounted to a prejudgment of the case, there being no trial on the merits of Civil Case No. 00-6015 as yet. In *Levi Strauss (Phils.) Inc. v. Vogue Traders Clothing Company,* the Court already explicated that: Indeed, a writ of preliminary injunction is generally based solely on initial and incomplete evidence

adduced by the applicant (herein petitioner). The evidence submitted during the hearing of the incident is not conclusive, for only a "sampling" is needed to give the trial court an idea of the justification for its issuance pending the decision of the case on the merits. As such, the findings of fact and opinion of a court when issuing the writ of preliminary injunction are interlocutory in nature. Moreover, the sole object of a preliminary injunction is to preserve the *status quo* until the merits of the case can be heard. x x x The RTC Orders dated December 16, 2002 and February 28, 2003 have settled nothing more than the question of which party/parties is/are entitled to possession of the subject property while Civil Case No. 00-6015 is still being heard. The findings of fact and opinion of the RTC, based on the evidence that had so far been submitted by the parties, are merely interlocutory in nature. Even with its issuance of said Orders, the RTC is not precluded from proceeding with Civil Case No. 00-6015 to receive additional evidence and hear further arguments that will help said trial court to determine with finality the rightful owner/s and possessor/s of the subject property.

APPEARANCES OF COUNSEL

Rodolfo S.J. Flores for petitioners.
Marko C. Callanta & Jose M. Manuel, Jr. for NHA.
Angeles & Associates for Heirs of J. Valdez.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court with Prayer for Temporary Restraining Order and/or a Writ of Preliminary Injunction assailing the Decision[1] dated June 10, 2003 and Resolution[2] dated July 24, 2003 of the

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[1] *Rollo*, pp. 38-44; penned by Associate Justice Oswaldo D. Agcaoili with Associate Justices Perlita J. Tria Tirona and Edgardo F. Sundiam, concurring.

[2] *Id.* at 46-47.

Court of Appeals in CA-G.R. SP No. 76081. The Court of Appeals found that Judge Felix S. Caballes of the Regional Trial Court (RTC), Branch 71 of Antipolo City, did not commit grave abuse of discretion in issuing the Orders dated December 16, 2002[3] and February 28, 2003[4] in Civil Case No. 00-6015, which granted the issuance of a writ of preliminary mandatory injunction, placing spouses Juan[5] and Apolinaria Valdez (spouses Valdez) and spouses Potenciano and Lourdes Malvar (spouses Malvar) in possession of Lot 4, Psd-76374, located in Barrio Sta. Cruz, Antipolo City, Rizal, with an area of 103 hectares (subject property).

The instant Petition traces its roots to a Complaint for Quieting of Title and Declaration of Nullity of Transfer Certificates of Title[6] involving the subject property, filed before the RTC by Manila Construction Development Corporation of the Philippines (MCDC), against Gonzalo and Cristeta dela Rosa (spouses Dela Rosa) and Juan, Jose, Pedro and Maria, all surnamed De la Cruz, docketed as Civil Case No. 00-6015. Complaints-in-intervention were filed in the said case by (1) North East Property Ventures, Inc. (NEPVI),[7] and (2) spouses Valdez and spouses Malvar.[8] The spouses Malvar were the grantees/assignees under a Deed of Absolute Transfer/Conveyance[9] over the subject property executed by the spouses Dela Rosa on September 6, 2001.

The RTC took note of the following facts in its Order dated December 16, 2002:

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[3] Records, pp. 422-434.

[4] *Id.* at 463-468.

[5] Upon the death of Juan Valdez on December 25, 2002, he was substituted by his legitimate heirs, namely, Herminigildo C. Valdez, Miguela C. Valdez, Marcelino C. Valdez, Rosita C. Valdez, and Jesus C. Valdez. (Records, pp. 735-738.)

[6] Records, pp. 1-11.

[7] *Id.* at 131-141.

[8] *Id.* at 223-234.

[9] *Id.* at 220-222.

In its complaint, plaintiff MCDC in substance states that: thru its President, Honor P. Moslares, the subject property consisting an area of 103 hectares was acquired by virtue of the Deed of Absolute Sale executed on January 16, 1996. It is further stated that Juan Valdez and Apolinaria Valdez were awarded with Sales Patent after compliance with corresponding requirements. Plaintiff MCDC and its predecessor-in-interest Juan Valdez have been in continuous, adverse and open possession of the property in the concept of owners.

However, plaintiff MCDC has been unlawfully deprived of the possession and enjoyment of the property because of the continuing acts of dispossession committed and perpetuated by the defendants spouses Gonzales and Cristeta dela Rosa as well as the other defendants and other occupants who have no property right at all. As a result plaintiff [MCDC] has suffered and continues to suffer grave and irreparable damages and injuries; thus, the writ of preliminary injunction is urgently necessary to prevent further acts of dispossession of plaintiff MCDC.

While in the Complaint-in-intervention of Intervenor North East Property Ventures, Inc. it is substantially alleged that: It claims to be the co-owner to the extent of one half or fifty percent (50%) of the subject parcel of land according to a Deed of Absolute Conveyance/Transfer for valuable services to be rendered; and for the amounts to be advanced by intervenor corporation needed to update the real estate taxes; and to clear the title of Juan Valdez from overlapping titles from the adverse claim of the interlopers; and the removal of the defendants and other occupants from the disputed property. Intervenor North East Property Ventures, Inc. sought for the relief to be placed in possession of the property by the process of the writ of mandatory injunction.

Whereas, in the subsequent complaint-in-intervention, intervenors Valdez spouses state that they are the absolute owners of the subject parcel of land being the vendees/grantees of Sales Patent No. 38713 dated September 5, 1983 which was preceded by Sales Application dated July 21, 1968 and Order of Sales Patent No. (IV-1) 13442 issued on August 31, 1983, and paid under official receipt No. 6010195. On the other hand, intervenors Malvar spouses allege that they are the grantees/assignees under the Deed of Absolute Transfer/Conveyance executed on September 6, 2001 by the intervenors spouses Valdez.

Indubitably, the pleadings reveal admitted and uncontroverted facts, to wit:

1. The subject matter of this case is a parcel of land located at Barrio Sta. Cruz, Antipolo City consisting of one hundred three (103) hectares, more or less;

2. Defendants dela Rosa spouses and Intervenors Valdez spouses have been in possession of the said parcel of land in question;

3. Several portions of the disputed property have been occupied by the other unknown defendants and numerous occupants;

4. Certification dated April 11, 2002 certified that Transfer Certificate of Title No. 541423-A was not recorded in the Registry of Deeds, Marikina City;

5. Certification dated April 12, 2002 certified that Transfer Certificate of Title No. 541423-A was not recorded in the Registry of Deeds, Antipolo City.

To dovetail the uncontroverted or admitted facts and the evidence presented, this Court has found that:

On the side of plaintiff MCDC:

1. MCDC's right or claim on the disputed parcel of land is based on Sales Patent No. 38713 issued in the name of plaintiff-intervenor Juan Valdez;

2. The price or consideration stipulated in the Deed of Absolute Sale dated January 16, 1996 covering the realty was not paid; thus, the sale is simulated according to the handwritten letter dated April 5, 2002 of plaintiff MCDC and according to the Joint Venture Agreement;

3. The terms and conditions of the Joint Venture Agreement were not complied with as shown by the very allegations in paragraphs 12, 14 and 15 by the plaintiff [MCDC] in its complaint against defendant Dela Rosa spouses.

On the part of defendants Dela Rosa spouses:

1. Defendants Dela Rosa have been in the physical possession of the substantial portions of the questioned property;

2. They base their claim of possession and ownership: Firstly, on the *Titulo de Propriedad* No. 4136 that was previously nullified in the *Intestate Estate of Don Mariano San Pedro y Esteban vs. Court of Appeals* reported in Volume 265 Supreme Court Reports Annotated page 733; Secondly, Transfer Certificate of Title No. 451423-A in the name of defendant Cristeta dela Rosa shows on its face the following:

    a. June 16, 1934 was certified the date of original registration; while, the dates of survey of the subject land were on July 14-25, 1969 and the approval was on June 30, 1971;

    b. The technical description of the disputed property Lot 4 of the plaintiff [MCDC] in the Sales Patent No. 38713 was copied and manipulated in TCT No. 451423-A to be as Lots 4-A and 4-B;

3. TCT No. 451423-A was not recorded in the Registry of Deeds of Marikina according to the certification dated April 11, 2002 and was not recorded in the Registry of Deeds of Antipolo City per certification dated April 12, 2002.

On the side of plaintiff-intervenor North East Property Ventures, Inc.:

1. Deed of Absolute Transfer/Conveyance executed on 3rd September 1999 by the plaintiffs-intervenors Juan Valdez and Apolinaria Valdez;

2. Special Power of Attorney dated also 3rd September 1999;

3. Complaint-in-Intervention failed to attach any document showing accomplishment of any of the terms and conditions of the transfer/conveyance.

On the part of plaintiff-intervenor spouses Juan Valdez and Apolinaria Valdez and plaintiff-intervenor spouses Potenciano Malvar and Lourdes Malvar:

1. Sales Application No. (IV-1) 1344-2 dated July 21, 1968 filed by plaintiff-intervenor Juan Valdez;

2. Official Receipt No. 6030195 dated April 26, 1983, payor Juan Valdez covering Lot 4;

3. Order: Issuance of Patent dated August 31, 1983 signed and issued on 05 September 1983;

4. Sales Patent No. 38713 issued on September 05, 1983;
5. Transmittal Letter dated December 3, 1993 of Sales Patent No. 38713 to the Registry of Deeds, Marikina, Rizal, for registration and issuance of certificate of title;
6. 1st Indorsement dated August 1, 1994 issued by the Land Registration Authority;
7. December 5, 1990 Official communication by Land Management Bureau signed by Director Abelardo Palad, Jr. relating to 1st Indorment of Land Registration Authority (LRA) clarifying the existence of Sales Patent No. 38713 issued in the name of Juan Valdez for Lot 4, Psd-76374;
8. August 15, 1994 Reply of Artemio B. Cana, Acting Register of Deeds, Marikina City to the 1st Indorsement dated August 1, 1994 of the Land Registration Authority;
9. Letter of Official Inquiry dated November 21, 1994 by the Hon. Estanislao U. Valdez on the request for assistance of Intervenor Juan Valdez on Sales Patent No. 37813;
10. Letter dated August 1, 1994 of Juan Valdez to the Register of Deeds, Marikina City, requesting for registration of Sales Patent No. 37813;
11. Plan Psd-76374 of Lot 4 covered by Sales Patent No. 37813;
12. Deed of Absolute Transfer/Conveyance dated 06 September 2001 executed by Intervenors Juan Valdez and Apolinaria Valdez in favor of Intervenor Potenciano Malvar family corporation, Noel Rubber Development Corporation;
13. Deeds of Absolute Sale dated 06 September 2001 selling 150,000 or 15 hectares of Lot 4 covered by Sales Patent.

Noticeably, plaintiff MCDC; Intervenor North East Property Ventures, Inc. and Intervenor Valdez spouses and Malvar spouses under separate applications have commonly prayed for the relief of mandatory injunction; although plaintiff MCDC initially sought for the relief of preventive injunction; however, all the prayers for reliefs of mandatory injunction have conjoined against defendants dela Rosa spouses and the other occupants of Lot 4, the land in controversy.[10] (Citations omitted.)

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[10] *Id.* at 424-430.

The RTC had to determine: (1) whether or not it should issue a writ of preliminary mandatory injunction in Civil Case No. 00-6015, directing that a party or parties be placed in possession of the subject property; and (2) in whose favor should such writ be issued.

In its Order dated December 16, 2002, the RTC granted the joint prayer for the issuance of a writ of preliminary mandatory injunction of the spouses Valdez and spouses Malvar, decreeing thus:

> WHEREFORE, premises considered, this Court orders the issuance of the Writ of Preliminary Mandatory Injunction to place Intervenor Spouses Juan Valdez and Apolinaria Valdez and the Intervenor Spouses Potenciano Malvar and Lourdes Malvar in the possession of the subject parcel of land Lot 4 covered by Sales Patent No. 38713 dated September 5, 1983 in the name of Juan Valdez upon posting the bond in the amount of ₱1,000,000.00 subject to the approval of the Court which shall answer for damages that defendant may suffer if it is found that said intervenors are not entitled thereto.[11]

The spouses Dela Rosa filed a Motion for Reconsideration of the aforementioned Order, but it was denied by the RTC in another Order[12] dated February 28, 2003. According to the RTC, the issues and evidence presented by the spouses Dela Rosa in their Motion for Reconsideration merely re-hashed those already thoroughly discussed in the Order dated December 16, 2002, thus, there was no valid reason to alter, modify, or reverse said order.

Aggrieved, the spouses Dela Rosa filed a Petition for *Certiorari* before the Court of Appeals, which was docketed as CA-G.R. SP No. 76081. The spouses Dela Rosa prayed that the Orders dated December 16, 2002 and February 28, 2003 be annulled for having been issued by RTC Judge Caballes with grave abuse of discretion and that the enforcement of the same orders be enjoined.

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[11] *Id.* at 434.

[12] *Id.* at 463-468.

On June 10, 2003, the Court of Appeals rendered its Decision dismissing the spouses Dela Rosa's Petition for *Certiorari* and, thus, upholding the RTC Orders dated December 16, 2002 and February 28, 2003. The appellate court agreed with the RTC that there are ample justifications for the issuance of the writ of preliminary mandatory injunction in favor of the spouses Valdez and spouses Malvar. The dispositive portion of the Court of Appeals judgment states that "WHEREFORE, the petition is DISMISSED. Respondent judge is DIRECTED to try the case on the merits with reasonable dispatch."[13]

On July 1, 2003, the spouses Dela Rosa filed a Motion for Reconsideration of the foregoing Decision, however, it was denied for lack of merit by the Court of Appeals in its Resolution dated July 24, 2003.

The spouses Dela Rosa now comes before this Court *via* the instant Petition for Review with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction.

In a Resolution[14] dated October 8, 2003, the Court issued a TRO enjoining the Court of Appeals, the RTC, and the spouses Valdez and spouses Malvar, and their agents, representatives, and anyone acting on their behalf, from implementing and enforcing the Decision dated June 10, 2003 and Resolution dated July 24, 2003 of the Court of Appeals in CA-G.R. SP No. 76081. The Court also required the spouses Dela Rosa to post a bond in the amount of ₱500,000.00 in cash or surety to answer for all damages which the spouses Valdez and spouses Malvar might sustain by reason of the TRO if the Court should finally decide that the spouses Dela Rosa were not entitled thereto.

The spouses Valdez and spouses Malvar filed several motions to lift the TRO, but these were all denied by the Court,[15] hence, the TRO remained effective and binding.

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[13] *Rollo*, p. 44.

[14] *Id.* at 82-84.

[15] *Id.* at 464-465.

The spouses Dela Rosa made the following assignment of errors in the Petition at bar:

I

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE AND REVERSIBLE ERROR IN AFFIRMING THE ORDER OF THE REGIONAL TRIAL COURT, BRANCH 71, ANTIPOLO CITY ORDERING THE ISSUANCE OF A WRIT OF A PRELIMINARY MANDATORY INJUNCTION IN FAVOR OF THE PRIVATE RESPONDENTS SPOUSES VALDEZ AND SPOUSES MALVAR IN ORDER TO TAKE AWAY FROM THE PETITIONERS THE POSSESSION OF THE LAND IN QUESTION AND TO PLACE THE PRIVATE RESPONDENTS IN POSSESSION THEREOF.

II

THE HONORABLE COURT OF APPEALS ERRED IN APPRECIATING THE EXHIBITS RELIED UPON BY THE RESPONDENT JUDGE IN ISSUING THE WRIT OF PRELIMINARY MANDATORY INJUNCTION WHICH ARE FAKE, FALSIFIED, SPURIOUS, AND NON-EXISTENT.

III

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE AND REVERSIBLE ERROR IN SUSTAINING THE ISSUANCE OF A WRIT OF PRELIMINARY MANDATORY INJUNCTION WHICH APPARENTLY AND GLARINGLY AMOUNTED TO A PREJUDGMENT OF THE CASE NOTWITHSTANDING THE FACT THAT NO TRIAL ON THE MERITS HAS AS YET BEEN STARTED.

IV

THE HONORABLE COURT OF APPEALS ALSO SERIOUSLY ERRED WHEN IT DELIBERATELY IGNORED THE ARGUMENTS RAISED IN THE MOTION FOR RECONSIDERATION DESPITE ITS OWN ADMISSION THAT IT CANNOT PASS UPON THE FACTUAL FINDINGS OF THE RESPONDENT JUDGE.[16]

Essentially, the Court must resolve herein the issue of whether or not the Court of Appeals erred in dismissing the spouses Dela Rosa's Petition for *Certiorari* which, in turn, is dependent

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[16] *Id.* at 17-18.

on the question of whether or not the RTC committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in issuing a writ of preliminary mandatory injunction, which placed the spouses Valdez and spouses Malvar in possession of the subject property during the pendency of Civil Case No. 00-6015. For this reason, the Court shall address and concern itself only with the assailed writ, but not with the merits of the case pending before the RTC. A preliminary injunction is merely a provisional remedy, adjunct to the main case and subject to the latter's outcome. It is not a cause of action in itself.[17]

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order. It may be: (1) a prohibitory injunction, which commands a party to refrain from doing a particular act; or (2) a mandatory injunction, which commands the performance of some positive act to correct a wrong in the past.[18]

Section 3, Rule 58 of the Revised Rules of Court, enumerates the grounds for the issuance of a writ of preliminary injunction, whether prohibitive or mandatory:

SEC. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some

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[17] *Philippine National Bank v. RJ Ventures Realty & Development Corporation*, G.R. No. 164548, September 27, 2006, 503 SCRA 639, 658.

[18] Rules of Court, Rule 58, Section 1; *Levi Strauss & Co., & Levi Strauss (Phils.) Inc. v. Clinton Apparelle, Inc.*, G.R. No. 138900, September 20, 2005, 470 SCRA 236, 252.

act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

A preliminary mandatory injunction is more cautiously regarded than a mere prohibitive injunction since, more than its function of preserving the *status quo* between the parties, it also commands the performance of an act. Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute. When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of a writ of preliminary mandatory injunction is improper. While it is not required that the right claimed by applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.[19]

Sine dubio, the grant or denial of a writ of preliminary injunction in a pending case, rests on the sound discretion of the court taking cognizance of the case since the assessment and evaluation of evidence towards that end involve findings of facts left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with except when there is grave abuse of discretion. Grave abuse of discretion in the issuance of writs of preliminary injunction 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.[20]

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[19] *Spouses Anthony L. Ngo and So Hon K. Ngo v. Allied Banking Corporation*, G.R. No. 177420, October 6, 2010.

[20] *Philippine National Bank v. RJ Ventures Realty & Development Corporation, supra* note 17 at 660.

In the instant Petition, the Court finds that the RTC did not commit grave abuse of discretion in issuing the writ of preliminary mandatory injunction in favor of the spouses Valdez and spouses Malvar. Consequently, the Court of Appeals did not commit any reversible error in dismissing the spouses Dela Rosa's Petition for *Certiorari*.

A scrutiny of the RTC Orders dated December 16, 2002 and February 28, 2003 easily reveals that these were based on substantial evidence and pertinent jurisprudence.

In its Order dated December 16, 2002, the RTC thoroughly discussed its factual and legal bases for granting the challenged writ in favor of the spouses Valdez and spouses Malvar:

> This Court honestly believes, after in-depth evaluation of the material and relevant averments in the pleadings, annexes thereto, and documents formally offered and admitted, and the established and unconverted facts, that the joint application for mandatory injunction of the Intervenors Valdez spouses and Malvar spouses is meritorious.
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> Firstly, because neither the plaintiff MCDC nor the intervenor North East Property Ventures, Inc. has shown by credible facts to underwrite the clear legal right to be entitled to the relief of injunction since their proprietary right or rights of dominion under their respective muniments of title were subject to conditions which were not complied with correspondingly.
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> Notably, the Joint Venture Agreement (Annex I, Complaint-in-Intervention of Intervenor Valdez) has qualified the Deed of Absolute Sale (Exhibit "B") since both deeds involved the same parties covering the same disputed parcel of land; hence, both deeds are to be interpreted jointly and to be harmonized (*Philippine National Construction Corporation vs. Mars Construction Enterprises, Inc*., 323 SCRA 624).
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> Secondly, consequentially because the parties primarily and ultimately affected by the continuing and manifold acts of dispossession are the intervenors, the spouses Juan Valdez and Apolinaria Valdez and the Malvar spouses, who evidently by the facts and circumstances borne out by the pleadings and by the evidence, have already shown to have established clear legal rights to be entitled

to the relief of writ of mandatory injunction under the salutary ruling that enunciates:

> "x x x In *Visayan Realty, Inc. vs. Meer*[,] we ruled that the approval of a sales application merely authorized the applicant to take possession of the land so that he could comply with the requirements prescribed by law before a final patent could be issued in his favor. Meanwhile, the government still remained the owner thereof, as in fact the application could still be cancelled and the land awarded to another applicant should it be shown that the legal requirements had not been complied with. What divests the government of title to the land is the issuance of the sales patent and its subsequent registration with the Register of Deeds. x x x" (*Development Bank of the Philippines vs. Court of Appeals*, 253 SCRA 414, 419-420) Underlining supplied.

Other considerations why the relief of preliminary mandatory injunction precludes the preventive injunction are: the acts of dispossession have become manifold and have perpetuated with impunity by the defendants and those whose occupancies were derived from them and the degree of violations of the rights of the plaintiffs-intervenors Valdez and Malvar has reached the extremes on one hand; and the other the undisputed fact that the supposed title of ownership of defendant dela Rosas, has been certified to be non-existent (Annexes B and C, Reply to Opposition to Motion to Conduct Hearing *etc*.) by the concerned Registry of Deeds while the *Titulo de Propriedad* No. 4136 where defendants dela Rosa's right to occupy was fatuously derived was nullified in the case of the *Intestate Estate of Don Mariano San Pedro y Esteban vs. Court of Appeals*, 265 SCRA 733.

The situations as established relative to the preliminary mandatory injunction in this case is clearly within the ambit of the exceptional or extreme urgency cases of: "x x x WHERE the right to the possession, during the pendency of the main case, of the property involved is very clear; WHERE considerations of relative inconvenience bear strongly in favor of the complainant seeking the possession *pendente lite*; WHERE there was willful and unlawful invasion of plaintiff's rights, over his protest and remonstrance, the injury being a continuing one; WHERE the effect of the preliminary mandatory injunction is to re-establish and maintain a pre-existing

and continuing relationship between the parties, recently and arbitrarily interrupted by the defendant, rather than to establish a new relationship during the pendency of the principal case x x x" authoritatively mentioned in G.R. No. 104782 prom. March 30, 1993, entitled *Nelly Raspado vs. Court of Appeals*, 220 SCRA 650, 653.

Measured by the parameters of judicial discretion specified in the immediate proceeding paragraph, the grant of preliminary writ of mandatory injunction to place in possession of the property in question intervenors Valdez Spouses including Intervenors Malvar Spouses would be justified and consistent with the ruling that:

> "In effect, petitioner's occupation of the land in question, after the denial of its application for Miscellaneous Sales Patent, became subsequently illegal. Petitioner's members have, as a consequence, become squatters whose continuous possession of the land may now be considered to be in bad faith. This is unfortunate because squatters acquire no legal right over the land they are occupying.
>
> Although as a general rule, a court should not by means of a preliminary injunction, transfer property in litigation from the possession of one party to another, this rule admits of some exceptions. For example, when there is a clear finding of ownership and possession of the land or unless the subject property is covered by a torrens title pointing to one of the parties as the undisputed owner. In the case at bench, the land subject of the suit is covered by a torrens title under the name of NHA." (*Cagayan de Oro City Landless Residents Asso. Inc. vs. Court of Appeals*, 254 SCRA 220, 232-233).

This aforecited ruling is squarely applicable in this case because, as previously shown, the intervenors Valdez and Malvar have established a clear and legal right of ownership and possession and the alleged TCT No. 451423-A of the defendants spouses dela Rosa is non-existent.

Nevertheless, the existence in the land records of the Bureau of Lands now the Land Management Bureau of the Sales Patent (Exhibit "F") the recording in the Map of the Cadastral module of the Lungsod Silangan of the subject property in the name of Juan Valdez are sufficient actual "*caveat emptor*" to defendants dela Rosa and their privies, [assignees] or [transferees]. Thus, actual notice of the Sales

Patent No. 38713 (Exhibit "F") has a binding [effect] on defendants dela Rosa and those whose rights were derived from them.[21]

Instead of summarily dismissing the spouses Dela Rosa's Motion for Reconsideration of the Order dated December 16, 2002, the RTC still extensively addressed in its Order dated February 28, 2003 each of the issues raised by the spouses Dela Rosa in their motion, to wit:

> With respect to the issue of absence of clear legal right on the part of the intervenors Valdez spouses and Malvar spouses, the Court believes that the pieces of documentary evidence detailed in the order sought to be reconsidered are overwhelming. While the thrust of defendant spouses' motion on the falsity or non-existence of the Sales Patent No. 37813 (Exhibit "F") is predicated on the letter dated October 2, 1994 of Abelardo Palad, Jr., Director of Lands Management Bureau, however, the Court believes that the same bears no evidentiary value or credence, simply because it is unsigned and without any certification or authentication. Besides, the letter merely certifies that "the alleged Sales Patent No. 38713 x x x does not appear to have been recorded or entered in the Sales Patent Registry Book."
>
> This Court perforce gave credence and probative value to the December 5, 1990 Official Communication (Exhibit "H") of Land Management Bureau, signed by Director Abelardo Palad, Jr. stating in no uncertain terms that:
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> > "x x x In connection therewith, please be informed that a perusal to our official records show that Sales Patent No. 37813 was issued by this Office in the name of Juan Valdez for Lot 4, Psd-76374, situated in Sta. Cruz, Antipolo, Rizal, covering an area of 1,033,760 square meters on September 5, 1983."
>
> relative to the 1st Indorsement (Exhibit "G") of the Land Registration Authority (LRA) clarifying the existence of Sales Patent No. 38713 (Exhibit "F") issued in the name of Intervenor Juan Valdez for Lot 4, Psd-763774.
>
> What is predominantly telling is the fact of payment under Official Receipt No. 6030195 (Exhibit "E") dated April 26, 1983 received

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[21] *Rollo,* pp. 56-58.

by the then Bureau of Lands as due consideration by Intervenor Valdez for the purchase of the subject parcel of land.

As regards the issue of non-violation of Intervenors' rights by defendants dela Rosas on the ground that a clear legal right has not been established, it would be too repetitious for the Court to re-state what had been thoroughly and previously discussed in the assailed order like the other re-hashed issues raised in the instant motion. The falsity of defendants' claim as to the non-existence of Sales Patent No. 38713 under the name of Intervenor Juan Valdez has also been shown and explained by documents on record and therefore should need no further elucidation.

Nevertheless, to clear the minds of any air of doubt, the transmittal of the Letter (Annex Q, Complaint-in-Intervention) dated December 3, 1993 of the Sales Patent No. 38713 (Exhibit "F") issued to Intervenor Valdez to the Registry of Deeds precisely states that:

> "We are forwarding to you the above-noted patent for registration and issuance of the corresponding certificate of title.
>
> Please notify the patentee as soon as the owner's duplicate certificate of title is ready for release."

as well as the August 15, 1994 Letter Reply (Exhibit "I") of Artemio Cana, Acting Registry of Deeds stating that:

> "In compliance and to comment your first Indorsement of August 1, 1994 relative to the Sales Patent No. 38713 issued by the Bureau of Lands on September 5, 1983 in the name of Juan O. Valdez, which patent is sought to be registered, I have the honor, very respectfully, to inform your good office that Original Certification of title issued pursuant to Sales, Free and Homestead Patents, by procedural standards followed in this office, <u>are personally delivered by DENR, PENRO Officials to this office, afterwhich</u>, registration is effected upon representation of its owners." (Underlining for emphasis.)

And the letter dated August 1, 1994 (Exhibit "K") are indicia of efforts to have the Sales Patent No. 38713 (Exhibit "F") registered and those efforts, having been entered in the day book of Registry of Deeds of Marikina, as well as in the Land Registration Authority, is a constructive notice of the registration of sales patent to bind

the defendants, their representatives, attorneys and privies as they have been bound by actual notice when defendants dela Rosa spouses claimed as theirs and caused to have Lot 4, PSD-76374 technically described under Sales Patent No. 38713 (Exhibit "F") to be subdivided into Lot 4-A, Lot 4-B and Lot 4-C to be supplanted as the property described in defendants' Transfer Certificate of Title No. 451423-A. Defendants' certificate of title therefore is the proverbial "skeleton hidden in the closet."

On the other hand, defendants-spouses dela Rosas' assertions against the certifications on the non-existence of their TCT No. 451423-A by the Registry of Deeds of Marikina City and the Registry of Deeds of Antipolo City, by citing LRC Case No. '94-1492 pending also before this Court only logically highlights or underscores the falsity of their Transfer Certificate of Title No. 451423-A. Defendants' dilemma is aggravated or compounded by the revelation in the technical description of their Transfer Certificate of Title No. 451423-A that Lot 4, Psd-76374 of Intervenors' Sales Patent No. 38713 (Exhibit "F") as pointed out in the preceding paragraph, was supplanted therein. Likewise, the date of survey July 14-25, 1969 of the subject property Lot 4-Psd-76374 and the date of approval June 30, 1971 was also copied from Intervenors' Sales Patent No. 38713.

With reference to the issue as to the non-existence of extreme urgencies or necessity of the writ of preliminary mandatory injunction; this Court has culled from the records that long before or in 1993 the filing of an ejectment case (Civil Case No. 2107, Branch II, MTC, Antipolo City) defendants dela Rosa had already intruded into the portions of the land in controvery (Decision dated April 22, 1993, Annex "D" of the complaint of MCDC).

The indiscriminate disposition by defendants either by lease or sale of right has caused and continued to cause grave and irreparable material damages and moral injuries to the Intervenors. And because of the questionable and conflicting documents, the Deed of Absolute Sale executed on July 28, 1976 in their favor covering the notorious *Titulo de Propriedad* No. 4136 that was nullified in the *Intestate Estate of Don Mariano San Pedro y Esteban vs. Court of Appeals*, 265 SCRA 733 and because of the doubtful TCT No. 451423-A allegedly issued on 10 July 1974, the defendants were able to sell rights to occupy other portions of the subject property, while other syndicated groups were emboldened to sell also rights of occupancy,

thus conflicts of rights have become inevitable resulting to the breakdown of peace and order in the communities.

Again it must be stressed that as a general rule a parcel of land in dispute cannot be taken from one party and given to another by an injunctive writ. But that is not absolute or without exception. The exception to the general rule is when there is a clear finding of ownership of the land in litigation, as in this case. And the Court honestly believes that the grant of the questioned writ to the herein intervenors falls within the exceptional cases (*Nely Raspado vs. Court of Appeals*, 220 SCRA 650, 653; *Cagayan de Oro Landless Residents Asso., Inc. vs. Court of Appeals*, 254 SCRA 232) for reasons previously discussed. Further the grant of the writ of preliminary mandatory injunction is merely *pendente lite*, and the intervenors have already filed a bond as required by the Court, in the amount of ONE MILLION PESOS (₱1,000,000.00) for defendants' protection, if it is found that intervenors are not entitled thereto.[22]

Evidently, there are ample justifications for the grant by the RTC of a writ that places the subject property in the possession of the spouses Valdez and spouses Malvar for the duration of the trial of Civil Case No. 00-6015. Sales Patent No. 38713, covering the subject property, had already been issued to Juan Valdez which makes him, at the very least, the equitable owner of the said property. There is already a request for the registration of Sales Patent No. 38713 pending before the Registry of Deeds of Marikina City. The spouses Valdez acknowledge the transfer of the subject property to the spouses Malvar. In contrast, the title of the spouses Dela Rosa to the subject property is nebulous. The spouses Dela Rosa's title is based on TCT No. 451423-A in Cristeta dela Rosa's name, which is not registered with the Registry of Deeds of Marikina City or Antipolo City. TCT No. 451423-A is also traced back to *Titulo de Propriedad* No. 4136, which, in the *Intestate Estate of the late Don Mariano San Pedro y Esteban v. Court of Appeals*,[23] was already declared null and void, and from which no rights could be derived.

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[22] Records, pp. 464-468.

[23] 333 Phil. 597 (1996).

There is no reason for the Court to deviate from the foregoing findings of the RTC, as affirmed by the Court of Appeals. It is worth stressing that the assessment and evaluation of evidence in the issuance of the writ of preliminary injunction involves findings of facts ordinarily left to the trial court for its conclusive determination. The Court has time and again ruled that conclusions and findings of fact of the trial court are entitled to great weight and should not be disturbed on appeal, unless strong and cogent reasons dictate otherwise. This is because the trial court is in a better position to examine the real evidence, as well as to observe the demeanor of the witnesses while testifying in the case.[24]

There is likewise no merit in the spouses Dela Rosa's contention that the RTC Orders dated December 16, 2002 and February 28, 2003 amounted to a prejudgment of the case, there being no trial on the merits of Civil Case No. 00-6015 as yet. In *Levi Strauss (Phils.) Inc. v. Vogue Traders Clothing Company*,[25] the Court already explicated that:

> Indeed, a writ of preliminary injunction is generally based solely on initial and incomplete evidence adduced by the applicant (herein petitioner). The evidence submitted during the hearing of the incident is not conclusive, for only a "sampling" is needed to give the trial court an idea of the justification for its issuance pending the decision of the case on the merits. As such, the findings of fact and opinion of a court when issuing the writ of preliminary injunction are interlocutory in nature. Moreover, the sole object of a preliminary injunction is to preserve the *status quo* until the merits of the case can be heard. Since Section 4 of Rule 58 of the Rules of Civil Procedure gives the trial courts sufficient discretion to evaluate the conflicting claims in an application for a provisional writ which often involves a factual determination, the appellate courts generally will not interfere in the absence of manifest abuse of such discretion. A writ of preliminary injunction would become a prejudgment of a case only when it grants the main prayer in the complaint or responsive

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[24] *Lopez v. Court of Appeals*, 379 Phil. 743, 752 (2000).

[25] 500 Phil. 438 (2005).

pleading, so much so that there is nothing left for the trial court to try except merely incidental matters. x x x.[26]

The RTC Orders dated December 16, 2002 and February 28, 2003 have settled nothing more than the question of which party/parties is/are entitled to possession of the subject property while Civil Case No. 00-6015 is still being heard. The findings of fact and opinion of the RTC, based on the evidence that had so far been submitted by the parties, are merely interlocutory in nature. Even with its issuance of said Orders, the RTC is not precluded from proceeding with Civil Case No. 00-6015 to receive additional evidence and hear further arguments that will help said trial court to determine with finality the rightful owner/s and possessor/s of the subject property.

WHEREFORE, the Petition is *DENIED*. The Decision dated June 10, 2003 and Resolution dated July 24, 2003 of the Court of Appeals in CA-G.R. SP No. 76081 are *AFFIRMED*. Furthermore, the TRO issued by the Court in its Resolution dated October 8, 2003 is *LIFTED* and the surety bond posted by the spouses Dela Rosa is *CANCELLED*. The RTC, Branch 71 of Antipolo City is *ORDERED* to proceed with the hearing of Civil Case No. 00-6015 with dispatch.

Costs against the spouses Dela Rosa.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, del Castillo, and *Villarama, Jr., JJ.,* concur.

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[26] *Id.* at 461-462.

FIRST DIVISION

[G.R. No. 161787. July 27, 2011]

MASING AND SONS DEVELOPMENT CORPORATION and CRISPIN CHAN, *petitioners, vs.* **GREGORIO P. ROGELIO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; TO BE FILED NOT LATER THAN SIXTY (60) DAYS FROM NOTICE TO JUDGMENT, ORDER OR RESOLUTION; IN CASE AT BAR, THE PETITION WAS TIMELY COMMENCED IN THE COURT OF APPEALS.— Anent the first error, the Court finds that the CA did not err in taking cognizance of the petition for *certiorari* of Rogelio. Based on the records, Rogelio received the NLRC's denial of his motion for reconsideration on January 16, 2003. He then had 60 days from January 16, 2003, or until March 17, 2003, within which to file his petition for *certiorari*. It is without doubt, therefore, that his filing was timely considering that the CA received his petition for *certiorari* at 2:44 o'clock in the afternoon of March 17, 2003. The petitioners' insistence, that the issuance of the entry of judgment with respect to the NLRC's decision precluded Rogelio from filing a petition for *certiorari*, was unwarranted. It ought to be without debate that the finality of the NLRC's decision was of no consequence in the consideration of whether or not he could bring a special civil action for *certiorari* within the period of 60 days for doing so under Section 4, Rule 65, *Rules of Court*, simply because the question being thereby raised was jurisdictional.

2. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; DEFINED; SUBSTANTIAL EVIDENCE IS SUFFICIENT TO ESTABLISH THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP.— The issue of whether or not an employer-employee relationship existed between the petitioners and the respondent in that period was essentially a question of fact. In dealing with such question, substantial evidence — that amount of relevant evidence which a reasonable

mind might accept as adequate to justify a conclusion – is sufficient. Although no particular form of evidence is required to prove the existence of the relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship exists must nonetheless rest on substantial evidence.

3. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; GENERALLY, THE SUPREME COURT DOES NOT REVIEW ERRORS THAT RAISE FACTUAL QUESTIONS BECAUSE THE COURT IS NOT A TRIER OF FACTS; EXCEPTION.— Generally, the Court does not review errors that raise factual questions, primarily because the Court is not a trier of facts. However, where, like now, there is a conflict between the factual findings of the Labor Arbiter and the NLRC, on the one hand, and those of the CA, on the other hand, it is proper, in the exercise of our equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ESTABLISHED BY SUBSTANTIAL EVIDENCE IN CASE AT BAR; RESPONDENT REMAINED THE PETITIONERS' EMPLOYEE DESPITE HIS SUPPOSED SEPARATION.— We agree with the CA's factual findings, because they were based on the evidence and records of the case submitted before the LA. The CA essentially complied with the guidepost that the substantiality of evidence depends on both its quantitative and its qualitative aspects. Indeed, the records substantially established that Chan and MSDC had employed Rogelio until 1997. In contrast, Chan and MSDC failed to adduce credible substantiation of their averment that Rogelio had been Lim's employee from July 1989 until 1997. Credible proof that could outweigh the showing by Rogelio to the contrary was demanded of Chan and MSDC to establish the veracity of their allegation, for their mere allegation of Rogelio's employment under Lim did not constitute evidence, but they did not submit such proof, sadly failing to discharge their burden of proving their own affirmative allegation. In this regard, as we pointed out at the start, the doubts reasonably arising from the evidence are resolved in favor of the laborer in any controversy between a laborer and his master.

5. ID.; ID.; RETIREMENT FROM THE SERVICE; BASIS.— Was Rogelio entitled to the retirement benefits under Article 287 of the *Labor Code*, as amended by Republic Act No. 7641? The CA held so in its decision, to wit: Having reached the conclusion that petitioner was an employee of the respondents from 1950 to March 17, 1997, and considering his uncontroverted allegation that in the Ibajay branch office where he was assigned, respondents employed no less than 12 workers at said later date, thus affording private respondents no relief from the duty of providing retirement benefits to their employees, we see no reason why petitioner should not be entitled to the retirement benefits as provided for under Article 287 of the Labor Code, as amended. The beneficent provisions of said law, as applied in *Oro Enterprises Inc. v. NLRC*, is apart from the retirement benefits that can be claimed by a qualified employee under the social security law. Attorney's fees are also granted to the petitioner. But the monetary benefits claimed by petitioner cannot be granted on the basis of the evidence at hand. We concur with the CA's holding. The third paragraph of the aforequoted provision of the *Labor Code* entitled Rogelio to retirement benefits as a necessary consequence of the finding that Rogelio was an employee of MSDC and Chan. Indeed, there should be little, if any, doubt that the benefits under Republic Act No. 7641, which was enacted as a labor protection measure and as a curative statute to respond, in part at least, to the financial well-being of workers during their twilight years soon following their life of labor, can be extended not only from the date of its enactment but retroactively to the time the employment contracts started.

APPEARANCES OF COUNSEL

Estrella M. Briones and *Francisco B. Figura* for petitioners.
Leaño, Leaño & Leaño Law Office for respondent.

D E C I S I O N

BERSAMIN, *J.*:

In any controversy between a laborer and his master, doubts reasonably arising from the evidence are resolved in favor of the laborer.

We re-affirm this principle, as we uphold the decision of the Court of Appeals (CA) that reversed the uniform finding that there existed no employment relationship between the petitioners, as employers, and the respondent, as employee, made by the National Labor Relations Commission (NLRC) and the Labor Arbiter (LA).

Petitioners Masing and Sons Development Corporation (MSDC) and Crispin Chan assail the October 24, 2003 decision,[1] whereby the CA reversed the decision dated January 28, 2000 of the NLRC that affirmed the decision of the LA (dismissing the claim of the respondent for retirement benefits on the ground that he had not been employed by the petitioners but by another employer).

Antecedents

On May 19, 1997, respondent Gregorio P. Rogelio (Rogelio) brought against Chan a complaint for retirement pay pursuant to Republic Act No. 7641,[2] in relation to Article 287 of the *Labor Code*, holiday and rest days premium pay, service incentive leave, 13th month pay, cost of living allowances (COLA), underpayment of wages, and attorney's fees. On January 20, 1998, Rogelio amended his complaint to include MSDC as a co-respondent. His version follows.

Rogelio was first employed in 1949 by Pan Phil. Copra Dealer, MSDC's predecessor, which engaged in the buying and selling of copra in Ibajay, Aklan, with its main office being in Kalibo, Aklan. Masing Chan owned and managed Pan Phil. Copra Dealer, and the Branch Manager in Ibajay was a certain So Na. In 1965, Masing Chan changed the business name of Pan Phil. Copra Dealer to Yao Mun Tek, and appointed Jose Conanan Yap Branch Manager in Ibajay. In the 1970s, the business

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[1] *Rollo*, pp. 111-121; penned by Associate Justice Renato C. Dacudao (retired), with Associate Justice Cancio C. Garcia (later Presiding Justice of the CA and a Member of the Court) and Associate Justice Danilo B. Pine (retired), concurring.

[2] Approved on December 9, 1992 and effective on January 7, 1993.

name of Yao Mun Tek was changed to Aklan Lumber and General Merchandise, and Leon Chan became the Branch Manager in Ibajay. Finally, in 1984, Masing Chan adopted the business name of Masing and Sons Development Corporation (MSDC), appointing Wynne or Wayne Lim (Lim) as the Branch Manager in Ibajay. Crispin Chan replaced his father, Masing Chan, in 1990 as the manager of the entire business.

In all that time, Rogelio worked as a laborer in the Ibajay Branch, along with twelve other employees. In January 1974, Rogelio was reported for Social Security System (SSS) coverage. After paying contributions to the SSS for more than 10 years, he became entitled to receive retirement benefits from the SSS. Thus, in 1991, he availed himself of the SSS retirement benefits, and in order to facilitate the grant of such benefits, he entered into an internal arrangement with Chan and MSDC to the effect that MSDC would issue a certification of his separation from employment notwithstanding that he would continue working as a laborer in the Ibajay Branch.

The certification reads as follows:[3]

CRISPIN AMIGO CHAN – COPRA DEALER
IBAJAY, AKLAN

August 10, 1991

CERTIFICATION OF SEPARATION FROM EMPLOYMENT

To whom it may concern:

This is to certify that my employee, GREGORIO P. ROGELIO bearing SSS ID No. 07-0495213-7 who was first covered effective January, 1974 up to June 30, 1989 inclusive, is now officially separated from my employ effective the 1st of July, 1989.

Please be guided accordingly.

(SGD.) CRISPIN AMIGO CHAN
Proprietor
SSS ID No. 07-0595800-4

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[3] CA *rollo*, p. 48.

On March 17, 1997, Rogelio was paid his last salary. Lim, then the Ibajay Branch Manager, informed Rogelio that he was deemed retired as of that date. Chan confirmed to Rogelio that he had already reached the compulsory retirement age when he went to the main office in Kalibo to verify his status. Rogelio was then 67 years old.

Considering that Rogelio was supposedly receiving a daily salary of ₱70.00 until 1997, but did not receive any 13th month pay, service incentive leave, premium pay for holidays and rest days and COLA, and even any retirement benefit from MSDC upon his retirement in March 1997, he commenced his claim for such pay and benefits.

In substantiation, Rogelio submitted the January 19, 1998 affidavits of his co-workers, namely: Domingo Guevarra,[4] Juanito Palomata,[5] and Ambrosio Señeres,[6] whereby they each declared under oath that Rogelio had already been working at the Ibajay Branch by the time that MSDC's predecessor had hired them in the 1950s to work in that branch; and that MSDC and Chan had continuously employed them until their own retirements, that is, Guevarra in 1994, and Palomata and Señeres in 1997. They thereby corroborated the history of MSDC and the names of the various Branch Managers as narrated by Rogelio, and confirmed that like Rogelio, they did not receive any retirement benefits from Chan and MSDC upon their retirement.

In their defense, MSDC and Chan denied having engaged in copra buying in Ibajay, insisting that they did not ever register in such business in any government agency. They asserted that Lim had not been their agent or employee, because he had been an independent copra buyer. They averred, however, that Rogelio was their former employee, hired on January 3, 1977 and retired on June 30, 1989;[7] and that Rogelio was thereafter

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[4] *Id.,* pp. 44-45.

[5] *Id.*

[6] *Id.,* pp. 46-47.

[7] *Id.,* p. 35.

employed by Lim starting from July 1, 1989 until the filing of the complaint.

MSDC and Chan submitted the affidavit of Lim, whereby Lim stated that Rogelio was one of his employees from 1989 until the termination of his services.[8] They also submitted SSS Form R-1A, Lim's SSS Report of Employee-Members (showing that Rogelio and Palomata were reported as Lim's employees);[9] Lim's application for registration as copra buyer;[10] Chan's affidavit;[11] and the affidavit of Guevarra[12] and Señeres,[13] whereby said affiants denied having executed or signed the January 19, 1998 affidavits submitted by Rogelio.

In his affidavit, Guevarra recanted the statement attributed to him that he had been employed by Chan and MSDC, and declared that he had been an employee of Lim. Likewise, Guevarra's daughter executed an affidavit,[14] averring that his father had been an employee of Lim and that his father had not signed the affidavit dated January 19, 1998.

On April 5, 1999, the LA dismissed the complaint against Chan and MSDC, ruling thus:

> From said evidence, it is our considered view that there exists no employer-employee relationship between the parties effective July 1, 1989 up to the date of the filing of the instant complaint complainant was an employee of Wynne O. Lim. Hence, his claim for retirement should have been filed against the latter for he admitted that he was the employer of herein complainant in his sworn statement dated June 9, 1998.

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[8] *Id.*, p. 38.

[9] *Id.*, p. 36.

[10] *Id.*, p. 37.

[11] *Id.*, pp. 39-40.

[12] *Id.*, p. 51.

[13] *Id*.

[14] *Id.*, p. 52.

Complainant's claim for retirement benefits against herein respondents under RA No. 7641 has been barred by prescription considering the fact that it partakes of the nature of a money claim which prescribed after the lapse of three years after its accrual.

The rest of the claims are also dismissed for the same accrued during complainant's employment with Wynne O. Lim.

WHEREFORE, PREMISES CONSIDERED, this case is hereby DISMISSED for lack of merit.

SO ORDERED.[15]

Rogelio appealed, but the NLRC affirmed the decision of the LA on January 28, 2000, observing that there could be no double retirement in the private sector; that with the double retirement, Rogelio would be thereby enriching himself at the expense of the Government; and that having retired in 1991, Rogelio could not avail himself of the benefits under Republic Act No. 7641 entitled *An Act Amending Article 287 of Presidential Decree No. 442, As Amended, Otherwise Known as The Labor Code Of The Philippines, By Providing for Retirement Pay to Qualified Private Sector Employees in the Absence Of Any Retirement Plan in the Establishment*, which took effect only on January 7, 1993.[16]

The NLRC denied Rogelio's motion for reconsideration.

Ruling of the CA

Rogelio commenced a special civil action for *certiorari* in the CA, charging the NLRC with grave abuse of discretion in denying to him the benefits under Republic Act No. 7641, and in rejecting his money claims on the ground of prescription.

On October 24, 2003, the CA promulgated its decision,[17] holding that Rogelio had substantially established that he had been an employee of Chan and MSDC, and that the benefits

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[15] *Rollo*, pp. 24-25.

[16] *Id.*, pp. 56-61.

[17] *Supra*, note 1.

under Republic Act No. 7641 were apart from the retirement benefits that a qualified employee could claim under the Social Security Law, conformably with the ruling in *Oro Enterprises, Inc. v. NLRC* (G.R. No. 110861, November 14, 1994, 238 SCRA 105).

The CA decreed:

> WHEREFORE, premises considered, the Decision of the public respondent NLRC is hereby VACATED and SET ASIDE. This case is remanded to the Labor Arbiter for the proper computation of the retirement benefits of the petitioner based on Article 287 of the Labor Code, as amended, to be pegged at the minimum wage prevailing in Ibajay, Aklan as of March 17, 1997, and attorney's fees based on the same. Without costs.
>
> SO ORDERED.

Chan and MSDC's motion for reconsideration was denied by the CA.

Issues

In this appeal, Chan and MSDC contend that the CA erred: (*a*) in taking cognizance of Rogelio's petition for *certiorari* despite the decision of the NLRC having become final and executory almost two months before the petition was filed; (*b*) in concluding that Rogelio had remained their employee from July 6, 1989 up to March 17, 1997; and (*c*) in awarding retirement benefits and attorney's fees to Rogelio.

Ruling

The petition for review is barren of merit.

I

***Certiorari* was timely commenced in the CA**

Anent the first error, the Court finds that the CA did not err in taking cognizance of the petition for *certiorari* of Rogelio.

Based on the records, Rogelio received the NLRC's denial of his motion for reconsideration on January 16, 2003. He then

had 60 days from January 16, 2003, or until March 17, 2003, within which to file his petition for *certiorari*. It is without doubt, therefore, that his filing was timely considering that the CA received his petition for *certiorari* at 2:44 o'clock in the afternoon of March 17, 2003.

The petitioners' insistence, that the issuance of the entry of judgment with respect to the NLRC's decision precluded Rogelio from filing a petition for *certiorari*, was unwarranted. It ought to be without debate that the finality of the NLRC's decision was of no consequence in the consideration of whether or not he could bring a special civil action for *certiorari* within the period of 60 days for doing so under Section 4, Rule 65, *Rules of Court*, simply because the question being thereby raised was jurisdictional.

II
***Respondent* remained the petitioners' employee despite his supposed separation**

Did Rogelio remain the employee of the petitioners from July 6, 1989 up to March 17, 1997?

The issue of whether or not an employer-employee relationship existed between the petitioners and the respondent in that period was essentially a question of fact.[18] In dealing with such question, substantial evidence — that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion[19] — is sufficient. Although no particular form of evidence is required to prove the existence of the relationship, and any competent and relevant evidence to prove the relationship may be admitted,[20]

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[18] *Lopez v. Bodega City*, G.R. No. 155731, September 3, 2007, 532 SCRA 56, 64; *Manila Water Company, Inc. v. Peña*, G.R. No. 158255, July 8, 2004, 434 SCRA 53, 58-59.

[19] Section 5, Rule 133, *Rules of Court*; *People's Broadcasting (Bombo Radyo Phils., Inc.) v. Secretary of the Department of Labor and Employment*, G.R. No. 179652, May 8, 2009, 587 SCRA 724, 753.

[20] *Opulencia Ice Plant and Storage v. NLRC*, G.R. No. 98368, December 15, 1993, 228 SCRA 473, 478.

a finding that the relationship exists must nonetheless rest on substantial evidence.

Generally, the Court does not review errors that raise factual questions, primarily because the Court is not a trier of facts. However, where, like now, there is a conflict between the factual findings of the Labor Arbiter and the NLRC, on the one hand, and those of the CA, on the other hand,[21] it is proper, in the exercise of our equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings.

The CA delved on and resolved the issue of the existence of an employer-employee relationship between the petitioners and the respondent thusly:

> As to the factual issue, the petitioner's evidence consists of his own statements and those of his alleged co-worker from 1950 until 1997, Juanito Palomata, who unlike his former co-workers Domingo Guevarra and Ambrosio Señeres, did not disown the "Sinumpaang Salaysay" he executed, in corroboration of petitioner's allegations; and the Certification dated August 10, 1991 stating that petitioner was first placed under coverage of the SSS in January 1974 to June 30, 1989 and was separated from service effective July 1, 1989, a certification executed by respondent Crispin Amigo Chan which, petitioner maintains, was only intended for his application for retirement benefits with the SSS.
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> Private respondents' evidence, on the other hand, consisted of respondent Crispin Amigo Chan's counter statements as well as documentary evidence consisting of (1) Wayne Lim's Affidavit which petitioner acknowledged in his Reply dated July 11, 1998, par. 8, admitting to being the employer of petitioner from July 1, 1989 until the filing of the complaint; (2) Certification dated October 22, 1991 showing petitioner's employment with respondents to have been between January 3, 1977 until July 1, 1989; (3) Affidavits of Guevarra and Señeres disowning their signatures in the affidavits submitted in evidence by the petitioner; (4) SSS report executed by

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[21] *Lopez v. Bodega City, supra*, p. 65; *Manila Water Company, Inc. v. Pena, supra*, p. 58; *Tiu v. Pasaol, Sr.*, G.R. No. 139876, April 30, 2003, 402 SCRA 312, 319.

Wayne Lim of his initial list of employees as of July 1, 1989 which includes the petitioner. On appeal, the respondents further submitted documentary evidence showing that Wayne Lim registered his business name on July 11, 1989 and apparently went into business buying copra.

At this point, we should note the following factual discrepancies in the evidence on hand: First, the respondents issued certificates stating the commencement of petitioner's employment on different dates, *i.e.* January 1974 and January 1977, although the earlier date referred only to the period when petitioner was first placed under the coverage of the SSS, which need not necessarily refer to the commencement of his employment. Secondly, while respondent Crispin Amigo Chan denied having ever engaged in copra buying in Ibajay, the certificates he issued *both dated in 1991* state otherwise, for he declared himself as a "copra dealer" with *address in Ibajay*. Then there is the statement of the petitioner that Wayne Lim was the respondents' manager in their branch office in Ibajay since 1984, a statement that respondents failed to disavow. Instead, respondents insisted on their *non sequitur* argument that they had never engaged in copra buying activities in Ibajay, and that Wayne Lim was in business all by himself in regard to such activity.

The denial on respondents' part of their copra buying activities in Ibajay begs the obvious question: What were petitioner and his witness Juanito Palomata then doing for respondents as laborers *in Ibajay* prior to July 1, 1989? Indeed, what did petitioner do for the respondents as the latter's laborer prior to July 1, 1989, which was *different* from what he did after said date? The records showed that he continued *doing the same job*, *i.e.* as laborer and trusted employee tasked with the responsibility of getting money from the Kalibo office of respondents which was used to buy copra and pay the employees' salaries. He did not only continue doing the same thing but he apparently did the same *at or from the same place*, *i.e.* the bodega in Ibajay, which his co-worker Palomata believed to belong to the respondent Masing & Sons. Since respondents admitted to employing petitioner from 1977 to 1989, we have to conclude that, indeed, the bodega in Ibajay was owned by respondents at least prior to July 1, 1989 since petitioner had consistently stated that he worked for the respondents continuously in their branch office *in Ibajay* under different managers and *nowhere else*.

We believe that the respondents' strongest evidence in regard to the alleged separation of petitioner from service effective July 1, 1989 would be the affidavit of Wayne Lim, owning to being the employer of petitioner since July 1, 1989 and the SSS report that he executed listing petitioner as one of his employees since said date. But in light of the incontrovertible *physical reality* that petitioner and his co-workers did go to work day in and day out for such a long period of time, doing the same thing and in the same place, without apparent discontinuity, *except on paper*, these documents cannot be taken at their face value. We note that Wayne Lim apparently inherited, *at least on paper*, ten (10) employees of respondent Crispin Amigo Chan, including petitioner, *all on the same day, i.e.* on July 1, 1989. We note, too, that while there exists an initial report of employees to the SSS by Wayne Lim, no other document apart from his affidavit and business registration was offered by respondents to bolster their contention, irrespective of the fact that Wayne Lim was not a party respondent. What were the circumstances underlying such alleged mass transfer of employment? Unfortunately, the evidence for the respondents does not provide us with ready answers. We could conclude that respondents sold their business in Ibajay and assets to Wayne Lim on July 1, 1989; however, as pointed out above, respondent Crispin Amigo Chan himself said that he was a "copra dealer" *from Ibajay in August and October of 1991*. Whether or not he was registered as a copra buyer is immaterial, given that he declared himself a "copra dealer" and had apparently engaged in the activity of buying copra, as shown precisely by the employment of petitioner and Palomata. If Wayne Lim, from being the respondents' manager in Ibajay became an independent businessman and took over the respondents' business in Ibajay along with all their employees, why did not the respondents' simply state that fact for the record? More importantly, why did the petitioner and Palomata continue believing that Wayne Lim was only the respondents' manager? Given the long employment of petitioner with the respondents, was it possible for him and his witness to make such mistake? We do not think so. *In case of doubt, the doubt is resolved in favor of labor*, in favor of the safety and decent living for the laborer as mandated by Article 1702 of the Civil Code. The reality of the petitioner's toil speaks louder than words. xxx[22]

[22] *Rollo*, pp.117-119.

We agree with the CA's factual findings, because they were based on the evidence and records of the case submitted before the LA. The CA essentially complied with the guidepost that the substantiality of evidence depends on both its quantitative and its qualitative aspects.[23] Indeed, the records substantially established that Chan and MSDC had employed Rogelio until 1997. In contrast, Chan and MSDC failed to adduce credible substantiation of their averment that Rogelio had been Lim's employee from July 1989 until 1997. Credible proof that could outweigh the showing by Rogelio to the contrary was demanded of Chan and MSDC to establish the veracity of their allegation, for their mere allegation of Rogelio's employment under Lim did not constitute evidence,[24] but they did not submit such proof, sadly failing to discharge their burden of proving their own affirmative allegation.[25] In this regard, as we pointed out at the start, the doubts reasonably arising from the evidence are resolved in favor of the laborer in any controversy between a laborer and his master.

III
Respondent entitled to retirement benefits from the petitioners

Article 287 of the *Labor Code*, as amended by Republic Act No. 7641, provides:

> Article 287. *Retirement*. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
>
> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws

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[23] *Insular Life Assurance Co., Ltd. Employees Association-NATU v. Insular Life Assurance Co., Ltd.*, G.R. No.L-25291, March 10, 1977, 76 SCRA 50.

[24] *Martinez v. National Labor Relations Commission*, G.R. No. 117495, May 29, 1997, 272 SCRA 793, 801; *P.T. Cerna Corporation v. Court of Appeals*, G.R. No. 91622, April 6, 1993, 221 SCRA 19, 25.

[25] *Jimenez v. National Labor Relations Commission*, G.R. No. 116960, April 2, 1996, 256 SCRA 84, 89.

and any collective bargaining agreement and other agreements; Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions provided under Article 288 of this Code.

Was Rogelio entitled to the retirement benefits under Article 287 of the *Labor Code*, as amended by Republic Act No. 7641?

The CA held so in its decision, to wit:

Having reached the conclusion that petitioner was an employee of the respondents from 1950 to March 17, 1997, and considering his uncontroverted allegation that in the Ibajay branch office where he was assigned, respondents employed no less than 12 workers at said later date, thus affording private respondents no relief from the duty of providing retirement benefits to their employees, we see no reason why petitioner should not be entitled to the retirement benefits as provided for under Article 287 of the Labor Code, as amended. The beneficent provisions of said law, as applied in *Oro Enterprises Inc. v. NLRC*, is apart from the retirement benefits that can be claimed by a qualified employee under the social security law. Attorney's fees are also granted to the petitioner. But the monetary

benefits claimed by petitioner cannot be granted on the basis of the evidence at hand.[26]

We concur with the CA's holding. The third paragraph of the aforequoted provision of the *Labor Code* entitled Rogelio to retirement benefits as a necessary consequence of the finding that Rogelio was an employee of MSDC and Chan. Indeed, there should be little, if any, doubt that the benefits under Republic Act No. 7641, which was enacted as a labor protection measure and as a curative statute to respond, in part at least, to the financial well-being of workers during their twilight years soon following their life of labor, can be extended not only from the date of its enactment but retroactively to the time the employment contracts started.[27]

WHEREFORE, the Court denies the petition for review on *certiorari*, and affirms the decision promulgated on October 24, 2003 in CA-G.R. SP No.75983.

Costs of suit to be paid by the petitioners.

SO ORDERED.

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

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[26] *Rollo,* p. 120.

[27] *Oro Enterprises, Inc. v. National Labor Relations Commission*, G.R. No. 110861, November 14, 1994, 238 SCRA 105, 112.

SECOND DIVISION

[G.R. No. 163252. July 27, 2011]

ABOSTA SHIPMANAGEMENT CORPORATION, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) and ARNULFO R. FLORES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; RE-EXAMINATION OF THE EVIDENCE IN VIEW OF THE VARIANCE IN THE FACTUAL FINDINGS OF THE LABOR ARBITER AND THAT OF THE NLRC AND THE CA, PROPER IN CASE AT BAR.— We first resolve the procedural issue of whether we should rule on the petition which, as Flores contends, raises only questions of fact and not of law. While it is true that the Court is not a trier of facts, we deem it proper to re-examine the evidence in view of the variance in the factual findings of the labor arbiter, on the one hand, and of the NLRC and the CA, on the other hand.

2. ID.; EVIDENCE; SUBSTANTIAL EVIDENCE; DEFINED; VALID REASON FOR TERMINATION OF PRIVATE RESPONDENT'S EMPLOYMENT, SUPPORTED BY SUBSTANTIAL EVIDENCE IN CASE AT BAR.— "Substantial evidence[, it must be stressed,] is more than a mere scintilla[. It means such] relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise." The agency, to our mind, succeeded in showing, by substantial evidence, that its principal (*Panstar*) had a valid reason for terminating Flores' employment. The Master, Capt. B.H. Mun, decided to dismiss him not only for agitating the crew to rebel against the authorities of the vessel *M/V Morning Charm* (which the NLRC considered as the main reason for the dismissal), but for several other infractions. As the records show, and as Capt. B.H. Mun stressed in his letter of November 17, 1997 to the agency management, Flores was also charged with

inefficiency or neglect of duty, insubordination, insolent and disrespectful behavior, and other actuations which made him unfit for his position and rank. x x x It is clear that the letters of Chief Officer De Luna and 1st Assistant Engineer Escarola to Panstar's Capt. Chung, detailing how Flores agitated the crew (with charges of mismanagement of the vessel), and Capt. B.H. Mun's letter to the agency all depict a radio officer who undermined the authority of the shipmaster and the other officers in the guise of raising labor-management issues on board the vessel. Additionally and as an indication of his disrespect for the vessel's management, as well as his low regard for his work, he neglected his duties as radio officer and disobeyed Capt. B.H. Mun's instructions on several occasions. It is no surprise that his record of service yielded a very poor assessment or a "no further employment" assessment.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; TECHNICAL RULES OF EVIDENCE ARE NOT BINDING THEREIN; APPLICATION.— Flores questioned the probative value of Capt. B.H. Mun's statements, contending that they are self-serving. He regarded them as pure hearsay which cannot be considered as evidence. It bears stressing in this regard that under the law, technical rules of evidence are not binding in administrative proceedings, and the NLRC and the labor arbiters "shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process." Hearsay or not, and by way of reiteration, Capt. B.H. Mun's statements cannot just be ignored, for Flores himself admitted in his position paper, as noted by the labor arbiter, that the shipmaster asked him to be the coordinator or go-between for several crew members who wanted to pre-terminate their contract. It is not disputed that Flores acted as such coordinator between the crew and Capt. B.H. Mun.

4. CIVIL LAW; DAMAGES; NOMINAL DAMAGES; VIOLATION OF ONE'S RIGHT TO PROCEDURAL DUE PROCESS WARRANTS THE PAYMENT OF INDEMNITY IN THE FORM OF NOMINAL DAMAGES.— The records bear out that Flores was not given a reasonable opportunity to present his side *vis-à-vis* the charges at the time he was dismissed. As the NLRC noted, Flores was immediately dismissed after Capt.

> B.H. Mun conducted his inquiry on November 17, 1997. Although Flores merely issued a vehement denial, Capt. B.H. Mun should have given him a reasonable time to explain, if necessary, in writing. While this lapse in procedure cannot negate the existence of a valid cause for Flores' dismissal, as discussed above, the violation of his right to procedural due process warrants the payment of indemnity in the form of nominal damages, as we held in *Agabon v. National Labor Relations Commission*. Given the circumstances in the present case, we deem an award of nominal damages to Flores in the amount of ₱30,000.00 to be appropriate.

APPEARANCES OF COUNSEL

Estrada and Associates Law Offices for petitioner.
Francisco Miralles for respondents.

D E C I S I O N

BRION, *J.*:

The petition for review on *certiorari*[1] before us seeks the reversal of the resolutions of the Court of Appeals (CA), dated October 20, 2003[2] and April 6, 2004,[3] rendered in CA-G.R. SP No. 66806.

The Facts

Respondent Arnulfo R. Flores entered into a 12-month contract of employment, as radio officer, with the petitioner Abosta Shipmanagement Corporation (*agency*) for and in behalf of Panstar Shipping Co. Ltd. (*Panstar*) of Busan, South Korea. Under the contract, Flores was to receive a salary of US$728.00/month for a 48-hour work week, a guaranteed overtime pay of US$439.00

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[1] *Rollo*, pp. 9-23; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 31-32; penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), and concurred in by Associate Justice Edgardo P. Cruz and Associate Justice Noel G. Tijam.

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

a month, a monthly vacation pay of US$146.00, and a supplemental allowance of US$33.00 a month.

Flores joined the vessel *M/V Morning Charm* sometime in June 1997. The Master of the vessel, Captain B.H. Mun, and Chief Engineer Gowang Gun Lee are from South Korea. Aside from Flores, there were other Filipino workers on the vessel. On November 29, 1997, Flores was repatriated due to alleged infractions committed while on board the vessel. In reaction, he filed a complaint for illegal dismissal on January 13, 1998 against the agency and Panstar.

The Compulsory Arbitration Proceedings

Before the labor arbiter, Flores alleged that in the course of his employment, he was asked by the Master to coordinate with several crew members who were requesting that they be allowed to resign or pre-terminate their employment contracts due to the alleged mismanagement of the vessel. He acted as coordinator as bidden, but was surprised to learn later that he was one of those whose resignations were accepted. He sought clarification from the Master, only to be told that he was among the crew members who were considered to have resigned; hence, his discharge on November 29, 1997.

Upon his return to Manila, he immediately informed the agency that he had been erroneously included among those who were considered resigned. He was surprised to learn that he was blamed for having instigated the mass resignation of the Filipino crew. When he tried to explain his side, the agency told him that the action taken by the Master was final and that it was not interested in his story.

For their part, the agency and Panstar argued that Flores, while in their employ, insistently and rudely questioned the crew's working schedule, including the propriety of requiring them to render overtime services. They claimed that Flores instigated the crew to rebel against the authority of the Master, under the guise of questioning social security and income tax deductions. As a result, the crew members became unruly, arrogant, and

impolite, and were even violent in expressing their views. They even refused to obey the lawful orders of the Master and the senior officers, thus causing dissension on board the vessel.

The agency alleged that sometime in September 1997, Flores prepared a petition for five Filipino crew members from the engine department, demanding the ouster of 1st Assistant Engineer Rodolfo Escarola, reportedly for incompetence and inefficiency; they threatened mass resignation. To create further unrest and dissatisfaction, Flores induced Sofronio Tibay, Herman Sebuando, Primitive Ferrer and Raymundo Angel, of the same department, to write a letter to the ship management that they would be taking their emergency leaves, one after the other, in November 1997. They charged the vessel officers of mismanaging the crew. When confronted about the letter, however, they denied most of the letter's contents, pointing to Flores as the author of the letter. At Flores' instigation, the crew members threatened to disembark without waiting for their replacements. The Master asked them to work for a less drastic solution, but they maintained their threat.

In light of the growing unrest on board the ship and Flores' negative work attitude, the Master, Capt. B.H. Mun, asked Flores to explain why he should not be administratively sanctioned for (1) disrespecting his superior officers through his unruly, discourteous, impolite and violent behavior; (2) inciting the crew to commit insubordination and engaging in an activity which tends to create discontent among the crew or to destroy harmonious relations with the principal; and (3) inefficiency and other infractions, specifically: (a) staying at his quarters most of the time while on duty, leaving unattended the messages from the charterer or from the *Panstar* office; (b) revealing confidential messages to the crew without the Master's permission; and (c) insubordination.

According to the agency and Panstar, Flores became enraged after he was informed of the charges, but could only vehemently deny the accusations. The Master then decided to separate Flores from the service as the former was convinced that the charges were well-founded. The agency and Panstar claimed

that Flores was paid his overtime pay, salary for November 1997, and accrued vacation leave pay.

In a decision dated August 20, 1999,[4] Labor Arbiter Adolfo C. Babiano dismissed the complaint for lack of merit. He found that the evidence the agency and Panstar presented were convincing enough to prove that Flores was a serious threat to the safety of the vessel and its crew. He noted that Flores failed to refute the agency's and Panstar's allegations that he incited the crew to rebel against the authority of the Master and the vessel's senior officers. He also found Flores to have been paid all his monetary entitlements.

On appeal by Flores, the National Labor Relations Commission (*NLRC*), in its decision of December 29, 2000,[5] reversed the labor arbiter's ruling. The NLRC found that the agency and Panstar failed to prove (1) that Flores' termination of employment was for a just or authorized cause and (2) that he was accorded due process. It opined that the main basis for the dismissal action against Flores was the accusation that he agitated the crew to rebel against the authorities of *M/V Morning Charm*, as reported by the Chief Officer (Chief Mate) and the 1st Assistant Engineer. The reports, the NLRC believe, did not constitute proof of the validity of the dismissal.

Moreover, the NLRC noted that Flores was dismissed immediately after the Master conducted his inquiry on November 17, 1997. It stressed that the Master's so called administrative inquiry did not satisfy the due process requirements, as Flores was not given an adequate time for his defense.

Accordingly, the NLRC declared Flores to have been illegally dismissed. It directed the agency and *Panstar* to pay Flores, jointly and severally, US$2,184.00 as salary for the unexpired portion of his contract, ₱50,000.00 in moral damages, and ₱25,000.00 in exemplary damages, plus 10% attorney's fees.

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[4] *Rollo,* pp. 33-42.

[5] *Id.* at 75-82.

The agency moved for reconsideration, but the NLRC denied the motion in its order of July 18, 2001.[6] The agency then sought relief from the CA, through a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Ruling

In its first assailed resolution (dated October 20, 2003),[7] the CA dismissed the petition due to insufficiency in substance,[8] as the petitioner failed to show that the NLRC committed grave abuse of discretion in reversing the labor arbiter's decision finding Flores' dismissal legal. It sustained the NLRC's conclusion that the dismissal was without a valid cause and that Flores was denied due process.

The second assailed CA resolution[9] denied the agency's motion for reconsideration, prompting the agency's present appeal[10] to this Court.

The Petitioner's Case

Through its submissions — the petition itself,[11] the reply to Flores' comment[12] and the memorandum[13] — the agency contends that in affirming the NLRC ruling, the CA deviated from the "substantial evidence rule" in *quasi-judicial* proceedings. It argues that Flores' employer, *Panstar*, met this standard of evidence through the affirmative declarations (reports) of Capt. B.H. Mun, Chief Officer Alfredo R. de Luna and 1st Assistant Engineer Rodolfo Escarola that Flores committed the infractions which

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[6] CA *rollo*, pp. 17-18.

[7] *Supra* note 2.

[8] RULES OF COURT, Rule 65, Section 6.

[9] *Supra* note 3.

[10] *Supra* note 1.

[11] *Ibid.*

[12] *Rollo*, pp. 84-90.

[13] *Id.* at 209-224.

led to his dismissal. In the face of these positive statements, the agency points out that Flores could only offer bare and self-serving denials. It stresses too that, contrary to the impression of the NLRC and the CA, Flores' dismissal was not only for inciting members of the crew to rebel against the ship officers, but also for other causes such as inefficiency and insubordination or disobedience to the lawful orders of a superior officer, all prejudicial to the interests of the employer.

The agency insists that Flores' contumacious acts, while on board the vessel, constituted a serious and grave offense which posed a threat to the safety of the crew and the vessel. It adds that they also reflected Flores' arrogance and disobedience to lawful orders/directives of his superiors, punishable by dismissal pursuant to Section 31 of the Philippine Overseas Employment Administration Standard Employment Contract.

The agency posits that the CA erred in brushing aside the findings of the labor arbiter. It calls attention to the labor arbiter's observation that Flores failed to refute the agency's allegation that he incited the crew to rebel against the authority of the Master and the senior officers of the vessel. Flores did not also refute the charge that to pressure the principal, he induced some members of the crew to take their emergency leaves one by one and to threaten the principal to an early sign-off.

The Case for Flores

In his comment[14] and memorandum,[15] Flores asks that the petition be dismissed for raising purely questions of fact and not of law. He contends that the appellate court's findings are not to be disturbed as they are binding upon this Court and, although there are certain exceptions to the rule, the petition does not fall within any of the exceptions.[16]

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[14] *Id.* at 66-71.

[15] *Id.* at 107-119.

[16] RULES OF COURT, Rule 45, Section 1.

Flores further submits that aside from raising only questions of fact, the agency failed to state any special and important reasons to justify the exercise by the Court of its discretionary appellate jurisdiction in the case.[17]

The Court's Ruling

The procedural question

We first resolve the procedural issue of whether we should rule on the petition which, as Flores contends, raises only questions of fact and not of law. While it is true that the Court is not a trier of facts, we deem it proper to re-examine the evidence in view of the variance in the factual findings of the labor arbiter, on the one hand, and of the NLRC and the CA, on the other hand.

The substantive issue

After a careful and objective study of the parties' submissions, we find that there is substantial evidence on record supporting Flores' dismissal. "Substantial evidence[, it must be stressed,] is more than a mere scintilla[. It means such] relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise."[18]

The agency, to our mind, succeeded in showing, by substantial evidence, that its principal (*Panstar*) had a valid reason for terminating Flores' employment. The Master, Capt. B.H. Mun, decided to dismiss him not only for agitating the crew to rebel against the authorities of the vessel *M/V Morning Charm* (which the NLRC considered as the main reason for the dismissal),[19]

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[17] *Id.,* Section 6.

[18] *Abel v. Philex Mining Corporation*, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 692-693, citing *Community Rural Bank of San Isidro (N.E.), Inc. v. Paez*, G.R. No. 158707, November 27, 2006, 508 SCRA 245, 257-258.

[19] *Supra* note 5, at 79, par. 1.

but for several other infractions. As the records show, and as Capt. B.H. Mun stressed in his letter of November 17, 1997 to the agency management,[20] Flores was also charged with inefficiency or neglect of duty, insubordination, insolent and disrespectful behavior, and other actuations which made him unfit for his position and rank.

Capt. B.H. Mun's letter chronicled the bases of the charges lodged against Flores, and its salient points may be summarized as follows:

1. Since Flores came on board, he had been complaining about the deduction of US$40.00 from the crew's monthly allotment for the Associated Marine Officers' and Seamen's Union of the Philippines (*AMOSUP*) Fund. To Capt. B.H. Mun's knowledge, the crew members were aware of the deduction. Despite this, Flores prepared a letter to the International Transport Workers' Federation (*ITF)* and asked the crew members to sign it. Capt. B.H. Mun asked Flores to explain the contents of the ITF letter to the crew to avoid any misunderstanding. Instead of pacifying the crew, he stirred them up and made them even more agitated. Also, despite Capt. B.H. Mun's instructions to the contrary, he prepared letters for the crew containing his own complaints and sentiments against the company rather than those of the crew.
2. He revealed to the crew all outgoing and incoming messages, without informing Capt. B.H. Mun.
3. Contrary to Capt. B.H. Mun's instructions, Flores issued shore-passes to the deck crew without the permission of the chief mate when the vessel made a port call at Maputo during its last voyage. The deck crew members were not supposed to go on shore as cargo was being unloaded at the time. It was a rush operation which had to be supervised and monitored to avoid damage to the cargo and to be on alert for stowaways. Flores went on

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[20] CA *rollo,* pp. 47-49; Annex "E".

shore nevertheless, with some of the crew to whom he had issued shore-passes.

4. Flores entered in his overtime sheet 40-50 hours in excess of the monthly 85 hours, despite the captain's instructions to the crew not to go over 85 hours; Flores did this to give the impression that he was doing a lot of work.

5. Flores stayed most of the time at the crew restroom while on duty instead of the radio room, resulting in the failure, at times, of the charterer and the *Panstar* Busan Office to communicate with the vessel by INMARSAT phone. This gave rise to several complaints, especially from the charterer who was compelled to use two communication devices — the facsimile machine and the telex — to send the same instruction or message to the vessel.

Capt. B.H. Mun considered the foregoing infractions and a few more mentioned in his letter as indications of Flores' efforts to bypass his authority and to act at cross purposes with him.

It is clear that the letters of Chief Officer De Luna[21] and 1st Assistant Engineer Escarola[22] to Panstar's Capt. Chung, detailing how Flores agitated the crew (with charges of mismanagement of the vessel), and Capt. B.H. Mun's letter to the agency all depict a radio officer who undermined the authority of the shipmaster and the other officers in the guise of raising labor-management issues on board the vessel. Additionally and as an indication of his disrespect for the vessel's management, as well as his low regard for his work, he neglected his duties as radio officer and disobeyed Capt. B.H. Mun's instructions on several occasions. It is no surprise that his record of service[23] yielded a very poor assessment or a "no further employment" assessment.

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[21] *Id.* at 43-44; Annex "D".

[22] *Id.* at pp. 45-46; Annex "D-1".

[23] *Id.* at 50; Annex "E-1".

The NLRC grossly erred in rejecting the letters as proof of the validity of Flores' dismissal. It misappreciated the contents of the letters, especially that of Capt. B.H. Mun. They did not contain "a mere accusation of wrongdoing."[24] The letters made direct affirmative statements on Flores' transgressions, all of which only elicited angry denials from him. More significantly, he failed to refute the charges in the compulsory arbitration proceedings, as the labor arbiter emphasized in his decision. This aspect of the case should have been given due consideration by the NLRC.

In a different vein, Flores questioned the probative value of Capt. B.H. Mun's statements, contending that they are self-serving. He regarded them as pure hearsay which cannot be considered as evidence. It bears stressing in this regard that under the law, technical rules of evidence are not binding in administrative proceedings, and the NLRC and the labor arbiters "shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process."[25]

Hearsay or not, and by way of reiteration, Capt. B.H. Mun's statements cannot just be ignored, for Flores himself admitted in his position paper, as noted by the labor arbiter, that the shipmaster asked him to be the coordinator or go-between for several crew members who wanted to pre-terminate their contract.[26] It is not disputed that Flores acted as such coordinator between the crew and Capt. B.H. Mun. Thus, Capt. B.H. Mun specifically asked him to explain to the crew the deduction of US$40.00 from their monthly allotment for the AMOSUP Fund so that they would understand and would not to be agitated; instead of doing this, he stirred up the crew further. In fractured English, Capt. B.H. Mun stated:

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[24] *Supra* note 5, at 79.

[25] LABOR CODE, Article 221, par. 1.

[26] *Supra* note 5, at 33.

Notwithstand he should if necessary take all his way be persuaded and kindly explained to the crew about misunderstanding ITF contents, but he did has to say nothing of crew persuasion, more excite with big voices and stir up to the crew to mischief. Two anhalf (sic) months ago, I asked him that don't be helping to crew to be sent company their letters specially, because his prepared it for crew had writ down his own complaining with unless and reactive stories thru their letter. He didn't still follow to master instruction that's why help to nice preparing crew letter according to his say.[27]

The fact that Flores acted as coordinator or liaison between the crew and the vessel's officers signifies that Flores did interact with the crew, and had the opportunity to sow discontent among them towards the shipmanagement. Flores' infractions, as mentioned in the letters, could not have been just pigments of the imagination of Capt. B.H. Mun and the other officers as Flores insinuated; they were reporting on Flores' actual transgressions while on board the vessel.

Still on the probative value of the letters, Flores wondered why the agency did not present in evidence the vessel's logbook[28] — the official records of a ship's voyage that the master is required by law to keep and where he records the decision/s he made during the voyage, including all happenings on board.[29] The existence of a logbook, however, does not at all preclude the admission and consideration of other accounts of what was happening on board the vessel, such as, in this instance, the shipmaster's report. In *Abacast Shipping and Management Agency, Inc. v. NLRC,*[30] the Court explained —

The [logbook] is a respectable record that can be relied upon to authenticate the charges filed and the procedure taken against the employees prior to their dismissal. Curiously, however, no entry from such [logbook] was presented at all in this case. What was

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[27] *Supra* note 20, at 47.

[28] CA *rollo,* p. 146.

[29] Citing *Haverton Shipping Ltd., et al. v. NLRC, et al.*, 220 Phil. 356 (1985).

[30] 245 Phil. 487, 490 (1988).

offered instead was the shipmaster's report, which was later claimed to be a collation of excerpts from such book.

x x x x x x x x x

At that, **even if the shipmaster's report were to be admitted and considered,** a close reading thereof will show that the private respondents have not committed any act that would justify the termination of their services before the expiration of the contracts.

While the shipmaster's report was not considered in *Abacast Shipping,* the reason behind the rejection was the Court's conclusion that the separated employees had not committed any act that would justify their dismissal, as their dismissal was based on mere apprehension. This situation does not obtain in Flores' case. As mentioned earlier, Capt. B.H. Mun's report made affirmative statements regarding Flores' infractions that led to his dismissal. These infractions involved not only instigating several crew members to rebel against the vessel's authorities and to disrespect their superiors, but also other transgressions that made him unfit to continue in employment.

Even as he assailed the reports of Capt. B.H. Mun and the other officers as hearsay and self-serving, Flores failed to controvert the affirmative statements made in the reports. The reports were submitted on compulsory arbitration. He did not refute the charges, thus leaving them unrebutted. Capt. B.H. Mun's statements, corroborated by the reports of Chief Officer De Luna and 1st Assistant Engineer Escarola, should have therefore been admitted as sufficient support for the charges.

On the whole, we are convinced that Flores' dismissal was justified on the following grounds:

1. Sowing intrigue and dissension on board the vessel *M/V Morning Charm*;[31]
2. Inefficiency and neglect of duty;[32] and

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[31] POEA STANDARD EMPLOYMENT CONTRACT, Sections 33(13) & 15.

[32] *Id.* at Section 33(10).

3. Insubordination or disobedience of the lawful orders of the shipmaster.[33]

The NLRC's rulings, disregarding these grounds, do not only constitute errors in the appreciation of evidence; they were gross errors as they practically disregarded the petitioner's evidence. Hence, the CA erred in not recognizing these errors for what they were — grossly abusive acts that affected the NLRC's exercise of its jurisdiction.

The procedural due process issue

The records bear out that Flores was not given a reasonable opportunity to present his side *vis-à-vis* the charges at the time he was dismissed. As the NLRC noted, Flores was immediately dismissed after Capt. B.H. Mun conducted his inquiry on November 17, 1997. Although Flores merely issued a vehement denial, Capt. B.H. Mun should have given him a reasonable time to explain, if necessary, in writing. While this lapse in procedure cannot negate the existence of a valid cause for Flores' dismissal, as discussed above, the violation of his right to procedural due process warrants the payment of indemnity in the form of nominal damages, as we held in *Agabon v. National Labor Relations Commission*.[34] Given the circumstances in the present case, we deem an award of nominal damages to Flores in the amount of ₱30,000.00 to be appropriate.

In sum, we find the petition meritorious.

WHEREFORE, premises considered, the resolutions dated October 20, 2003 and April 6, 2004 of the Court of Appeals are *SET ASIDE*. We *DECLARE* the dismissal of respondent Arnulfo R. Flores *LEGAL*, but *AWARD* him nominal damages in the amount of ₱30,000.00 for the violation of his procedural due process rights.

No cost.

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[33] *Id.* at Section 33(5)(a), (e), (g).

[34] 485 Phil. 248 (2004).

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 164356. July 27, 2011]

HEIRS OF MARGARITO PABAUS, namely, FELICIANA P. MASACOTE, MERLINDA P. CAILING, MAGUINDA P. ARCLETA, ADELAIDA PABAUS, RAUL MORGADO AND LEOPOLDO MORGADO, *petitioners, vs.* **HEIRS OF AMANDA YUTIAMCO, namely, JOSEFINA TAN, AND MOISES, VIRGINIA, ROGELIO, ERLINDA, ANA AND ERNESTO, all surnamed YUTIAMCO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEWING QUESTIONS OF LAW.— As a general rule, in petitions for review, the jurisdiction of this Court in cases brought before it from the CA is limited to reviewing questions of law which involves no examination of the probative value of the evidence presented by the litigants or any of them. The Supreme Court is not a trier of facts; it is not its function to analyze or weigh evidence all over again.

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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.; FINDINGS OF FACT OF THE APPELLATE COURT AFFIRMING THOSE OF THE TRIAL COURT ARE GENERALLY CONCLUSIVE ON THE SUPREME COURT; EXCEPTIONS.— [F]indings of fact of the appellate court affirming those of the trial court are generally conclusive on this Court. Nonetheless, jurisprudence has recognized certain exceptions to the general rule that findings of the fact by the Court of Appeals are not reviewable by the Supreme Court. One such exception is when such findings are not sustained by the evidence. Another is when the judgment of the CA is based on misapprehension of facts or overlooked certain relevant facts not disputed by the parties which, if properly considered, would justify a different conclusion.

3. CIVIL LAW; LAND TITLES AND DEEDS; LAND REGISTRATION; SURVEY; DEFINED.— *Survey* is the process by which a parcel of land is measured and its boundaries and contents ascertained; also a map, plat or statement of the result of such survey, with the courses and distances and the quantity of the land. A case of overlapping of boundaries or encroachment depends on a reliable, if not accurate, verification survey.

4. ID.; ID.; ID.; LANDS ADMINISTRATIVE ORDER NO. 4 (MANUAL FOR LAND SURVEYS IN THE PHILIPPINES); RULES IN CONDUCTING RELOCATION SURVEYS; NOT COMPLIED WITH IN CASE AT BAR.— The Manual for Land Surveys in the Philippines (MLSP) provides for the following rules in conducting relocation surveys: Section 593 — The relocation of corners or re-establishment of boundary lines shall be made using the bearings, distances and areas approved by the Director of Lands or written in the lease or *Torrens title.* Section 594 — The data used in monumenting or relocating corners of approved surveys shall be *submitted to the Bureau of Lands for verification and approval.* New corner marks set on the ground shall be accurately described in the field notes and indicated on the original plans on file in the Bureau of Lands. x x x The MLSP laid down specific rules regarding tie lines, point of reference and overlapping of adjoining titled lands. In this case, records failed to disclose that the basis for relocating the missing corners was submitted to the Bureau of Lands (now Land Management Bureau) for verification and approval as required by Section 594. This is

crucial considering that the court-appointed commissioner is a private surveyor and not a government surveyor from the LRA or LMB-DENR. It bears stressing that in every land dispute, the aim of the courts is to protect the integrity of and maintain inviolate the Torrens system of land registration, as well as to uphold the law; a resolution of the parties' dispute is merely a necessary consequence.

5. ID.; ID.; ID.; FREE PATENT ISSUED OVER A PRIVATE LAND IS A NULLITY; AGGRIEVED PARTY MAY INITIATE AN ACTION FOR CANCELLATION OF CERTIFICATE OF TITLE ISSUED PURSUANT THERETO; INAPPLICABLE TO CASE AT BAR.— [W]e have ruled that if the land covered by free patent was a private land, the Director of Lands has no jurisdiction over it. Such free patent and the subsequent certificate of title issued pursuant thereto are a nullity. The aggrieved party may initiate an action for cancellation of such title. In the recent case of *De Guzman v. Agbagala*, the Court reiterated: The settled rule is that a free patent issued over a private land is null and void, and produces no legal effects whatsoever. Private ownership of land - as when there is a *prima facie* proof of ownership like a duly registered possessory information or a clear showing of open, continuous, exclusive, and notorious possession, by present or previous occupants - is not affected by the issuance of a free patent over the same land, because the Public Land [L]aw applies only to lands of the public domain. The Director of Lands has no authority to grant free patent to lands that have ceased to be public in character and have passed to private ownership. Consequently, a certificate of title issued pursuant to a homestead patent partakes of the nature of a certificate issued in a judicial proceeding only if the land covered by it is really a part of the disposable land of the public domain. Considering, however, that the claim of overlapping has not been clearly established, it is premature to declare the free patent issued to Margarito Pabaus null and void. Instead, the Court deems it more appropriate to remand the case to the trial court for the conduct of a verification/relocation survey under the direction and supervision of the LMB-DENR. In the event that respondents' claim of encroachment of 15,675 square meters is found to be correct, the corresponding adjustment in the metes and bounds of petitioners' property should be reflected in OCT

No. P-8649 which title will then have to be partially, not totally, voided and the corresponding amendment as to the precise area and technical description of Lot 2994, PLS 736 be entered by the Registry of Deeds.

APPEARANCES OF COUNSEL

Roy Lago Salcedo for petitioners.
Emmanuel R. Balanon for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

By way of petition[1] for review on *certiorari*, petitioners Heirs of Margarito Pabaus challenge the June 10, 2004 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 65854. The CA affirmed the October 8, 1999 Judgment[3] of the Regional Trial Court (RTC) of Butuan City, Branch 1 in Civil Case No. 4489 declaring void petitioners' title and ordering them and all those claiming any right under them to vacate the land covered by said title and deliver possession thereof to the respondents.

Subject of this controversy are three adjoining parcels of land located in Barangay Cabayawa, Municipality of Tubay, Agusan Del Norte. Lot 1, Plan Psu-213148 with an area of 58,292 square meters, and Lot 2, Plan Psu-213148, consisting of 1,641 square meters, are registered in the name of Amanda L. Yutiamco under Original Certificate of Title (OCT) No. O-104[4] and Transfer Certificate of Title (TCT) No. T-1428,[5] respectively.

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[1] *Rollo,* pp. 3-16.

[2] *Id.* at 21-48. Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Arturo G. Tayag and Edgardo A. Camello concurring.

[3] Records, pp. 292-314. Penned by Judge Marissa Macaraig-Guillen.

[4] *Id.* at 6.

[5] *Id.* at 7.

Lot 2994, Pls-736, with an area of 35,077 square meters, is owned by Margarito Pabaus and covered by OCT No. P-8649.[6]

OCT No. O-104 was issued pursuant to Judicial Decree No. R-130700 dated July 9, 1970 which covered Lots 1 and 2. A separate title, TCT No. T-1428, was subsequently issued to Amanda Yutiamco for Lot 2, thus partially canceling OCT No. O-104. Meanwhile, OCT No. P-8649 was issued to Margarito Pabaus on March 12, 1974 pursuant to Free Patent No. (X-2)102.

On December 26, 1996, respondents Josefina Tan, and Moises, Virginia, Rogelio, Erlinda, Ana and Ernesto, all surnamed Yutiamco, representing themselves as the heirs of Amanda L. Yutiamco, filed a Complaint[7] for Cancellation of OCT No. P-8649, Recovery of Possession and Damages against the heirs of Margarito Pabaus, namely, petitioners Feliciana P. Masacote, Merlinda P. Cailing, Maguinda P. Arcleta, Adelaida Pabaus, Raul Morgado and Leopoldo Morgado. The case was docketed as Civil Case No. 4489 in the RTC of Butuan City, Branch 1.

Respondents alleged that petitioners illegally entered upon their lands, harvested coconuts therein and built a house on the premises, thus encroaching a substantial portion of respondents' property. Despite repeated demands and objection by Moises Yutiamco, petitioners continued to occupy the encroached portion and harvest the coconuts; petitioners even filed a criminal complaint against the respondents before the Office of the Provincial Prosecutor. Respondents averred that OCT No P-8649 issued to Margarito Pabaus is invalid as it substantially includes a land already covered by Decree No. N-130700 and OCT No. O-104 issued on July 9, 1970 in the name of Amanda Yutiamco. When Moises Yutiamco caused a resurvey of the land, the relocation plan confirmed that the free patent title of Margarito Pabaus overlapped substantially the lot covered by OCT No. O-104.

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[6] *Id.* at 9.

[7] *Id.* at 1-5.

In their Answer with Counterclaim,[8] petitioners admitted having gathered coconuts and cut trees on the contested properties, but asserted that they did so in the exercise of their rights of dominion as holders of OCT No. P-8649. They also contended that it was respondents who unlawfully entered their property and harvested coconuts therein. Citing a sketch plan prepared by Engr. Rosalinda V. De Casa, petitioners claimed it was the respondents who encroached Lot 1708, Cad-905 which is within and part of OCT No. P-8649. It was pointed out that with the claim of respondents of an alleged encroachment, respondents' land area would have increased by 5,517.50 square meters (or a total of 65,447.5) while that of petitioners would be decreased to only 29,546 square meters. Petitioners likewise averred that the complaint states no cause of action since the case was not referred for *barangay* conciliation and respondents' cause of action was, in any event, already barred by prescription, if not laches.

In the pre-trial conference held on March 12, 1997, the RTC issued an Order[9] which directed the conduct of a relocation survey to determine if the land covered by petitioners' title overlaps those in defendants' titles. The three commissioners who conducted the said survey were Engr. Romulo Estaca, a private surveyor and the court-appointed commissioner, Antonio Libarios, Jr., the representative of respondents, and Engr. Regino Lomarda, Jr., petitioners' representative.[10] It was agreed that the relocation survey shall be done by having the commissioners examine the titles in question and then survey the land to determine if there was indeed an overlapping of titles and who has better right to the contested lands.[11]

During the same pre-trial conference, petitioners manifested their intention to file an amended answer. The RTC gave them five days within which to seek leave of court to file the amended

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

[9] *Id.* at 41-44.

[10] *Id.* at 67-69.

[11] *Id.* at 43.

answer but they failed to comply. Thus, the court considered petitioners to have waived the filing of said pleading.

At the continuation of the pre-trial conference on June 23, 1997, the trial court informed the parties of the following findings in the Relocation Survey Report[12] dated May 27, 1997:

x x x x x x x x x

That, Lot 2, Psu-213148 covered by TCT#T-1428 issued in favor of Amanda L. [Yutiamco] is inside the lot covered by OCT#[P]-8649, issued in favor of Margarito Pabaus;

That, Portion of Lot 1, Psu-213148 covered by OCT#O-104, issued in favor of Amanda L. [Yutiamco] containing an area of 15,675 Sq. M. is inside the lot covered by OCT#P-8649, issued in favor of Margarito Pabaus;

That, there is actually an overlapping in the issuance of title[s] on the above-mentioned two (2) parcels of land, please refer to accompanying relocation plan and can be identified through color legend;

That, the Technical Description of Lot 1, Psu-213148 of OCT#O-104 has been properly verified and checked against approved plan of Psu-213148, approved in the name of Amanda L. [Yutiamco];

Finally, that during the relocation survey nobody objected and oppose[d] the findings conducted by the undersigned.

x x x x x x x x x[13]

The Report was accompanied by a Relocation Plan[14] which was certified by Engr. Estaca as accurately indicating the boundaries of the subject properties. Engr. Libarios, Jr. and Engr. Lomarda, Jr. also signed the Relocation Plan, expressing their conformity thereto.

In the pre-trial conference held on July 17, 1997, petitioners' counsel sought leave of court to file an amended answer. In

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

[13] *Id*.

[14] *Id.* at 58.

their Amended Answer with Counterclaim,[15] petitioners reiterated that in Engr. De Casa's sketch plan which was plotted in accordance with the description in the cadastral survey, it was respondents who encroached and claimed Lot 1708, Cad-905 within and part of OCT P-8649. They further alleged —

x x x x x x x x x

10. That plaintiffs['] title to the property in [question], known as O.C.T. No. 104 and TCT No. 1428 both registered in the name of Amanda Yutiamco were both secured thru fraud, if not the said properties are situated away, for a distance as adjoining of defendants property, under the following circumstances:

10.a. The subject property was surveyed by a private surveyor Antonio A. Libarios, Jr. on November 3 and 5, 1960, nonetheless, his license as Geodetic Engineer was issued only on November 11, [1965];

10.b. Base[d] on this fact, the survey plan or relocation survey was approved by the Director of Land[s], Nicanor G. Jorge on June 9, 1965;

10.c. Perspicacious examination of the technical description of plaintiffs['] title under OCT No. 104 and TCT No. 1428, the BLLM is marked as No. 4, which the tie line of PSU No. 213148, as compared [to] defendants['] title under OCT No. P-8649, the BLLM is marked as No. 1, which the tie line of PLS 736;

11. Actually, based on the foregoing observation, the properties of plaintiffs are away situated with the property of defendants; should plaintiffs insisted *(sic)* based on the relocation survey conducted by the commissioner appointed by this Honorable Court, which defendants believed that there was a maneuver to hoax and hoodwink themselves, into believing that plaintiffs properties are situated in the heart of defendants property, then their titles, covering their properties were secured thru fraud, which annulment of the same is proper and within the bounds of the law.

x x x x x x x x x[16]

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[15] *Id.* at 79-88.

[16] *Id.* at 84.

At the trial, plaintiffs presented as witnesses Moises Yutiamco (adopted son of Amanda Yutiamco), Figuracion Regala, Sr. (former *barangay* captain of Tubay), Antonio Payapaya (tenant of Moises Yutiamco) and court-appointed commissioner Engr. Estaca, while the defendants presented Raul P. Morgado (one of the heirs of Margarito Pabaus), Francisco Baylen (retired Land Management Officer/Deputy Land Inspector of the Bureau of Lands, Butuan City), Engr. Rosalinda V. De Casa (Geodetic Engineer I, DENR) and Ambrocio P. Alba (retired Land Management Officer-Chief of Lands Management Services, CENRO-Cabadbaran, Agusan del Norte).

On October 8, 1999, the RTC rendered judgment in favor of the respondents and against the petitioners. Said court gave credence to the finding in the Relocation Survey Report that petitioners' lot overlap respondents' lands. It held that since the land in dispute was already under the private ownership of the respondents and no longer part of the public domain, the same could not have been the subject of a free patent. As to the presumption of regularity in the performance of official duty invoked by the petitioners as far as the issuance of the free patent and title, the trial court pointed out that this cannot be appreciated in view of the testimony of Engr. De Casa that in conducting the cadastral survey, she was not able to secure a copy of the title of the landholdings of Amanda Yutiamco from the Register of Deeds, which is a vital document in the scheme of operations. The trial court thus applied the rule that in case of two certificates of title issued to different persons over the same land, the earlier in date must prevail. Hence, respondents' OCT No. O-104 is superior to petitioners' OCT No. P-8649 which is a total nullity.

The *fallo* of the RTC decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants, as follows:

1. Declaring as null and void *ab initio* [Original] Certificate of Title No. [P]-8649 and ordering defendants and all those claiming any right under them to vacate the land covered by said title and deliver possession thereof to the plaintiffs

and/or otherwise refrain and desist perpetually from exercising any act of dispossession and encroachment over the subject premises;

2. Declaring the plaintiffs as the true and legal owner of the property subject of this case;

3. Ordering defendants to render an accounting to the plaintiffs with respect to the income of the coconuts in the area in conflict starting from December 26, 1996 up to the time…reconveyance as herein directed is made, and to deliver or pay to the plaintiffs the income with legal interest thereon from the date of filing of the complaint in this case[,] which is December 26, 1996, until the same is paid or delivered; and

4. Ordering defendants to pay the plaintiffs, jointly and severally, the amount of ₱13,175.00 by way of actual damages, ₱50,000.00 by way of moral damages, the sum of ₱30,000.00 by way of attorney's fees and the cost of litigation in the amount of ₱720.00.

SO ORDERED.[17]

On appeal, the CA affirmed the RTC ruling and emphasized that petitioners are bound by the findings contained in the Relocation Survey Report and the Relocation Plan because not only did they agree to the appointment of the three commissioners but the commissioner representing them also manifested his conformity to the findings. It noted that neither party posed any objection while the survey was ongoing and that petitioners disputed the findings only after it turned out adverse to them. Since the settled rule is that a free patent issued over a private land is null and void and produces no legal effects whatsoever, and with the trial court's finding that the properties of respondents and petitioners overlapped as to certain areas, the CA held that the trial court correctly declared as void the title of the petitioners. Moreover, the CA cited previous rulings stating that "a certificate of title over a land issued pursuant to the Public Land Law, when in conflict with one obtained on the same date through

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[17] *Id.* at 313-314.

judicial proceedings, must give way to the latter," and that "a certificate of title issued pursuant to a decree of registration and a certificate of title issued in conformity therewith are on a higher level than a certificate of title based upon a patent issued by the Director of Lands."[18]

Aggrieved, petitioners filed the instant petition arguing that —

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE LOWER COURT DECISION THAT PETITIONERS' LOT NO. 2994, COVERED BY OCT NO. P-8649[,] REGISTERED IN THE NAME OF MARGARITO PABAUS OVERLAPPED RESPONDENTS['] LOT 2 AND LOT 1, [RESPECTIVELY] COVERED [BY] TCT NO. T-1428 AND OCT NO. O-104...BOTH REGISTERED IN THE NAME OF AMANDA YUTIAMCO.

II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RELYING [ON] THE FINDING OF PRIVATE SURVEYOR OR GEODETIC [ENGR.] ROMULO S. ESTACA APPOINTED BY THE COURT WHO DISTURBED THE CADASTRAL SURVEY CONDUCTED BY THE GOVERNMENT THRU THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES.[19]

Petitioners contend that the original technical description of Lot 2994, as per the 1961 public land survey[20], clearly showed that respondents' property lies south of the land applied for by Margarito Pabaus. The matter of encroachment was likewise refuted by Engr. De Casa who conducted the cadastral survey CAD 905 in Tubay and plotted the subject lots on the cadastral map.[21] They likewise assailed the relocation survey undertaken solely by the court-appointed commissioner, Engr. Estaca while

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[18] *Rollo,* pp. 43-45.

[19] *Id.* at 7.

[20] Records, p. 197.

[21] *Id.* at 203.

the other two surveyors did not perform their respective tasks or confirm the ground verification conducted by Engr. Estaca. With the admission by Engr. Estaca that there were five missing corners, there was no precise and accurate ground verification made on the alleged overlapping. Petitioners cite the testimony of Engr. De Casa which was based on the cadastral map she herself prepared showing the respective locations of the subject lots. They assert that the three government witnesses testified that the property of Margarito Pabaus was surveyed based on existing official records, and that the presumption of regularity in the performance of official duty should be upheld.

Respondents, for their part, assert that petitioners' assignment of errors delve on factual matters which are not proper subjects of an appeal before this Court. They echo the trial court's conclusion that petitioners' title is void since it covers private land.

As a general rule, in petitions for review, the jurisdiction of this Court in cases brought before it from the CA is limited to reviewing questions of law which involves no examination of the probative value of the evidence presented by the litigants or any of them. The Supreme Court is not a trier of facts; it is not its function to analyze or weigh evidence all over again.[22] Accordingly, findings of fact of the appellate court affirming those of the trial court are generally conclusive on this Court.

Nonetheless, jurisprudence has recognized certain exceptions to the general rule that findings of the fact by the Court of Appeals are not reviewable by the Supreme Court. One such exception is when such findings are not sustained by the evidence.[23] Another is when the judgment of the CA is based on

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[22] *Heirs of Marcelino Cabal v. Cabal,* G.R. No. 153625, July 31, 2006, 497 SCRA 301, 312, citing *Hanopol v. Shoemart, Incorporated,* G.R. Nos. 137774 & 148185, October 4, 2002, 390 SCRA 439, 447; *St. Michael's Institute v. Santos,* G.R. No. 145280, December 4, 2001, 371 SCRA 383, 396; *Go v. Court of Appeals,* G.R. No. 158922, May 28, 2004, 430 SCRA 358, 364.

[23] *Sarmiento v. Yu,* G.R. No. 141431, August 3, 2006, 497 SCRA 513, 517.

misapprehension of facts or overlooked certain relevant facts not disputed by the parties which, if properly considered, would justify a different conclusion.[24]

The case of overlapping of titles necessitates the assistance of experts in the field of geodetic engineering. The very reason why commissioners were appointed by the trial court, upon agreement of the parties, was precisely to make an evaluation and analysis of the titles in conflict with each other. Given their background, expertise and experience, these commissioners are in a better position to determine which of the titles is valid. Thus, the trial court may rely on their findings and conclusions.[25]

However, in overlapping of titles disputes, it has always been the practice for the court to appoint a surveyor from the government land agencies – the Land Registration Authority or the DENR — to act as commissioner.[26] In this case, the trial court appointed a private surveyor in the person of Engr. Estaca who actually conducted the relocation survey while the two other surveyors chosen by the parties expressed their conformity with the finding of encroachment or overlapping indicated in the Relocation Plan[27] submitted to the court by Engr. Estaca. Said plan showed that the area in conflict is on the northeastern portion wherein petitioners' OCT No. P-8649 overlapped with respondents' title (OCT No. O-104) by 15,675 square meters.

Were the respondents able to prove their claim of overlapping?

We rule in the negative.

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[24] *Estate of Edward Miller Grimm v. Estate of Charles Parsons and Patrick C. Parsons,* G.R. No. 159810, October 9, 2006, 504 SCRA 67, 75-76, citing *Sampayan v. Court of Appeals,* G.R. No. 156360, January 14, 2005, 448 SCRA 220, 229.

[25] *Manotok Realty, Inc. v. CLT Realty Development Corporation,* G.R. Nos. 123346, 134385 & 148767, November 29, 2005, 476 SCRA 305, 335-336.

[26] *Cambridge Realty and Resources Corp. v. Eridanus Development, Inc.*, G.R. No. 152445, July 4, 2008, 557 SCRA 96, 117.

[27] Records, p. 58.

Survey is the process by which a parcel of land is measured and its boundaries and contents ascertained; also a map, plat or statement of the result of such survey, with the courses and distances and the quantity of the land.[28] A case of overlapping of boundaries or encroachment depends on a reliable, if not accurate, verification survey.[29] To settle the present dispute, the parties agreed to the conduct of a relocation survey. The Manual for Land Surveys in the Philippines (MLSP)[30] provides for the following rules in conducting relocation surveys:

> Section 593 — The relocation of corners or re-establishment of boundary lines shall be made using the bearings, distances and areas approved by the Director of Lands or written in the lease or *Torrens title.*
>
> Section 594 — The data used in monumenting or relocating corners of approved surveys shall be *submitted to the Bureau of Lands for verification and approval.* New corner marks set on the ground shall be accurately described in the field notes and indicated on the original plans on file in the Bureau of Lands. (Italics supplied.)

In his Report, Engr. Estaca stated that he was able to relocate some missing corners of the subject lots:

> x x x x x x x x x

> By April 26, 1997, the whole survey team together with Mr. E. Concon and representatives from the Plaintiffs and De[f]endants returned to the area in question to relocate missing corners of Lot 1, Psu-213148 of OCT#O-104; Lot 2, Psu-213148 of TCT#T-1428; and OCT#P-8649. We were able to relocate the following corners of: Cors. 2 & 4 of Lot 1, Psu-213148 of OCT#O-104; cors. 7 & 8 of Lot 1, Psu-213148 of OCT#[O]-104 which are identical to cors. 15 & 16 of OCT#P-8649, respectively. We laid out missing cors. 3 & 2 of Lot 2, Psu-213148 of TCT#T-1428 and missing cors. 1 & 3 of Lot 1, Psu-213148 of OCT#O-104. All

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[28] BLACK'S *LAW DICTIONARY*, Fifth Edition, p. 1296.

[29] *Cambridge Realty and Resources Corp. v. Eridanus Development, Inc.*, *supra* note 26 at 120.

[30] Lands Administrative Order No. 4, July 3, 1980.

missing corners which were relocated were not yet planted with cylindrical concrete monuments pending court decision of the case.

x x x x x x x x x[31]

On cross-examination, Engr. Estaca testified as follows:

x x x x x x x x x

Q In your report, you stated that there missing corners: 3 and 2 of Lot 2; and missing corners 1 and 3 of Lot 1. Which of these three documents, Exhibit S which is OCT No. O-104 or Exhibit T which is TCT No. T-1428 or OCT No. P-8649 in which there are missing corners?

A TCT No. T-1428 has 3 missing corners; and OCT No. O-104 has 2 missing corners.

Q When you say missing corners, what do you mean by that?

A Well, based on the technical description, we were not able to locate the corners because it might have been moved or lost.

Q And when you say corners, you are referring to cylindrical concrete monuments?

A Yes, sir.

Q Do you agree with me Mr. Witness that in order to locate the missing corners to proceed with the relocation survey, you have to make a point of reference?

A Yes.

Q And that point of reference is found in the title itself?

A Yes, sir.

Q Do you agree with me that the point of reference is BLLM?

A No, that is a point of tie line. But the point of reference can be any of the corners within the property. If you have say ten corners, you can base from the existing corners. In other words, localize your location. Unless the whole property is lost, meaning all missing corners are not reliable

[31] Records, p. 56.

then you have to tie from known BLLM (Bureau of Lands Location Monument) That is established by a geographic position.

Q Do you agree with me that in order to have an accurate relocation survey, to determine and to locate the missing corners, you have to base the relocation survey on the tie line?

A It depends. There are tie lines which are located "40 kilometers" from that point. The big error is there. So we will not adopt all monuments. Anyway, they interrelated to each other. You can determine it by doing relocation survey. You can check it out by their positions. So the allowable for that is only 30 centimeters.

x x x x x x x x x

Q Finally, in your resurvey report which is Exhibit Q, you mentioned that there were missing corners which were relocated and you said certain basis for the relocation if there are missing corners and you said that the river is not a reliable point or basis. What did you base on your relocation survey considering that there are missing corners?

A Based on other existing monuments, sir.

Q What for example?

A Based on my report, I stated from a known corners identified as cors. 10 and 9 of Lot 1, PSU 213148 of OCT #O-104 which are identical to corners 1 and 17 of OCT #P-8649.

Q Is this already covered in your report?

A Yes, and it is found on par. 2 of my report.

x x x x x x x x x[32]

The MLSP laid down specific rules regarding tie lines, point of reference and overlapping of adjoining titled lands. In this case, records failed to disclose that the basis for relocating the missing corners was submitted to the Bureau of Lands (now Land Management Bureau) for verification and approval as

[32] TSN, Engr. Romulo S. Estaca, April 28, 1999, pp. 10-11, 17-18.

required by Section 594. This is crucial considering that the court-appointed commissioner is a private surveyor and not a government surveyor from the LRA or LMB-DENR. It bears stressing that in every land dispute, the aim of the courts is to protect the integrity of and maintain inviolate the Torrens system of land registration, as well as to uphold the law; a resolution of the parties' dispute is merely a necessary consequence.[33]

On the part of petitioners, their only evidence to support their opposition to the claim of encroachment by the respondents is the cadastral map which indicated the boundary of respondents' property at the south of petitioners' lot. But as admitted by Engr. De Casa, during the cadastral survey they conducted from 1986 to 1996, they did not send a written notice to the landowner Amanda Yutiamco and that she plotted the boundaries of her property based merely on a tax declaration because the cadastral survey team failed to obtain copies of OCT No. O-104 and TCT No. T-1428 from the Registry of Deeds.[34] The MLSP specifically required that relocation of boundary lines is to be made using the bearings, distances and areas approved by the Director of Lands or indicated in the Torrens titles. Hence, said cadastral map is not competent proof of the actual location and boundaries of respondents' Lots 1 and 2, Psu-213148.

Indeed, we have ruled that if the land covered by free patent was a private land, the Director of Lands has no jurisdiction over it. Such free patent and the subsequent certificate of title issued pursuant thereto are a nullity.[35] The aggrieved party may initiate an action for cancellation of such title. In the recent case of *De Guzman v. Agbagala*,[36] the Court reiterated:

The settled rule is that a free patent issued over a private land is null and void, and produces no legal effects whatsoever. Private

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[33] *Cambridge Realty and Resources Corp. v. Eridanus Development, Inc.*, *supra* note 26 at 123.

[34] TSN, Engr. Rosalinda de Casa, December 14, 1998, pp. 13-14.

[35] *Agne v. Director of Lands*, G.R. Nos. 40399 & 72255, February 6, 1990, 181 SCRA 793, 803.

[36] G.R. No. 163566, February 19, 2008, 546 SCRA 278.

ownership of land — as when there is a *prima facie* proof of ownership like a duly registered possessory information or a clear showing of open, continuous, exclusive, and notorious possession, by present or previous occupants — is not affected by the issuance of a free patent over the same land, because the Public Land [L]aw applies only to lands of the public domain. The Director of Lands has no authority to grant free patent to lands that have ceased to be public in character and have passed to private ownership. Consequently, a certificate of title issued pursuant to a homestead patent partakes of the nature of a certificate issued in a judicial proceeding only if the land covered by it is really a part of the disposable land of the public domain.[37]

Considering, however, that the claim of overlapping has not been clearly established, it is premature to declare the free patent issued to Margarito Pabaus null and void. Instead, the Court deems it more appropriate to remand the case to the trial court for the conduct of a verification/relocation survey under the direction and supervision of the LMB-DENR. In the event that respondents' claim of encroachment of 15,675 square meters is found to be correct, the corresponding adjustment in the metes and bounds of petitioners' property should be reflected in OCT No. P-8649 which title will then have to be partially, not totally, voided and the corresponding amendment as to the precise area and technical description of Lot 2994, PLS 736 be entered by the Registry of Deeds.

WHEREFORE, the Decision dated June 10, 2004 of the Court of Appeals in CA-G.R. CV No. 65854 and Judgment dated October 8, 1999 of the Regional Trial Court of Butuan City, Branch 1 in Civil Case No. 4489 are *SET ASIDE*. The case is *REMANDED* to the said RTC which is hereby directed to order the Land Management Bureau of the DENR to conduct verification/relocation survey to determine overlapping of titles over Lots 1 and 2, Psu-213148 and Lot 2994, PLS 736 covered by OCT No. O-104, TCT No. T-1428 and OCT No. P-8649, respectively, all of the Registry of Deeds for the Province of Agusan del Norte.

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[37] *Id.* at 286, citing *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago,* G.R. No. 151440, June 17, 2003, 404 SCRA 193, 199.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 164679. July 27, 2011]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **ULDARICO P. ANDUTAN, JR.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; REPUBLIC ACT NO. 6770 (OMBUDSMAN ACT OF 1989); SECTION 20(5); PROVISIONS THEREOF ARE MERELY DIRECTORY; THE OFFICE OF THE OMBUDSMAN IS NOT PROHIBITED FROM CONDUCTING AN INVESTIGATION A YEAR AFTER THE SUPPOSED ACT WAS COMMITTED.— The issue of whether Section 20(5) of R.A. 6770 is mandatory or discretionary has been settled by jurisprudence. In *Office of the Ombudsman v. De Sahagun*, the Court, speaking through Justice Austria-Martinez, held: [W]ell-entrenched is the rule that administrative offenses do not prescribe x x x. Administrative offenses by their very nature pertain to the character of public officers and employees. In disciplining public officers and employees, the object sought is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in our government [*Melchor v. Gironella*, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; *Remolona v. Civil Service Commission*, 414 Phil. 590, 601 (2001)]. x x x In *Melchor v. Gironella* [G.R. No. 151138, February 16, 2005, 451 SCRA 476], the Court held that the period stated in Section 20(5) of R.A. No. 6770 does not refer to the prescription of the offense but to the discretion given to the

Ombudsman on whether it would investigate a particular administrative offense. The use of the word "may" in the provision is construed as permissive and operating to confer discretion x x x. Clearly, Section 20 of R.A. 6770 does not prohibit the Ombudsman from conducting an administrative investigation after the lapse of one year, reckoned from the time the alleged act was committed. Without doubt, even if the administrative case was filed beyond the one (1) year period stated in Section 20(5), the Ombudsman was well within its discretion to conduct the administrative investigation.

2. ID.; ADMINISTRATIVE LAW; RESIGNATION; RESIGNATION DIVESTS THE OMBUDSMAN OF ITS RIGHT TO INSTITUTE AN ADMINISTRATIVE COMPLAINT AGAINST THE RESIGNED PUBLIC OFFICIAL; ADMINISTRATIVE COMPLAINT FILED PRIOR TO RESIGNATION, NOT RENDERED MOOT.— Although the Ombudsman is not precluded by Section 20(5) of R.A. 6770 from conducting the investigation, the Ombudsman can no longer institute an administrative case against Andutan because the latter was not a public servant at the time the case was filed. x x x To recall, we have held in the past that a public official's resignation does not render moot an administrative case that was filed prior to the official's resignation. In *Pagano v. Nazarro, Jr.*, we held that: In *Office of the Court Administrator v. Juan* [A.M. No. P-03-1726, 22 July 2004, 434 SCRA 654, 658], this Court categorically ruled that the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service **does not** render moot the administrative case against him. **Resignation is not a way out to evade administrative liability when facing administrative sanction**. **The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable**-[*Baquerfo v. Sanchez*, A.M. No. P-05-1974, 6 April 2005, 455 SCRA 13, 19-20]. Likewise, in *Baquerfo v. Sanchez*, we held: Cessation from office of respondent by resignation [*Reyes v. Cristi*, A.M. No. P-04-1801, 2 April 2004, 427 SCRA 8] or retirement x x x. **neither warrants the dismissal of the administrative complaint filed against him while he was still in the service** x x x nor does it render said administrative case moot and academic [*Sy Bang v. Mendez*, 350 Phil. 524, 533 (1998)]. The jurisdiction that was this Court's at the time of the filing

of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case [*Flores v. Sumaljag*, 353 Phil. 10, 21 (1998)]. **Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable** [*OCA v. Fernandez*, A.M. No. MTJ-03-1511, 20 August 2004]. However, the facts of those cases are not entirely applicable to the present case. **In the above-cited cases, the Court found that the public officials — subject of the administrative cases — resigned, either to prevent the continuation of a case already filed or to pre-empt the imminent filing of one.** Here, neither situation obtains. The Ombudsman's general assertion that Andutan pre-empted the filing of a case against him by resigning, since he "knew for certain that the investigative and disciplinary arms of the State would eventually reach him" is unfounded. *First*, Andutan's resignation was neither his choice nor of his own doing; he was forced to resign. *Second*, Andutan resigned from his DOF post on July 1, 1998, while the administrative case was filed on September 1, 1999, exactly one (1) year and two (2) months after his resignation. The Court struggles to find reason in the Ombudsman's sweeping assertions in light of these facts.

3. ID.; REPUBLIC ACT NO. 6770 (OMBUDSMAN ACT OF 1989); THE POSSIBILITY OF IMPOSING ACCESSORY PENALTIES DOES NOT NEGATE THE OMBUDSMAN'S LACK OF JURISDICTION.— [A]lthough we have held that the resignation of an official does not render an administrative case moot and academic because accessory penalties may still be imposed, this holding must be read in its proper context. In *Pagano v. Nazarro, Jr.*, indeed, we held: A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case [*Tantoy, Sr. v. Abrogar*, G.R. No. 156128, 9 May 2005, 458 SCRA 301, 305]. The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions — that of separation from service — may no longer be imposed on the petitioner, there are **other penalties which may be imposed on her if she is later found guilty of administrative offenses** charged against her, namely, the **disqualification to hold any**

government office and the forfeiture of benefits. Reading the quoted passage in a vacuum, one could be led to the conclusion that the mere availability of accessory penalties justifies the continuation of an administrative case. This is a misplaced reading of the case and its ruling. x x x We rejected Pagano's position on the principal ground "that the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction." **Our position that accessory penalties are still imposable — thereby negating the mootness of the administrative complaint — merely flows from the fact that Pagano pre-empted the filing of the administrative case against her. It was neither intended to be a stand-alone argument nor would it have justified the continuation of the administrative complaint if Pagano's filing of candidacy/resignation did not reek of irregularities.** x x x Plainly, our justification for the continuation of the administrative case — notwithstanding Pagano's resignation — was her "bad faith" in filing the certificate of candidacy, and not the availability of accessory penalties. *Second*, we agree with the Ombudsman that "fitness to serve in public office x x x is a question of transcendental [importance]" and that "preserving the inviolability of public office" compels the state to prevent the "re-entry [to] public service of persons who have x x x demonstrated their absolute lack of fitness to hold public office." However, the State must perform this task within the limits set by law, particularly, the limits of jurisdiction. As earlier stated, under the Ombudsman's theory, the administrative authorities may exercise administrative jurisdiction over subordinates *ad infinitum;* thus, **a public official who has validly severed his ties with the civil service may still be the subject of an administrative complaint up to his deathbed. This is contrary to the law and the public policy behind it**. *Lastly*, the State is not without remedy against Andutan or any public official who committed violations while in office, but had already resigned or retired therefrom. Under the "threefold liability rule," the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. Even if the Ombudsman may no longer file an administrative case against a public official who has

already resigned or retired, the Ombudsman may still file criminal and civil cases to vindicate Andutan's alleged transgressions.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for petitioner.
Santos Parungao Aquino & Santos Law Offices for respondent.

D E C I S I O N

BRION, *J.*:

Through a petition for review on *certiorari*,[1] the petitioner Office of the Ombudsman (*Ombudsman*) seeks the reversal of the decision[2] of the Court of Appeals (*CA*), dated July 28, 2004, in "*Uldarico P. Andutan, Jr. v. Office of the Ombudsman and Fact Finding and Intelligence Bureau* (*FFIB*), *etc.*," docketed as CA-G.R. SP No. 68893. The assailed decision annulled and set aside the decision of the Ombudsman dated July 30, 2001,[3] finding Uldarico P. Andutan, Jr. guilty of Gross Neglect of Duty.

THE FACTUAL ANTECEDENTS

Andutan was formerly the Deputy Director of the One-Stop Shop Tax Credit and Duty Drawback Center of the Department of Finance (*DOF*). On June 30, 1998, then Executive Secretary Ronaldo Zamora issued a Memorandum directing all non-career officials or those occupying political positions to vacate their positions effective July 1, 1998.[4] On July 1, 1998, pursuant to the Memorandum, Andutan resigned from the DOF.[5]

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[1] *Rollo*, pp. 12-74; filed under Rule 45 of the Rules of Court.

[2] *Id.* at 76-83; penned by Associate Justice Roberto A. Barrios, and concurred in by Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso.

[3] *Id.* at 173-188.

[4] *Id.* at 163.

[5] *Id.* at 164.

On September 1, 1999, Andutan, together with Antonio P. Belicena, former Undersecretary, DOF; Rowena P. Malonzo, Tax Specialist I, DOF; Benjamin O. Yao, Chairman and Executive Officer, Steel Asia Manufacturing Corporation (*Steel Asia*); Augustus S. Lapid, Vice-President, Steel Asia; Antonio M. Lorenzana, President and Chief Operating Officer, Steel Asia; and Eulogio L. Reyes, General Manager, Devmark Textiles Ind. Inc., was criminally charged by the Fact Finding and Intelligence Bureau (*FFIB*) of the Ombudsman with Estafa through Falsification of Public Documents, and violations of Section 3(a), (e) and (j) of Republic Act No. (*R.A.*) 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.[6] As government employees, Andutan, Belicena and Malonzo were likewise administratively charged of Grave Misconduct, Dishonesty, Falsification of Official Documents and Conduct Prejudicial to the Best Interest of the Service.[7]

The criminal and administrative charges arose from anomalies in the illegal transfer of Tax Credit Certificates (*TCC*s) to Steel Asia, among others.[8]

During the investigation, the FFIB found that Steel Asia fraudulently obtained *TCCs* worth Two Hundred Forty-Two Million, Four Hundred Thirty-Three Thousand, Five Hundred Thirty-Four Pesos (₱242,433,534.00).[9] The FFIB concluded that Belicena, Malonzo and Andutan — in their respective capacities – irregularly approved the "issuance of the TCCs to several garment/textile companies and allowing their subsequent illegal transfer" to Steel Asia.[10]

On November 11, 1999, the Ombudsman ordered the respondents therein (respondents) to submit their counter-affidavits. Only Malonzo complied with the order, prompting

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[6] *Id.* at 22.

[7] *Ibid.*

[8] *Id.* at 77.

[9] *Id.* at 78.

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

the Ombudsman to set a Preliminary Conference on March 13, 2000.

Upon the respondents' failure to appear at the March 20, 2000 hearing, the Ombudsman deemed the case submitted for resolution.

On July 30, 2001, the Ombudsman found the respondents guilty of Gross Neglect of Duty.[11] Having been separated from the service, Andutan was imposed the penalty of forfeiture of all leaves, retirement and other benefits and privileges, and perpetual disqualification from reinstatement and/or reemployment in any branch or instrumentality of the government, including government owned and controlled agencies or corporations.[12]

After failing to obtain a reconsideration of the decision,[13] Andutan filed a petition for review on *certiorari* before the CA.

On July 28, 2004,[14] the CA annulled and set aside the decision of the Ombudsman, ruling that the latter "should not have considered the administrative complaints" because: *first*, Section 20 of R.A. 6770 provides that the Ombudsman "may not conduct the necessary investigation of any administrative act or omission complained of if it believes that x x x [t]he complaint was filed after one year from the occurrence of the act or omission complained of";[15] and *second*, the administrative case was filed after Andutan's forced resignation.[16]

THE PETITIONER'S ARGUMENTS

In this petition for review on *certiorari*, the Ombudsman asks the Court to overturn the decision of the CA. It submits,

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[11] *Supra* note 3.

[12] *Id.* at 186.

[13] *Rollo*, pp. 189–202.

[14] *Supra* note 2.

[15] *Id.* at 81–82.

[16] *Id.* at 82.

first, that contrary to the CA's findings, administrative offenses do not prescribe after one year from their commission,[17] and *second*, that in cases of "capital" administrative offenses, resignation or optional retirement cannot render administrative proceedings moot and academic, since accessory penalties such as perpetual disqualification and the forfeiture of retirement benefits may still be imposed.[18]

The Ombudsman argues that Section 20 of R.A. 6770 is not mandatory. Consistent with existing jurisprudence, the use of the word "may" indicates that Section 20 is merely directory or permissive.[19] Thus, it is not ministerial upon it to dismiss the administrative complaint, as long as any of the circumstances under Section 20 is present.[20] In any case, the Ombudsman urges the Court to examine its mandate under Section 13, Article XI of the 1987 Constitution, and hold that an imposition of a one (1) year prescriptive period on the filing of cases unconstitutionally restricts its mandate.[21]

Further, the Ombudsman submits that Andutan's resignation from office does not render moot the administrative proceedings lodged against him, even after his resignation. Relying on Section VI(1) of Civil Service Commission (*CSC*) Memorandum Circular No. 38,[22] the Ombudsman argues that "[a]s long as the breach

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[17] *Rollo*, p. 26.

[18] *Id.* at 63–65.

[19] *Id.* at 29.

[20] *Id.* at 29–30.

[21] *Id.* at 33–34.

[22] Section VI.

> 1. x x x x x x x x x
>
> An officer or employee under administrative investigation may be allowed to resign pending decision of his case but it shall be without prejudice to the continuation of the proceeding against him. It shall also be without prejudice to the filing of any administrative, criminal case against him for any act committed while still in the service.

of conduct was committed while the public official or employee was still in the service x x x a public servant's resignation is not a bar to his administrative investigation, prosecution and adjudication."[23] It is irrelevant that Andutan had already resigned from office when the administrative case was filed since he was charged for "acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public."[24] Furthermore, even if Andutan had already resigned, there is a need to "determine whether or not there remains penalties capable of imposition, like bar from reentering the (*sic*) public service and forfeiture of benefits."[25] Finally, the Ombudsman reiterates that its findings against Andutan are supported by substantial evidence.

THE RESPONDENT'S ARGUMENTS

Andutan raises three (3) counterarguments to the Ombudsman's petition.

First, Andutan submits that the CA did not consider Section 20(5) of R.A. 6770 as a prescriptive period; rather, the CA merely held that the Ombudsman should not have considered the administrative complaint. According to Andutan, Section 20(5) "does not purport to impose a prescriptive period x x x but simply prohibits the Office of the Ombudsman from conducting an investigation where the complaint [was] filed more than one (1) year from the occurrence of the act or omission complained of."[26] Andutan believes that the Ombudsman should have referred the complaint to another government agency.[27] Further, Andutan disagrees with the Ombudsman's interpretation of Section 20(5). Andutan suggests that the phrase "may not conduct the necessary investigation" means that the Ombudsman

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[23] *Rollo,* p. 57.

[24] *Id.* at 59, citing *Perez v. Abiera*, A.C. No. 223-J, June 11, 1975.

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

[26] *Id.* at 255.

[27] *Ibid*.

is prohibited to act on cases that fall under those enumerated in Section 20(5).[28]

Second, Andutan reiterates that the administrative case against him was moot because he was no longer in the public service at the time the case was commenced.[29] According to Andutan, *Atty. Perez v. Judge Abiera*[30] and similar cases cited by the Ombudsman do not apply since the administrative investigations against the respondents in those cases were commenced prior to their resignation. Here, Andutan urges the Court to rule otherwise since unlike the cases cited, he had already resigned before the administrative case was initiated. He further notes that his resignation from office cannot be characterized as "preemptive, *i.e.* made under an atmosphere of fear for the imminence of formal charges"[31] because it was done pursuant to the Memorandum issued by then Executive Secretary Ronaldo Zamora.

Having established the propriety of his resignation, Andutan asks the Court to uphold the mootness of the administrative case against him since the cardinal issue in administrative cases is the "officer's fitness to remain in office, the principal penalty imposable being either suspension or removal."[32] The Ombudsman's opinion — that accessory penalties may still be

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[28] *Id.* at 256; relying on Ruben Agpalo, Statutory Construction 338 (4th ed., 1998):

> The use by the legislature of negative, prohibitory or exclusive terms or words in a statute is indicative of the legislative intent to make the statute mandatory. A statute or provision which contains words of positive prohibition, such as "shall not," "cannot," or "ought not," or which is couched in negative terms importing that the act shall not be done otherwise than designated is mandatory. Prohibitive or negative words can rarely, if ever, be directory, for there is but one way to obey the command, "thou shall not," and that is to completely refrain from doing the forbidden act.

[29] *Id.* at 257.

[30] 159-A Phil. 575 (1975).

[31] *Rollo*, p. 262.

[32] *Ibid.*

imposed — is untenable since it is a fundamental legal principle that "accessory follows the principal, and the former cannot exist independently of the latter."[33]

Third, the Ombudsman's findings were void because procedural and substantive due process were not observed. Likewise, Andutan submits that the Ombudsman's findings lacked legal and factual bases.

ISSUES

Based on the submissions made, we see the following as the issues for our resolution:

I. Does Section 20(5) of R.A. 6770 prohibit the Ombudsman from conducting an administrative investigation a year after the act was committed?

II. Does Andutan's resignation render moot the administrative case filed against him?

III. Assuming that the administrative case is not moot, are the Ombudsman's findings supported by substantial evidence?

THE COURT'S RULING

We rule to deny the petition.

The provisions of Section 20(5) are merely directory; the Ombudsman is not prohibited from conducting an investigation a year after the supposed act was committed.

The issue of whether Section 20(5) of R.A. 6770 is mandatory or discretionary has been settled by jurisprudence.[34] In *Office*

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[33] *Id.* at 263.

[34] *Office of the Ombudsman v. De Sahagun*, G.R. No. 167982, August 13, 2008, 562 SCRA 122, 128.

of the Ombudsman v. De Sahagun,[35] the Court, speaking through Justice Austria-Martinez, held:

> [W]ell-entrenched is the rule that administrative offenses do not prescribe [*Concerned Taxpayer v. Doblada, Jr.*, A.M. No. P-99-1342, September 20, 2005, 470 SCRA 218; *Melchor v. Gironella*, G.R. No. 151138, February 16, 2005, 451 SCRA 476; *Heck v. Judge Santos*, 467 Phil. 798, 824 (2004); *Floria v. Sunga*, 420 Phil. 637, 648-649 (2001)]. Administrative offenses by their very nature pertain to the character of public officers and employees. In disciplining public officers and employees, the object sought is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in our government [*Melchor v. Gironella*, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; *Remolona v. Civil Service Commission*, 414 Phil. 590, 601 (2001)].
>
> Respondents insist that Section 20 (5) of R.A. No. 6770, to wit:
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> SEC. 20. *Exceptions*. — The Office of the Ombudsman **may** not conduct the necessary investigation of any administrative act or omission complained of if it believes that:
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> x x x x x x x x x
>
> (5) The complaint was filed after one year from the occurrence of the act or omission complained of. (Emphasis supplied)
>
> proscribes the investigation of any administrative act or omission if the complaint was filed after one year from the occurrence of the complained act or omission.
>
> In *Melchor v. Gironella* [G.R. No. 151138, February 16, 2005, 451 SCRA 476], the Court held that the period stated in Section 20(5) of R.A. No. 6770 does not refer to the prescription of the offense but to the discretion given to the *Ombudsman* on whether it would investigate a particular administrative offense. The use of the word "may" in the provision is construed as permissive and operating to confer discretion [*Melchor v. Gironella*, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; *Jaramilla v. Comelec*, 460 Phil. 507, 514 (2003)]. Where the words of a statute

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[35] *Id.* at 128–130.

are clear, plain and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation [*Melchor v. Gironella*, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; *National Federation of Labor v. National Labor Relations Commission*, 383 Phil. 910, 918 (2000)].

In *Filipino v. Macabuhay* [G.R. No. 158960, November 24, 2006, 508 SCRA 50], the Court interpreted Section 20 (5) of R.A. No. 6770 in this manner:

> Petitioner argues that based on the abovementioned provision [Section 20(5) of RA 6770)], respondent's complaint is barred by prescription considering that it was filed more than one year after the alleged commission of the acts complained of.
>
> Petitioner's argument is without merit.
>
> The use of the word "may" clearly shows that it is directory in nature and not mandatory as petitioner contends. When used in a statute, it is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced. Applying Section 20(5), therefore, **it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act or omission complained of. In fine, the complaint is not barred by prescription.** (Emphasis supplied)

The declaration of the CA in its assailed decision that while as a general rule the word "may" is directory, the negative phrase "may not" is mandatory in tenor; **that a directory word, when qualified by the word "not," becomes prohibitory and therefore becomes mandatory in character, is not plausible. It is not supported by jurisprudence on statutory construction.** [emphases and underscoring supplied]

Clearly, Section 20 of R.A. 6770 does not prohibit the Ombudsman from conducting an administrative investigation after the lapse of one year, reckoned from the time the alleged act was committed. Without doubt, even if the administrative case was filed beyond the one (1) year period stated in Section 20(5), the Ombudsman was well within its discretion to conduct the administrative investigation.

However, the crux of the present controversy is not on the issue of prescription, but on the issue of the Ombudsman's authority to institute an administrative complaint against a government employee who had already resigned. On this issue, we rule in Andutan's favor.

Andutan's resignation divests the Ombudsman of its right to institute an administrative complaint against him.

Although the Ombudsman is not precluded by Section 20(5) of R.A. 6770 from conducting the investigation, the Ombudsman can no longer institute an administrative case against Andutan because the latter was not a public servant at the time the case was filed.

The Ombudsman argued — in both the present petition and in the petition it filed with the CA — that Andutan's retirement from office does not render moot any administrative case, as long as he is charged with an offense he committed while in office. It is irrelevant, according to the Ombudsman, that Andutan had already resigned prior to the filing of the administrative case since the operative fact that determines its jurisdiction is the commission of an offense while in the public service.

The Ombudsman relies on Section VI(1) of Civil Service Commission Memorandum Circular No. 38 for this proposition, *viz*.:

Section VI.

1. x x x

An officer or employee under administrative investigation may be allowed to resign pending decision of his case but it shall be without prejudice to the continuation of the proceeding against him. **It shall also be without prejudice to the filing of any administrative, criminal case against him for any act committed while still in the service.** (emphasis and underscoring supplied)

The CA refused to give credence to this argument, holding that the provision "refers to cases where the officers or employees were already charged before they were allowed to resign or were separated from service."[36] In this case, the CA noted that "the administrative cases were filed only after Andutan was retired, hence the Ombudsman was already divested of jurisdiction and could no longer prosecute the cases."[37]

Challenging the CA's interpretation, the Ombudsman argues that the CA "limited the scope of the cited Civil Service Memorandum Circular to the first sentence."[38] Further, according to the Ombudsman, "the court *a quo* ignored the second statement in the said circular that contemplates a situation where previous to the institution of the administrative investigation or charge, the public official or employee subject of the investigation has resigned."[39]

To recall, we have held in the past that a public official's resignation does not render moot an administrative case that was filed prior to the official's resignation. In *Pagano v. Nazarro, Jr.*,[40] we held that:

> In *Office of the Court Administrator v. Juan* [A.M. No. P-03-1726, 22 July 2004, 434 SCRA 654, 658], this Court categorically ruled that the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service **does not** render moot the administrative case against him. **Resignation is not a way out to evade administrative liability when facing administrative sanction**. **The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable** [*Baquerfo v. Sanchez*, A.M. No. P-05-1974, 6 April 2005, 455 SCRA 13, 19-20]. [emphasis and underscoring supplied]

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[36] *Rollo*, p. 82.

[37] *Ibid.*

[38] *Rollo*, p. 56.

[39] *Ibid.*

[40] G.R. No. 149072, September 21, 2007, 533 SCRA 622, 628.

Likewise, in *Baquerfo v. Sanchez*,[41] we held:

> Cessation from office of respondent by resignation [*Reyes v. Cristi*, A.M. No. P-04-1801, 2 April 2004, 427 SCRA 8] or retirement [*Re: Complaint Filed by Atty. Francis Allan A. Rubio on the Alleged Falsification of Public Documents and Malversation of Public Funds*, A.M. No. 2004-17-SC, 27 September 2004; *Caja v. Nanquil*, A.M. No. P-04-1885, 13 September 2004] **neither warrants the dismissal of the administrative complaint filed against him while he was still in the service** [*Tuliao v. Ramos*, A.M. No. MTJ-95-1065, 348 Phil. 404, 416 (1998), citing *Perez v. Abiera*, A.C. No. 223-J, 11 June 1975, 64 SCRA 302; *Secretary of Justice v. Marcos*, A.C. No. 207-J, 22 April 1977, 76 SCRA 301] nor does it render said administrative case moot and academic [*Sy Bang v. Mendez*, 350 Phil. 524, 533 (1998)]. The jurisdiction that was this Court's at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case [*Flores v. Sumaljag*, 353 Phil. 10, 21 (1998)]. **Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable** [*OCA v. Fernandez*, A.M. No. MTJ-03-1511, 20 August 2004]. [emphases and underscoring supplied)

However, the facts of those cases are not entirely applicable to the present case. In the above-cited cases, the Court found that the public officials — subject of the administrative cases – resigned, either to prevent the continuation of a case already filed[42] or to pre-empt the imminent filing of one.[43] Here, neither situation obtains.

The Ombudsman's general assertion that Andutan pre-empted the filing of a case against him by resigning, since he "knew for certain that the investigative and disciplinary arms of the State

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[41] 495 Phil. 10, 16-17 (2005).

[42] See *Baquerfo v. Sanchez, supra* note 41; and *Tuliao v. Judge Ramos*, 348 Phil. 404, 416 (1998), citing *Perez v. Abiera*, A.C. No. 223-J, 11 June 1975, 64 SCRA 302, *Secretary of Justice v. Marcos*, A.C. No. 207-J, 22 April 1997, 76 SCRA 301.

[43] See *Pagano v. Nazarro, Jr., supra* note 40; and *OCA v. Juan*, 478 Phil. 823 (2004).

would eventually reach him"[44] is unfounded. *First*, Andutan's resignation was neither his choice nor of his own doing; he was forced to resign. *Second*, Andutan resigned from his DOF post on July 1, 1998, while the administrative case was filed on September 1, 1999, exactly one (1) year and two (2) months after his resignation. The Court struggles to find reason in the Ombudsman's sweeping assertions in light of these facts.

What is clear from the records is that Andutan was forced to resign more than a year before the Ombudsman filed the administrative case against him. Additionally, even if we were to accept the Ombudsman's position that Andutan foresaw the filing of the case against him, his forced resignation negates the claim that he tried to prevent the filing of the administrative case.

Having established the inapplicability of prevailing jurisprudence, we turn our attention to the provisions of Section VI of CSC Memorandum Circular No. 38. We disagree with the Ombudsman's interpretation that "[a]s long as the breach of conduct was committed while the public official or employee was still in the service x x x a public servant's resignation is not a bar to his administrative investigation, prosecution and adjudication."[45] If we agree with this interpretation, any official — even if he has been separated from the service for a long time — may still be subject to the disciplinary authority of his superiors, *ad infinitum*. We believe that this interpretation is inconsistent with the principal motivation of the law — which is to improve public service and to preserve the public's faith and confidence in the government, and not the punishment of

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[44] *Rollo*, pp. 61–62.

An officer or employee under administrative investigation may be allowed to resign pending decision of his case but it shall be without prejudice to the continuation of the proceeding against him. It shall also be without prejudice to the filing of other administrative or criminal case against him for any act committed while still in the service.

[45] *Id.* at 57.

the public official concerned.[46] Likewise, if the act committed by the public official is indeed inimical to the interests of the State, other legal mechanisms are available to redress the same.

The possibility of imposing accessory penalties does not negate the Ombudsman's lack of jurisdiction.

The Ombudsman suggests that although the issue of Andutan's removal from the service is moot, there is an "irresistible justification" to "determine whether or not there remains penalties capable of imposition, like bar from re-entering the public service and forfeiture of benefits."[47] Otherwise stated, since accessory penalties may still be imposed against Andutan, the administrative case itself is not moot and may proceed despite the inapplicability of the principal penalty of removal from office.

We find several reasons that militate against this position.

First, although we have held that the resignation of an official does not render an administrative case moot and academic because accessory penalties may still be imposed, this holding must be read in its proper context. In *Pagano v. Nazarro, Jr.*,[48] indeed, we held:

> A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case [*Tantoy, Sr. v. Abrogar*, G.R. No. 156128, 9 May 2005, 458 SCRA 301, 305]. The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions - that of separation from service — may no longer be imposed on the petitioner, there are **other penalties which may**

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[46] *Office of the Ombudsman v. De Sahagun*, *supra* note 34, at 128, citing *Melchor v. Gironella*, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; and *Remolona v. Civil Service Commission*, 414 Phil. 590, 601 (2001). See also *Bautista v. Negado*, 108 Phil. 283 (1960).

[47] *Rollo*, pp. 62–63.

[48] *Supra* note 40, at 628.

be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the **disqualification to hold any government office and the forfeiture of benefits**. [emphasis and underscoring supplied]

Reading the quoted passage in a vacuum, one could be led to the conclusion that the mere availability of accessory penalties justifies the continuation of an administrative case. This is a misplaced reading of the case and its ruling.

Esther S. Pagano — who was serving as Cashier IV at the Office of the Provincial Treasurer of Benguet — filed her certificate of candidacy for councilor four days after the Provincial Treasurer directed her to explain why no administrative case should be filed against her. The directive arose from allegations that her accountabilities included a cash shortage of ₱1,424,289.99. She filed her certificate of candidacy under the pretext that since she was deemed *ipso facto* resigned from office, she was no longer under the administrative jurisdiction of her superiors. Thus, according to Pagano, the administrative complaint had become moot.

We rejected Pagano's position on the principal ground "that the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction."[49] Our position that accessory penalties are still imposable — thereby negating the mootness of the administrative complaint — merely flows from the fact that Pagano pre-empted the filing of the administrative case against her. It was neither intended to be a stand-alone argument nor would it have justified the continuation of the administrative complaint if Pagano's filing of candidacy/resignation did not reek of irregularities. Our factual findings in *Pagano* confirm this, *viz.*:

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[49] *Pagano v. Nazarro, Jr.*, *supra* note 40, at 628, citing *Office of the Court Administrator v. Juan*, A.M. No. P-03-1726, 22 July 2004, 434 SCRA 654, 658.

At the time petitioner filed her certificate of candidacy, petitioner was already notified by the Provincial Treasurer that she needed to explain why no administrative charge should be filed against her, after it discovered the cash shortage of ₱1,424,289.99 in her accountabilities. Moreover, she had already filed her answer. To all intents and purposes, **the administrative proceedings had already been commenced at the time she was considered separated from service through her precipitate filing of her certificate of candidacy. Petitioner's bad faith was manifest when she filed it, fully knowing that administrative proceedings were being instituted against her as part of the procedural due process in laying the foundation for an administrative case.**[50] (emphasis and underscoring supplied)

Plainly, our justification for the continuation of the administrative case — notwithstanding Pagano's resignation — was her "bad faith" in filing the certificate of candidacy, and not the availability of accessory penalties.

Second, we agree with the Ombudsman that "fitness to serve in public office x x x is a question of transcendental [importance][51]" and that "preserving the inviolability of public office" compels the state to prevent the "re-entry [to] public service of persons who have x x x demonstrated their absolute lack of fitness to hold public office."[52] However, the State must perform this task within the limits set by law, particularly, the limits of jurisdiction. As earlier stated, under the Ombudsman's theory, the administrative authorities may exercise administrative jurisdiction over subordinates *ad infinitum;* thus, a public official who has validly severed his ties with the civil service may still be the subject of an administrative complaint up to his deathbed. This is contrary to the law and the public policy behind it.

Lastly, the State is not without remedy against Andutan or any public official who committed violations while in office, but had already resigned or retired therefrom. Under the "threefold

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[50] *Id.* at 631.

[51] *Rollo*, p. 63.

[52] *Id.* at 65.

liability rule," the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability.[53] Even if the Ombudsman may no longer file an administrative case against a public official who has already resigned or retired, the Ombudsman may still file criminal and civil cases to vindicate Andutan's alleged transgressions. In fact, here, the Ombudsman — through the FFIB — filed a criminal case for Estafa and violations of Section 3(a), (e) and (j) of the Anti-Graft and Corrupt Practices Act against Andutan. If found guilty, Andutan will not only be meted out the penalty of imprisonment, but also the penalties of perpetual disqualification from office, and confiscation or forfeiture of any prohibited interest.[54]

CONCLUSION

Public office is a public trust. No precept of administrative law is more basic than this statement of what assumption of public office involves. The stability of our public institutions relies on the ability of our civil servants to serve their constituencies well.

While we commend the Ombudsman's resolve in pursuing the present case for violations allegedly committed by Andutan, the Court is compelled to uphold the law and dismiss the petition. Consistent with our holding that Andutan is no longer the proper subject of an administrative complaint, we find no reason to delve on the Ombudsman's factual findings.

WHEREFORE, we *DENY* the Office of the Ombudsman's petition for review on *certiorari*, and *AFFIRM* the decision of

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[53] Antonio E.B. Nachura, *Outline Reviewer in Political Law* 478 (2009 ed.). See also Hector S. De Leon and Hector M. De Leon, Jr., *The Law on Public Officers and Election Law* 262 (6th ed., 2008).

[54] R.A. 3019. Sec. 9. *Penalties for violations.* — (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

the Court of Appeals in CA-G.R. SP No. 68893, promulgated on July 28, 2004, which annulled and set aside the July 30, 2001 decision of the Office of the Ombudsman, finding Uldarico P. Andutan, Jr. guilty of Gross Neglect of Duty.

No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 168105. July 27, 2011]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **SEVERINO LISTANA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW); DETERMINATION OF JUST COMPENSATION; ESSENTIALLY A JUDICIAL FUNCTION WHICH IS VESTED IN THE REGIONAL TRIAL COURT ACTING AS SPECIAL AGRARIAN COURT.— The valuation of property in expropriation cases pursuant to R.A. No. 6657 or 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.

Comprehensive Agrarian Reform Law, is essentially a judicial function which is vested in the RTC acting as Special Agrarian Court and cannot be lodged with administrative agencies such as the DAR.

2. REMEDIAL LAW; RULES OF PROCEDURE; RELAXATION OF THE RULE ON THE TIMELY AVAILMENT OF JUDICIAL ACTION FOR DETERMINATION OF JUST COMPENSATION, NOT PROPER IN CASE AT BAR.— In contrast to the diligence showed by LBP in [*Philippine Veterans Bank vs. Court of Appeals*], herein petitioner LBP admitted its "thoughtless" filing of the petition before the SAC more than 100 days after notice of the denial of its motion for reconsideration of the PARAD's decision fixing the just compensation for the subject property. Petitioner did not offer any explanation for its tardiness and neglect, and simply reiterated the great prejudice to the agrarian reform fund with the erroneous inclusion in the PARAD's valuation of the 151.1419 hectares already conveyed to the government. As to the remaining 89.1419 hectares, petitioner asserts that the PARAD's valuation failed to apply the computation provided in Sec. 17 of R.A. No. 6657 as translated in DAR AO No. 5, series of 1998. Petitioner clearly slept on its rights by not filing the petition in the SAC within the prescribed fifteen-day period or a reasonable time after notice of the denial of its motion for reconsideration. Even assuming there was already a consummated sale with respect to the 151.1419 hectares and LBP's valuation thereof had been fully paid to the respondent, the amount already paid by LBP shall be deducted from the total compensation as determined by the PARAD. Notably, LBP exhibited lack of interest in the discharge of its statutory functions as it failed to actively participate in the summary administrative proceeding despite due notice of the hearings. Clearly, there exists no compelling reason to justify relaxation of the rule on the timely availment of judicial action for the determination of just compensation.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Duran Narvaez & Associates for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 which seeks to set aside the Decision[1] dated November 12, 2004 and Resolution[2] dated May 11, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 70979. The CA affirmed the Order[3] dated October 25, 2000 of the Regional Trial Court (RTC) of Sorsogon, Sorsogon, Branch 52, sitting as a Special Agrarian Court, in Civil Case No. 99-6639 dismissing the petition for determination of just compensation on the ground of late filing.

Respondent Severino Listana is the owner of a 246.0561-hectare land located at Inlagadian, Casiguran, Sorsogon and covered by Transfer Certificate of Title (TCT) No. T-20193. The land was voluntarily offered for sale to the government under the Comprehensive Agrarian Reform Program (CARP) pursuant to Republic Act (R.A.) No. 6657.

Petitioner Land Bank of the Philippines (LBP) valued the 240.9066 hectares for acquisition at ₱5,871,689.03. Since the respondent rejected the said amount, a summary proceeding for determination of just compensation was conducted by the Department of Agrarian Reform (DAR). On May 2, 1996, respondent wrote LBP Department Manager III, Engr. Alex A. Lorayes, requesting the release of payment of the cash portion of the "accepted x x x 151.1419 has. with an equivalent valuation of ₱5,607,874.69." Consequently, on May 7, 1996, a Deed of Transfer was executed by respondent over the said portion of his landholding in consideration of payment received from the transferee Republic of the Philippines consisting of cash (₱1,078,877.54) and LBP bonds (₱2,747,858.60).[4]

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[1] *Rollo*, pp. 56-64. Penned by Associate Justice Roberto A. Barrios (now deceased) with Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso concurring.

[2] *Id.* at 66-68.

[3] CA *rollo*, pp. 9-11. Penned by Judge Honesto A. Villamor.

[4] Records, pp. 43-51.

On October 14, 1998, DAR Provincial Adjudicator Manuel M. Capellan rendered a decision[5] fixing the amount of just compensation at ₱10,956,963.25 for the entire acquired area of 240.9066 hectares. Copy of the said decision was received by petitioner on October 27, 1998.

Almost a year later, or on September 6, 1999, petitioner filed before the RTC of Sorsogon, Sorsogon, Branch 52, a petition[6] for judicial determination of just compensation (Civil Case No. 99-6639). Petitioner argued that the PARAD's valuation is unacceptable and that the initial valuation of ₱5,871,689.03 for the 240.9066 hectares is in accordance with Section 17 of R.A. No. 6657 and DAR Administrative Order No. 11, series of 1994, as amended by DAR AO No. 5, series of 1998.

Respondent filed a motion to dismiss[7] contending that the landowner's acceptance of the DAR's valuation resulted in a binding contract and therefore constitutes *res judicata* as it is in the nature of a compromise agreement that has attained finality. Respondent also cited the contempt proceedings against the LBP for its refusal to comply with the writ of execution issued by the Provincial Agrarian Reform Adjudicator's (PARAD's) Office on June 18, 1999.

The matter of contempt proceedings was the subject of G.R. No. 152611 *(Land Bank of the Philippines v. Listana, Sr.).* The PARAD had issued on August 20, 2000 an order granting respondent's motion for contempt and LBP Manager Alex A. Lorayes was cited for indirect contempt and ordered to be imprisoned until he complied with the PARAD's October 14, 1998 decision. After its motion for reconsideration was denied, petitioner filed a Notice of Appeal which was likewise denied due course by PARAD Capellan who also ordered the issuance of an alias Writ of Execution for the payment of the adjudged

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[5] *Id.* at 20-22.

[6] *Id.* at 1-6.

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

amount of just compensation and subsequently directed the issuance of an arrest order against Lorayes. Petitioner then filed with the RTC a petition for injunction with application for the issuance of a writ of preliminary injunction to restrain PARAD Capellan from issuing the order of arrest. A writ of preliminary injunction was eventually issued by the trial court and LBP posted a ₱5,644,773.02 cash bond. Respondent went to the CA and challenged said writ *via* a special civil action for *certiorari* (CA-G.R. SP No. 65276). On December 11, 2001, the CA rendered its decision nullifying the trial court's orders. In our Decision dated August 5, 2003, we granted the petition filed by LBP and reinstated the January 29, 2001 Order of the RTC of Sorsogon, Sorsogon, Branch 51 which enjoined the PARAD from enforcing its order of arrest against Lorayes pending the final termination of Civil Case No. 99-6639 of RTC Branch 52.[8]

Petitioner filed its opposition to the motion to dismiss,[9] arguing that the filing of petition with SAC is not an appeal from the decision of the PARAD which is deemed vacated upon filing of the case before the SAC; hence *res judicata* cannot be applied. It stressed that the determination of just compensation is inherently judicial in nature. There being no speedy and adequate remedy in the ordinary course of law, petitioner averred that unless it is authorized to file this case it cannot protect the interest of the government who is the owner of the Agrarian Reform Fund.

In an Amended Petition,[10] petitioner additionally alleged the fact that respondent had already accepted the valuation of the *cocoland* portion (151.1419 hectares) in the amount of ₱5,312,190.23; that payment therefor had been received by respondent; and that a Deed of Transfer of the said portion had been executed in favor of the government which was notarized on May 7, 1996 and registered with the Registry of Deeds. Petitioner thus asserted that the valuation and compensation

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[8] *Land Bank of the Philippines v. Listana, Sr.*, G.R. No. 152611, August 5, 2003, 408 SCRA 328.

[9] Records, pp. 27-29.

[10] *Id.* at 33-37.

process insofar as the 151.1419-hectare portion, should now be considered terminated. Respondent, on his part, contended that by bringing the question of valuation before the court, petitioner is estopped from asserting that such issue had already been laid to rest with the alleged acceptance by respondent of the prior valuation.[11]

On April 28, 2000, the trial court denied the motion to dismiss.

In his Answer,[12] the respondent asserted that petitioner, being part of the administrative machinery charged under the law to determine the government land valuation/compensation offer is bound by the compensation fixed by the DARAB. Hence, respondent's acceptance of such offered compensation resulted in a binding contract, especially under the Voluntary Offer to Sell (VOS) scheme. The PARAD's decision therefore constitutes *res judicata* as it is, in effect, a judgment upon a compromise. Respondent also filed a motion for reconsideration of the order denying his motion to dismiss.

On October 25, 2000, the trial court issued the order[13] granting respondent's motion for reconsideration and dismissing the petition for having been filed almost one year from receipt of the copy of the PARAD's decision.

Petitioner filed a motion for reconsideration[14] alleging that it had filed a motion for reconsideration from the PARAD's decision dated October 14, 1998 but the order denying said motion was received only on May 12, 1999. It further averred that the cause of delay was not solely attributable to it but also to the respondent through his counsel "because there was a manifestation on their part to settle this case amicably." Petitioner stressed that while there was really a late filing, it was done in good faith and without any intent to prejudice any person. Invoking

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[11] *Id.* at 65.

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

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

[14] *Id.* at 105-107.

a liberal construction of procedural rules, petitioner argued that it is without any speedy and adequate remedy in this case, which is necessary for the protection of the government's interest.

In its Order dated March 27, 2001, the trial court denied petitioner's motion for reconsideration. Copy of the said order was received by petitioner on April 6, 2001 and on the same date it filed a notice of appeal.[15]

In its memorandum, petitioner argued that on the matter of its late filing of the petition for judicial determination of just compensation, the trial court should have given primacy to the very clear demands of substantial justice over the rigid application of technicalities. It cited Section 57 of R.A. No. 6657 allowing a party to bring the issue of valuation of lands acquired by virtue of CARP to the Special Agrarian Courts, which should be liberally construed to afford LBP the amplest opportunity to prove that its valuation pertaining to the remaining portion of 89.1419 hectares of the subject landholding is in accordance with the legally prescribed formula spelled out in DAR AO No. 5, series of 1998. Moreover, the government has not acceded to the alteration of the valuation pertaining to the 151.1419 hectares, to which both the landowner and government gave their consent, which had become a perfected contract having the force of law between the parties.[16]

In the meantime, following this Court's ruling in *Land Bank of the Philippines v. Listana, Sr. (supra)* which voided all contempt proceedings against LBP Manager Lorayes, petitioner filed with the RTC a motion to withdraw the ₱5,644,773.02 cash bond. The RTC denied the motion and petitioner's motion for reconsideration was likewise denied. Petitioner challenged the trial court's order before the CA which eventually dismissed the petition. When the case was elevated to this Court, we affirmed the CA and sustained the RTC's orders denying LBP's motion to withdraw the cash bond. By Decision dated May 30,

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[15] *Id.* at 125-127.

[16] CA *rollo,* pp. 178-189.

2011, we ruled that LBP cannot withdraw the ₱5,644,773.02 cash bond which is a condition for the issuance of the writ of preliminary injunction issued by the RTC enjoining the PARAD from implementing the warrant of arrest against Manager Lorayes pending final determination of the amount of just compensation for the property.[17]

By Decision dated November 12, 2004, the CA dismissed petitioner's appeal from the SAC's dismissal of its petition for judicial determination of just compensation. The CA said that petitioner failed to adequately explain its failure to abide by the rules and "its loss of appellate recourse cannot be revived by invoking the mantra of liberality." We quote the pertinent portion of the appellate court's ruling:

> The argument of Listana that he rejected the pricing for the entire area and that the Request to Open a Trust Fund x x x is proof of his refusal, is unmeritorious. If indeed Listana rejected the entire valuation then he would not have executed a Deed of Transfer of Unsegregated Portion of a Parcel of Land x x x covering the 51.1419 *[sic]* hectares. Said document is not only valid and binding but also reflects the true intention of the parties and is athwart the claim of Listana that he rejected the valuation of this portion of the property.
>
> The PARAB (sic) in the summary proceeding it conducted to determine the land valuation, should not have included in its determination of just compensation the accepted portion but should have limited the scope to only the rejected portion of 89.7647 hectares.
>
> **While there is thus good cause to seek recourse against the PARAB (sic) ruling, Land Bank took this appeal 117 days later and thus beyond the fifteen (15) day period provided by Rule XIII Sec. 11 of the DARAB Rules of Procedure**. Land Bank claims the court *a quo* was wrong in saying that it was late *for less than one year* for it was tardy only for 120 days by its reckoning. But whether it is one or the other, the fact is it was late for a considerable time and cannot be absolved by the poor excuse that there was a prospect for an amicable settlement. Rudimentary prudence dictated that appellate recourse should have been timely taken instead of

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[17] *Land Bank of the Philippines v. Heirs of Severino Listana,* G.R. No. 182758, May 30, 2011.

just relying with crossed fingers that settlement would come about.[18] (Emphasis supplied.)

Petitioner's motion for reconsideration was likewise denied by the CA.

Hence, this petition alleging that the CA committed serious errors of law, as follows:

A. THE DARAB ORDER DATED 14 OCTOBER 1998 WHICH ALLEGEDLY BECAME FINAL AND EXECUTORY CANNOT ABROGATE OR RENDER WITHOUT EFFECT A CONSUMMATED CONTRACT INVOLVING THE GOVERNMENT AND RESPONDENT LISTANA RELATIVE TO 151.1419 HECTARES OF SUBJECT PROPERTY. BEING IMMUTABLE, THE CONSUMMATED CONTRACT CAN NO LONGER BE DISTURBED OR ABROGATED BY THE DARAB ORDER DATED 14 OCTOBER 1998, WHICH THE COURT *A QUO* AND THE COURT OF APPEALS ERRONEOUSLY AFFIRMED.

B. THE CHALLENGED DECISION AND THE QUESTIONED RESOLUTION PLACE SO MUCH PREMIUM ON A PROCEDURAL RULE AT THE EXPENSE OF SUBSTANTIAL JUSTICE, A CIRCUMSTANCE THAT HAS UNNECESSARILY PUT A COLOR OF VALIDITY TO THE DARAB ORDER WHICH IS VOID *AB INITIO* AS IT UTTERLY DISREGARDED SECTION 17 OF R.A. NO. 6657 AND THE SUPREME COURT RULING IN "*LBP vs. SPOUSES BANAL,*" (G.R. NO. 143276, 20 JULY 2004).[19]

The sole issue to be resolved is whether the SAC may take cognizance of the petition for determination of just compensation which is filed beyond the prescribed 15-day period or more than 100 days after the PARAD rendered its valuation in a summary administrative proceeding.

The valuation of property in expropriation cases pursuant to R.A. No. 6657 or the Comprehensive Agrarian Reform Law, is

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[18] *Rollo*, pp. 62-63.

[19] *Id.* at 35-36, 46.

essentially a judicial function which is vested in the RTC acting as Special Agrarian Court and cannot be lodged with administrative agencies such as the DAR.[20] Section 57 of said law explicitly states that:

> SEC. 57. *Special Jurisdiction.* — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.
>
> The Special Agrarian Court shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

The CA affirmed the SAC's order of dismissal applying Section 11, Rule XIII of the 1994 DARAB Rules of Procedure which provides that:

> Section 11. *Land Valuation and Preliminary Determination and Payment of Just Compensation*. — The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within **fifteen (15) days from notice thereof.** Any party shall be entitled to only one motion for reconsideration. (Emphasis supplied.)

Petitioner admits the late filing of an action with the SAC but nonetheless argue that the serious errors committed by the PARAD when it included the 151.1419 hectares — despite the initial valuation offered by LBP having been already accepted by respondent who already conveyed said portion to the government — in its decision fixing just compensation, and non-application of the formula provided in Section 17 of R.A. No. 6657 and DAR AO No. 11, series of 1994, as amended by DAR AO No. 5, series of 1998 *on the remaining 89.1419*

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[20] *Land Bank of the Philippines v. Wycoco*, G.R. Nos. 140160 & 146733, January 13, 2004, 419 SCRA 67, 75, citing *Republic v. Court of Appeals*, G.R. No. 122256, October 30, 1996, 263 SCRA 758, 763.

hectares, warrants a review by this Court. It contends that this case deserves a relaxation of the procedural rule governing finality of judgments, adding that its "thoughtlessness" should not be deemed fatal to the instant petition "for at stake is an OVERPAYMENT amounting to more than SEVEN MILLION PESOS, which is GREATLY PREJUDICIAL to public interest, as the said amount shall be debited from the Agrarian Reform Fund (ARF)."

The petition is unmeritorious.

In *Republic v. Court of Appeals*,[21] private respondent landowner rejected the government's offer of its lands based on LBP's valuation and the case was brought before the PARAD which sustained LBP's valuation. Private respondent then filed a Petition for Just Compensation in the RTC sitting as Special Agrarian Court. However, the RTC dismissed its petition on the ground that private respondent should have appealed to the DARAB, in accordance with the then DARAB Rules of Procedure. Additionally, the RTC found that the petition had been filed more than fifteen days after notice of the PARAD decision. Private respondent then filed a petition for *certiorari* in the CA which reversed the order of dismissal of RTC and remanded the case to the RTC for further proceedings. The government challenged the CA ruling before this Court *via* a petition for review on *certiorari*. This Court, affirming the CA, ruled as follows:

> Thus, under the law, the Land Bank of the Philippines is charged with the initial responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking. Through notice sent to the landowner pursuant to §16(a) of R.A. No. 6657, the DAR makes an offer. In case the landowner rejects the offer, a summary administrative proceeding is held and afterward the provincial (PARAD), the regional (RARAD) or the central (DARAB) adjudicator as the case may be, depending on the value of the land, fixes the price to be paid for the land. If the landowner does not agree to the price fixed, he may bring the matter to the

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[21] G.R. No. 122256, October 30, 1996, 263 SCRA 758.

RTC acting as Special Agrarian Court. This in essence is the procedure for the determination of compensation cases under R.A. No. 6657. In accordance with it, the private respondent's case was properly brought by it in the RTC, and it was error for the latter court to have dismissed the case. In the terminology of §57, the RTC, sitting as Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." It would subvert this "original and exclusive" jurisdiction of the RTC for the DAR to vest original jurisdiction in compensation cases in administrative officials and make the RTC an appellate court for the review of administrative decisions.

Consequently, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, **it is clear from §57 that the *original* and *exclusive* jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to §57 and therefore would be void.** What adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the courts the ultimate power to decide this question.[22] (Emphasis supplied.)

The above ruling was reiterated in *Philippine Veterans Bank v. Court of Appeals*.[23] In that case, petitioner landowner who was dissatisfied with the valuation made by LBP and DARAB, filed a petition for determination of just compensation in the RTC (SAC). However, the RTC dismissed the petition on the ground that it was filed beyond the 15-day reglementary period for filing appeals from the orders of the DARAB. On appeal, the CA upheld the order of dismissal. When the case was elevated to this Court, we likewise affirmed the CA and declared that:

To implement the provisions of R.A. No. 6657, particularly §50 thereof, Rule XIII, §11 of the DARAB Rules of Procedure provides:

Land Valuation and Preliminary Determination and Payment of Just Compensation. — The decision of the

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[22] *Id.* at 764-765.

[23] G.R. No. 132767, January 18, 2000, 322 SCRA 139.

> Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.

As we held in *Republic v. Court of Appeals*, this rule is an acknowledgment by the DARAB that the power to decide just compensation cases for the taking of lands under R.A. No. 6657 is vested in the courts. It is error to think that, because of Rule XIII, §11, the original and exclusive jurisdiction given to the courts to decide petitions for determination of just compensation has thereby been transformed into an appellate jurisdiction. It only means that, in accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR as an administrative agency to determine in a preliminary manner the reasonable compensation to be paid for the lands taken under the Comprehensive Agrarian Reform Program, but such determination is subject to challenge in the courts.

The jurisdiction of the Regional Trial Courts is not any less "original and exclusive" because the question is first passed upon by the DAR, as the judicial proceedings are not a continuation of the administrative determination. For that matter, the law may provide that the decision of the DAR is final and unappealable. Nevertheless, resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of the administrative action.

Accordingly, as the petition in the Regional Trial Court was filed beyond the 15-day period provided in Rule XIII, §11 of the Rules of Procedure of the DARAB, the trial court correctly dismissed the case and the Court of Appeals correctly affirmed the order of dismissal.[24] (Emphasis supplied.)

The Court noted that *Republic v. Court of Appeals* does not serve as authority for disregarding the 15-day period to bring an action for judicial determination of just compensation as there was no pronouncement therein invalidating Rule XIII, Section 11 of the New Rules of Procedure of the DARAB. Moreover, we stated that any speculation as to the applicability

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[24] *Id.* at 146-147.

of said provision was foreclosed by our subsequent ruling in *Philippine Veterans Bank (supra)* where we affirmed the order of dismissal of a petition for determination of just compensation for having been filed beyond the fifteen-day period under Section 11.[25]

However, in the 2007 case of *Land Bank of the Philippines v. Suntay*,[26] the Court ruled that the RTC erred in dismissing LBP's petition for determination of just compensation on the ground that it was filed beyond the fifteen-day period provided in Section 11, Rule XIII of the DARAB New Rules of Procedure. Citing *Republic v. Court of Appeals (supra),* we stressed therein the original and exclusive — not appellate — jurisdiction of the SAC over all petitions for the determination of just compensation to landowners.[27]

To foreclose any uncertainty brought by the *Suntay* ruling, this Court in its July 31, 2008 Resolution denying LBP's motion for reconsideration of the August 14, 2007 Decision in the case of *Land Bank of the Philippines v. Martinez*[28] held:

> On the supposedly conflicting pronouncements in the cited decisions, the Court reiterates its ruling in this case that **the agrarian reform adjudicator's decision on land valuation attains finality after the lapse of the 15-day period stated in the DARAB Rules. The petition for the fixing of just compensation should therefore, following the law and settled jurisprudence, be filed with the SAC within the said period.** This conclusion, as already explained in the assailed decision, is based on the doctrines laid down in *Philippine Veterans Bank v. Court of Appeals* and *Department of Agrarian Reform Adjudication Board v. Lubrica*.
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[25] *Land Bank of the Philippines v. Umandap,* G.R. No. 166298, November 17, 2010.

[26] G.R. No. 157903, October 11, 2007, 535 SCRA 605.

[27] *Id.* at 612-614, 616-617.

[28] G.R. No. 169008, July 31, 2008, 560 SCRA 776.

The Court notes that the *Suntay* ruling is based on *Republic of the Philippines v. Court of Appeals*, decided in 1996 also through the pen of Justice Vicente V. Mendoza. In that case, the Court emphasized that the jurisdiction of the SAC is original and exclusive, not appellate. *Republic*, however, was decided at a time when Rule XIII, Section 11 was not yet present in the DARAB Rules. Further, *Republic* did not discuss whether the petition filed therein for the fixing of just compensation was filed out of time or not. The Court merely decided the issue of whether cases involving just compensation should first be appealed to the DARAB before the landowner can resort to the SAC under Section 57 of R.A. No. 6657.

To resolve the conflict in the rulings of the Court, we now declare herein, for the guidance of the bench and the bar, that the better rule is that stated in *Philippine Veterans Bank*, reiterated in *Lubrica* and in the August 14, 2007 Decision in this case. Thus, **while a petition for the fixing of just compensation with the SAC is not an appeal from the agrarian reform adjudicator's decision but an original action, the same has to be filed within the 15-day period stated in the DARAB Rules; otherwise, the adjudicator's decision will attain finality.** This rule is not only in accord with law and settled jurisprudence but also with the principles of justice and equity. Verily, a belated petition before the SAC, *e.g.*, one filed a month, or a year, or even a decade after the land valuation of the DAR adjudicator, must not leave the dispossessed landowner in a state of uncertainty as to the true value of his property.[29] (Emphasis supplied.)

Petitioner's action before the SAC having been filed, by its own reckoning, 117 days after notice of the PARAD's denial of its motion for reconsideration of the decision fixing the just compensation for respondent's landholding, the same has attained finality.

Anent petitioner's plea of liberality and relaxation of procedural rules, it is contended that in the interest of substantial justice, the matter of overpayment which is greatly prejudicial to the agrarian reform fund must be addressed by this Court notwithstanding petitioner's "thoughtlessness" in the tardy filing of its case before the RTC.

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[29] *Id.* at 781, 783.

In the more recent case of *Land Bank of the Philippines v. Umandap*,[30] the Court, in a decision penned by Associate Justice Teresita Leonardo-de Castro, set aside the CA's amended decision affirming the RTC's order dismissing the petition for judicial determination of just compensation which was re-filed beyond the 15-day period provided in Section 11, Rule XIII of the 1994 DARAB Rules of Procedure. After LBP's initial valuation of the landowners' property was rejected, a summary administrative proceeding was conducted by the DAR's Regional Agrarian Reform Adjudicator (RARAD). Dissatisfied with the valuation fixed by the RARAD, LBP timely filed a petition for judicial determination of just compensation before the RTC. The RTC dismissed the petition on the ground that LBP failed to submit a proper certification against forum shopping. LBP immediately filed a motion for reconsideration attaching thereto a certification signed by its LBP President confirming the authority of its regional operation manager to sign the verification and certification against forum shopping. The RTC, however, denied the motion for reconsideration, and the order of denial was received by LBP on May 29, 2003. On June 3, 2003, LBP re-filed the petition attaching more documents showing the authority of its regional operation manager to sign the verification and certification against forum shopping. The RTC still dismissed the petition, ruling that even though the previous dismissal was without prejudice, LBP nevertheless failed to re-file the petition within the period allowed by the DARAB Rules of Procedure, and thus, the Adjudicator's decision fixing the just compensation of the subject property attained finality. LBP filed a petition for *certiorari* in the CA which initially reversed and nullified the RTC's orders. Respondent landowners filed a motion for reconsideration and subsequently the CA rendered an Amended Decision dismissing LBP's petition and holding that *certiorari* is not the proper remedy since the RTC order dismissing the re-filed petition was a final order and based on *res judicata,* hence *certiorari* is not the proper remedy.

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[30] *Supra* note 25.

In a petition for review on *certiorari*, LBP assailed the CA's amended decision dismissing its petition for *certiorari*. The Court noted that at the core of the controversy is a jurisdictional issue, that is, whether the SAC acted without jurisdiction in outrightly dismissing the petition for the determination of just compensation. The Court declared that since the SAC statutorily exercises *original* and *exclusive* jurisdiction over all petitions for determination of just compensation to landowners, it cannot be said that the decision of the adjudicator, if not appealed to the SAC, would be deemed final and executory, under all circumstances. Citing *Philippine Veterans Bank v. Court of Appeals (supra)* which affirmed the order of dismissal of a petition for determination of just compensation for having been filed beyond the said period and explained that Section 11 is not incompatible with the original and exclusive jurisdiction of the SAC, we held:

> Notwithstanding this pronouncement, however, the statutorily mandated original and exclusive jurisdiction of the SAC led this Court to adopt, over the years, a policy of liberally allowing petitions for determination of just compensation, even though the procedure under DARAB rules have not been strictly followed, whenever circumstances so warrant:
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> 1. In the 1999 case of *Land Bank of the Philippines v. Court of Appeals*, we held that the SAC properly acquired jurisdiction over the petition to determine just compensation filed by the landowner without waiting for the completion of DARAB's re-evaluation of the land.
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> 2. In the 2004 case of *Land Bank of the Philippines v. Wycoco*, we allowed a direct resort to the SAC even where no summary administrative proceedings have been held before the DARAB.
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> 3. In the 2006 case of *Land Bank of the Philippines v. Celada*, this Court upheld the jurisdiction of the SAC despite the pendency of administrative proceedings before the DARAB. We held:
>
> > It would be well to emphasize that the taking of property under RA No. 6657 is an exercise of the power of eminent domain by the State. The valuation of property or determination of just compensation in eminent domain proceedings is

essentially a judicial function which is vested with the courts and not with administrative agencies. Consequently, the SAC properly took cognizance of respondent's petition for determination of just compensation.

4. In the 2009 case of *Land Bank of the Philippines v. Belista*, this Court permitted a direct recourse to the SAC without an intermediate appeal to the DARAB as mandated under the new provision in the 2003 DARAB Rules of Procedure. We ruled:

> Although Section 5, Rule XIX of the 2003 DARAB Rules of Procedure provides that the land valuation cases decided by the adjudicator are now appealable to the Board, such rule could not change the clear import of Section 57 of RA No. 6657 that the original and exclusive jurisdiction to determine just compensation is in the RTC. Thus, Section 57 authorizes direct resort to the SAC in cases involving petitions for the determination of just compensation. In accordance with the said Section 57, petitioner properly filed the petition before the RTC and, hence, the RTC erred in dismissing the case. Jurisdiction over the subject matter is conferred by law. Only a statute can confer jurisdiction on courts and administrative agencies while rules of procedure cannot.

In the case at bar, the refiling of the Petition for Judicial Determination of Just Compensation was done within five days from the denial of the Motion for Reconsideration of the order dismissing the original petition, during which time said dismissal could still be appealed to the Court of Appeals. The SAC even expressly recognized that the rules are silent as regards the period within which a complaint dismissed without prejudice may be refiled. **The statutorily mandated original and exclusive jurisdiction of the SAC, as well as the above circumstances showing that LBP did not appear to have been sleeping on its rights in the allegedly belated refiling of the petition, lead us to assume a liberal construction of the pertinent rules. To be sure, LBP's intent to question the RARAD's valuation of the land became evident with the filing of the first petition for determination of just compensation within the period prescribed by the DARAB Rules. Although the first petition was dismissed without prejudice on a technicality, LBP's refiling of essentially the same petition with a proper non-forum shopping certification while the earlier dismissal order had not attained finality should have been accepted by the trial court.**

In view of the foregoing, we rule that the RTC acted without jurisdiction in hastily dismissing said refiled Petition. Accordingly, the Petition for *Certiorari* before the Court of Appeals assailing this dismissal should be granted.[31] (Emphasis supplied.)

In contrast to the diligence showed by LBP in the above-cited case, herein petitioner LBP admitted its "thoughtless" filing of the petition before the SAC more than 100 days after notice of the denial of its motion for reconsideration of the PARAD's decision fixing the just compensation for the subject property. Petitioner did not offer any explanation for its tardiness and neglect, and simply reiterated the great prejudice to the agrarian reform fund with the erroneous inclusion in the PARAD's valuation of the 151.1419 hectares already conveyed to the government. As to the remaining 89.1419 hectares, petitioner asserts that the PARAD's valuation failed to apply the computation provided in Sec. 17 of R.A. No. 6657 as translated in DAR AO No. 5, series of 1998.

Petitioner clearly slept on its rights by not filing the petition in the SAC within the prescribed fifteen-day period or a reasonable time after notice of the denial of its motion for reconsideration. Even assuming there was already a consummated sale with respect to the 151.1419 hectares and LBP's valuation thereof had been fully paid to the respondent, the amount already paid by LBP shall be deducted from the total compensation as determined by the PARAD. Notably, LBP exhibited lack of interest in the discharge of its statutory functions as it failed to actively participate in the summary administrative proceeding despite due notice of the hearings. Clearly, there exists no compelling reason to justify relaxation of the rule on the timely availment of judicial action for the determination of just compensation.

It is a fundamental legal principle that a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the

[31] *Id.* at 18-20.

highest court of the land. The only exceptions to the general rule on finality of judgments are the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable.[32] Indeed, litigation must end and terminate sometime and somewhere, even at the risk of occasional errors.[33]

WHEREFORE, the petition for review on *certiorari* is *DENIED*. The Decision dated November 12, 2004 and Resolution dated May 11, 2005 of the Court of Appeals in CA-G.R. CV No. 70979 are *AFFIRMED*.

No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 168251. July 27, 2011]

JESUS M. MONTEMAYOR, *petitioner, vs.* **VICENTE D. MILLORA,** *respondent.*

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[32] *Sacdalan v. Court of Appeals,* G.R. No. 128967, May 20, 2004, 428 SCRA 586, 599.

[33] *Gallardo-Corro v. Gallardo,* G.R. No. 136228, January 30, 2001, 350 SCRA 568, 578.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY OF FINAL JUDGMENTS; APPLICATION.— At the outset, it should be stressed that the October 27, 1999 Decision of the RTC is already final and executory. Hence, it can no longer be the subject of an appeal. Consequently, Jesus is bound by the decision and can no longer impugn the same. Indeed, well-settled is the rule that a decision that has attained finality can no longer be modified even if the modification is meant to correct erroneous conclusions of fact or law. x x x To stress, the October 27, 1999 Decision of the RTC has already attained finality. "Such definitive judgment is no longer subject to change, revision, amendment or reversal. Upon finality of the judgment, the Court loses its jurisdiction to amend, modify or alter the same. Except for correction of clerical errors or the making of *nunc pro tunc* entries which cause no prejudice to any party, or where the judgment is void, the judgment can neither be amended nor altered after it has become final and executory. This is the principle of immutability of final judgment."

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; EXTINGUISHMENT OF OBLIGATIONS; COMPENSATION; REQUIREMENTS.— For legal compensation to take place, the requirements set forth in Articles 1278 and 1279 of the Civil Code, quoted below, must be present. ARTICLE 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other. ARTICLE 1279. In order that compensation may be proper, it is necessary: (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other; (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; (3) That the two debts be due; (4) That they be liquidated and demandable; (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

3. ID.; ID.; ID.; ID.; ID.; ID.; WHEN DEBT IS CONSIDERED LIQUIDATED; LIQUIDATION, ESTABLISHED IN CASE AT BAR.— "A debt is liquidated when its existence and amount

> are determined. It is not necessary that it be admitted by the debtor. Nor is it necessary that the credit appear in a final judgment in order that it can be considered as liquidated; it is enough that its exact amount is known. And a debt is considered liquidated, not only when it is expressed already in definite figures which do not require verification, but also when the determination of the exact amount depends only on a simple arithmetical operation x x x." x x x In the instant case, both obligations are liquidated. Vicente has the obligation to pay his debt due to Jesus in the amount of ₱300,000.00 with interest at the rate of 12% per annum counted from the filing of the instant complaint on August 17, 1993 until fully paid. Jesus, on the other hand, has the obligation to pay attorney's fees which the RTC had already determined to be equivalent to whatever amount recoverable from Vicente. The said attorney's fees were awarded by the RTC on the counterclaim of Vicente on the basis of "*quantum meruit*" for the legal services he previously rendered to Jesus.

APPEARANCES OF COUNSEL

Bihag Fetizanan Gandia & Associates and *Marla A. Barcenilla* for petitioner.

D E C I S I O N

DEL CASTILLO, *J.*:

When the dispositive portion of a judgment is clear and unequivocal, it must be executed strictly according to its tenor.

This Petition for Review on *Certiorari*[1] assails the Decision[2] dated May 19, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 81075, which dismissed the petition for *certiorari* seeking to annul and set aside the Orders dated September 6, 2002[3]

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[1] *Rollo*, pp. 17-26.

[2] CA *rollo*, pp. 91-97; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Ruben T. Reyes and Fernanda Lampas Peralta.

[3] Records, pp. 417-420; penned by Judge Evelyn Corpus-Cabochan.

and October 2, 2003[4] of the Regional Trial Court (RTC) of Quezon City, Branch 98 in Civil Case No. Q-93-17255.

Factual Antecedents

On July 24, 1990, respondent Atty. Vicente D. Millora (Vicente) obtained a loan of ₱400,000.00 from petitioner Dr. Jesus M. Montemayor (Jesus) as evidenced by a promissory note[5] executed by Vicente. On August 10, 1990, the parties executed a loan contract[6] wherein it was provided that the loan has a stipulated monthly interest of 2% and that Vicente had already paid the amount of ₱100,000.00 as well as the ₱8,000.00 representing the interest for the period July 24 to August 23, 1990.

Subsequently and with Vicente's consent, the interest rate was increased to 3.5% or ₱10,500.00 a month. From March 24, 1991 to July 23, 1991, or for a period of four months, Vicente was supposed to pay ₱42,000.00 as interest but was able to pay only ₱24,000.00. This was the last payment Vicente made. Jesus made several demands[7] for Vicente to settle his obligation but to no avail.

Thus, on August 17, 1993, Jesus filed before the RTC of Quezon City a Complaint[8] for Sum of Money against Vicente which was docketed as Civil Case No. Q-93-17255. On October 19, 1993, Vicente filed his Answer[9] interposing a counterclaim for attorney's fees of not less than ₱500,000.00. Vicente claimed that he handled several cases for Jesus but he was summarily dismissed from handling them when the instant complaint for sum of money was filed.

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[4] *Id.* at 452.

[5] *Id.* at 4.

[6] *Id.* at 5.

[7] *Id.* at 6, 10-14.

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

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

Ruling of the Regional Trial Court

In its Decision[10] dated October 27, 1999, the RTC ordered Vicente to pay Jesus his monetary obligation amounting to ₱300,000.00 plus interest of 12% from the time of the filing of the complaint on August 17, 1993 until fully paid. At the same time, the trial court found merit in Vicente's counterclaim and thus ordered Jesus to pay Vicente his attorney's fees which is equivalent to the amount of Vicente's monetary liability, and which shall be set-off with the amount Vicente is adjudged to pay Jesus, *viz*:

> WHEREFORE, premises above-considered [sic], JUDGMENT is hereby rendered ordering defendant Vicente D. Millora to pay plaintiff Jesus M. Montemayor the sum of ₱300,000.00 with interest at the rate of 12% per annum counted from the filing of the instant complaint on August 17, 1993 until fully paid and whatever amount recoverable from defendant shall be set off by an equivalent amount awarded by the court on the counterclaim representing attorney's fees of defendant on the basis of "quantum meruit" for legal services previously rendered to plaintiff.
>
> No pronouncement as to attorney's fees and costs of suit.
>
> SO ORDERED.[11]

On December 8, 1999, Vicente filed a Motion for Reconsideration[12] to which Jesus filed an Opposition.[13] On March 15, 2000, Vicente filed a Motion for the Issuance of a Writ of Execution[14] with respect to the portion of the RTC Decision which awarded him attorney's fees under his counterclaim. Jesus filed his Urgent Opposition to Defendant's Motion for the Issuance of a Writ of Execution[15] dated May 31, 2000.

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[10] *Id.* at 308-314; penned by Judge Justo M. Sultan.

[11] *Id.* at 313.

[12] *Id.* at 315-345.

[13] *Id.* at 348-356.

[14] *Id.* at 358-359.

[15] *Id.* at 372-373.

In an Order[16] dated June 23, 2000, the RTC denied Vicente's Motion for Reconsideration but granted his Motion for Issuance of a Writ of Execution of the portion of the decision concerning the award of attorney's fees.

Intending to appeal the portion of the RTC Decision which declared him liable to Jesus for the sum of ₱300,000.00 with interest at the rate of 12% per annum counted from the filing of the complaint on August 17, 1993 until fully paid, Vicente filed on July 6, 2000 a Notice of Appeal.[17] This was however denied by the RTC in an Order[18] dated July 10, 2000 on the ground that the Decision has already become final and executory on July 1, 2000.[19]

Meanwhile, Jesus filed on July 12, 2000 a Motion for Reconsideration and Clarification[20] of the June 23, 2000 Order granting Vicente's Motion for the Issuance of a Writ of Execution. Thereafter, Jesus filed on September 22, 2000 his Motion for the Issuance of a Writ of Execution.[21] After the hearing on the said motions, the RTC issued an Order[22] dated September 6, 2002 denying both motions for lack of merit. The Motion for

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[16] *Id.* at 375-376; penned by Judge Estrella T. Estrada.

[17] *Id.* at 377-378.

[18] *Id.* at 382.

[19] This Order was issued prior to the promulgation of *Neypes v. Court of Appeals*, 506 Phil. 613 (2005), where the Court categorically set a fresh period of 15 days from a denial of a motion for reconsideration within which to appeal.

Before *Neypes*, the party seeking to appeal should file the notice of appeal within the remaining period from the denial of the motion for reconsideration. Here, Vicente filed his Motion for Reconsideration on December 8, 1999, the 15th day from his receipt on November 23, 1999 of the October 27, 1999 RTC Decision. Having consumed the 15-day period to appeal, Vicente should have filed his Notice of Appeal on July 1, 2000, or the day immediately after his receipt on June 30, 2000 of the June 23, 2000 Order denying his Motion for Reconsideration. Instead, he filed his Notice of Appeal on July 6, 2000.

[20] *Id.* at 383-388.

[21] *Id.* at 392-393.

[22] *Id.* at 417-420.

Reconsideration and Clarification was denied for violating Section 5,[23] Rule 15 of the Rules of Court and likewise the Motion for the Issuance of a Writ of Execution, for violating Section 6,[24] Rule 15 of the same Rules.

Jesus filed his Motion for Reconsideration[25] thereto on October 10, 2002 but this was eventually denied by the trial court through its Order[26] dated October 2, 2003.

Ruling of the Court of Appeals

Jesus went to the CA *via* a Petition for *Certiorari*[27] under Rule 65 of the Rules of Court.

On May 19, 2005, the CA issued its Decision the dispositive portion of which provides:

> WHEREFORE, the foregoing considered, the petition for *certiorari* is **DENIED** and the assailed Orders are **AFFIRMED** *in toto*. No costs.
>
> SO ORDERED.[28]

Not satisfied, Jesus is now before this Court *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

Issue

NOTWITHSTANDING THE FINALITY OF THE TRIAL COURT'S DECISION OF OCTOBER 27, 1999, AS WELL AS THE ORDERS OF SEPTEMBER 6, 2002 AND OCTOBER 2, 2003, THE LEGAL ISSUE TO BE RESOLVED IN THIS CASE IS WHETHER X X X

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[23] Section 5. *Notice of hearing*. The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

[24] Section 6. *Proof of service necessary*. No written motion set for hearing shall be acted upon by the court without proof of service thereof.

[25] Records, pp. 421-427.

[26] *Id.* at 452.

[27] CA *rollo*, pp. 2-13.

[28] *Id.* at 97.

[DESPITE] THE ABSENCE OF A SPECIFIC AMOUNT IN THE DECISION REPRESENTING RESPONDENT'S COUNTERCLAIM, THE SAME COULD BE VALIDLY [OFFSET] AGAINST THE SPECIFIC AMOUNT OF AWARD MENTIONED IN THE DECISION IN FAVOR OF THE PETITIONER.[29]

Petitioner's Arguments

Jesus contends that the trial court grievously erred in ordering the implementation of the RTC's October 27, 1999 Decision considering that same does not fix the amount of attorney's fees. According to Jesus, such disposition leaves the matter of computation of the attorney's fees uncertain and, hence, the writ of execution cannot be implemented. In this regard, Jesus points out that not even the Sheriff who will implement said Decision can compute the judgment awards. Besides, a sheriff is not clothed with the authority to render judicial functions such as the computation of specific amounts of judgment awards.

Respondent's Arguments

Vicente counter-argues that the October 27, 1999 RTC Decision can no longer be made subject of review, either by way of an appeal or by way of a special civil action for *certiorari* because it had already attained finality when after its promulgation, Jesus did not even file a motion for reconsideration thereof or interpose an appeal thereto. In fact, it was Vicente who actually filed a motion for reconsideration and a notice of appeal, which was eventually denied and disapproved by the trial court.

Our Ruling

The petition lacks merit.

The October 27, 1999 Decision of the RTC is already final and executory, hence, immutable.

At the outset, it should be stressed that the October 27, 1999 Decision of the RTC is already final and executory. Hence, it

[29] *Rollo,* pp. 19-20.

can no longer be the subject of an appeal. Consequently, Jesus is bound by the decision and can no longer impugn the same. Indeed, well-settled is the rule that a decision that has attained finality can no longer be modified even if the modification is meant to correct erroneous conclusions of fact or law. The doctrine of finality of judgment is explained in *Gallardo-Corro v. Gallardo*:[30]

> Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case. The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[31]

To stress, the October 27, 1999 Decision of the RTC has already attained finality. "Such definitive judgment is no longer subject to change, revision, amendment or reversal. Upon finality of the judgment, the Court loses its jurisdiction to amend, modify or alter the same. Except for correction of clerical errors or the making of *nunc pro tunc* entries which cause no prejudice to any party, or where the judgment is void, the judgment can neither be amended nor altered after it has become final and executory. This is the principle of immutability of final judgment."[32]

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[30] 403 Phil. 498 (2001).

[31] *Id.* at 511.

[32] *Bongcac v. Sandiganbayan*, G.R. Nos. 156687-88, May 21, 2009, 588 SCRA 64, 71.

The amount of attorney's fees is ascertainable from the RTC Decision. Thus, compensation is possible.

Jesus contends that offsetting cannot be made because the October 27, 1999 judgment of the RTC failed to specify the amount of attorney's fees. He maintains that for offsetting to apply, the two debts must be liquidated or ascertainable. However, the trial court merely awarded to Vicente attorney's fees based on *quantum meruit* without specifying the exact amount thereof.

We do not agree.

For legal compensation to take place, the requirements set forth in Articles 1278 and 1279 of the Civil Code, quoted below, must be present.

ARTICLE 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.

ARTICLE 1279. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

"A debt is liquidated when its existence and amount are determined. It is not necessary that it be admitted by the debtor. Nor is it necessary that the credit appear in a final judgment in order that it can be considered as liquidated; it is enough that its exact amount is known. And a debt is considered liquidated, not only when it is expressed already in definite figures which

do not require verification, but also when the determination of the exact amount depends only on a simple arithmetical operation x x x."[33]

In *Lao v. Special Plans, Inc.*,[34] we ruled that:

> When the defendant, who has an unliquidated claim, sets it up by way of counterclaim, and a judgment is rendered liquidating such claim, it can be compensated against the plaintiff's claim from the moment it is liquidated by judgment. We have restated this in *Solinap v. Hon. Del Rosario*[35] where we held that compensation takes place only if both obligations are liquidated.

In the instant case, both obligations are liquidated. Vicente has the obligation to pay his debt due to Jesus in the amount of ₱300,000.00 with interest at the rate of 12% per annum counted from the filing of the instant complaint on August 17, 1993 until fully paid. Jesus, on the other hand, has the obligation to pay attorney's fees which the RTC had already determined to be equivalent to whatever amount recoverable from Vicente. The said attorney's fees were awarded by the RTC on the counterclaim of Vicente on the basis of "*quantum meruit*" for the legal services he previously rendered to Jesus.

In its Decision, the trial court elucidated on how Vicente had established his entitlement for attorney's fees based on his counterclaim in this manner:

> Defendant, on his counterclaim, has established the existence of a lawyer-client relationship between him and plaintiff and this was admitted by the latter. Defendant had represented plaintiff in several court cases which include the Laguna property case, the various cases filed by Atty. Romulo Reyes against plaintiff such as the falsification and libel cases and the disbarment case filed by plaintiff against Atty. Romulo Reyes before the Commission on Bar Integration. Aside from these cases, plaintiff had made defendant his consultant on almost everything that involved legal opinions.

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[33] Tolentino, Arturo M., *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES*, Vol. IV, 2002 ed., p. 371.

[34] G.R. No. 164791, June 29, 2010, 622 SCRA 27, 36.

[35] 208 Phil. 561, 565 (1983).

More particularly in the Calamba, Laguna land case alone, plaintiff had agreed to pay defendant a contingent fee of 25% of the value of the property for the latter's legal services as embodied in the Amended Complaint signed and verified by plaintiff (Exh. 5). Aside from this contingent fee, defendant had likewise told plaintiff that his usual acceptance fee for a case like the Laguna land case is ₱200,000.00 and his appearance fee at that time was x x x ₱2,000.00 per appearance but still plaintiff paid nothing.

The lawyer-client relationship between the parties was severed because of the instant case. The court is however fully aware of defendant's stature in life — a UP law graduate, Bar topnotcher in 1957 bar examination, former Senior Provincial Board Member, Vice-Governor and Governor of the province of Pangasinan, later as Assemblyman of the Batasang Pambansa and is considered a prominent trial lawyer since 1958. For all his legal services rendered to plaintiff, defendant deserves to be compensated at least on a "*quantum meruit*" basis.[36]

The above discussion in the RTC Decision was then immediately followed by the dispositive portion, *viz*:

WHEREFORE, premises above-considered, JUDGMENT is hereby rendered ordering defendant Vicente D. Millora to pay plaintiff Jesus M. Montemayor the sum of ₱300,000.00 with interest at the rate of 12% per annum counted from the filing of the instant complaint on August 17, 1993 until fully paid and **whatever amount recoverable from defendant shall be set off by an equivalent amount awarded by the court on the counterclaim representing attorney's fees of defendant** on the basis of "*quantum meruit*" for legal services previously rendered to plaintiff.

No pronouncement as to attorney's fees and costs of suit.

SO ORDERED.[37] (Emphasis supplied.)

It is therefore clear that in the execution of the RTC Decision, there are two parts to be executed. The first part is the computation of the amount due to Jesus. This is achieved by doing a simple arithmetical operation at the time of execution. The principal

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[36] Records, p. 313.

[37] *Id*.

amount of ₱300,000.00 is to be multiplied by the interest rate of 12%. The product is then multiplied by the number of years that had lapsed from the filing of the complaint on August 17, 1993 up to the date when the judgment is to be executed. The result thereof plus the principal of ₱300,000.00 is the total amount that Vicente must pay Jesus.

The second part is the payment of attorney's fees to Vicente. This is achieved by following the clear wordings of the above *fallo* of the RTC Decision which provides that Vicente is entitled to attorney's fees which is equivalent to whatever amount recoverable from him by Jesus. Therefore, whatever amount due to Jesus as payment of Vicente's debt is equivalent to the amount awarded to the latter as his attorney's fees. Legal compensation or set-off then takes place between Jesus and Vicente and both parties are on even terms such that there is actually nothing left to execute and satisfy in favor of either party.

In fact, the RTC, in addressing Jesus' Motion for Reconsideration and Clarification dated July 12, 2000 had already succinctly explained this matter in its Order dated September 6, 2002, *viz*:

> Notwithstanding the tenor of the said portion of the judgment, still, there is nothing to execute and satisfy in favor of either of the herein protagonists because the said decision also states clearly that **"whatever amount recoverable from defendant shall be SET-OFF by an equivalent amount awarded by the Court on the counterclaim representing attorney's fees of defendant on the basis of "*quantum meruit*" for legal services previously rendered to plaintiff"** x x x.
>
> Said dispositive portion of the decision is free from any ambiguity. It unequivocably ordered that any amount due in favor of plaintiff and against defendant is set off by an equivalent amount awarded to defendant in the form of counterclaims representing attorney's fees for past legal services he rendered to plaintiff.
>
> It will be an exercise in futility and a waste of so precious time and unnecessary effort to enforce satisfaction of the plaintiff's claims against defendant, and vice versa because there is in fact a setting

off of each other's claims and liabilities under the said judgment which has long become final.[38] (Emphasis in the original.)

A reading of the dispositive portion of the RTC Decision would clearly show that no ambiguity of any kind exists. Furthermore, if indeed there is any ambiguity in the dispositive portion as claimed by Jesus, the RTC had already clarified it through its Order dated September 6, 2002 by categorically stating that the attorney's fees awarded in the counterclaim of Vicente is of an amount equivalent to whatever amount recoverable from him by Jesus. This clarification is not an amendment, modification, correction or alteration to an already final decision as it is conceded that such cannot be done anymore. What the RTC simply did was to state in categorical terms what it obviously meant in its decision. Suffice it to say that the dispositive portion of the decision is clear and unequivocal such that a reading of it can lead to no other conclusion, that is, any amount due in favor of Jesus and against Vicente is set off by an equivalent amount in the form of Vicente's attorney's fees for past legal services he rendered for Jesus.

WHEREFORE, the instant Petition for Review on *Certiorari* is *DENIED*. The assailed Decision of the Court of Appeals dated May 19, 2005 in CA-G.R. SP No. 81075 which dismissed the petition for *certiorari* seeking to annul and set aside the Orders dated September 6, 2002 and October 2, 2003 of the Regional Trial Court of Quezon City, Branch 98 in Civil Case No. Q-93-17255, is hereby *AFFIRMED*.

SO ORDERED.

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

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[38] *Id.* at 420.

FIRST DIVISION

[G.R. No. 171868. July 27, 2011]

SPOUSES FRANCISCO D. YAP and WHELMA S. YAP, *petitioners, vs.* **SPOUSES ZOSIMO DY, SR. and NATIVIDAD CHIU DY, SPOUSES MARCELINO MAXINO and REMEDIOS L. MAXINO, PROVINCIAL SHERIFF OF NEGROS ORIENTAL and DUMAGUETE RURAL BANK, INC.,** *respondents.*

[G.R. No. 171991. July 27, 2011]

DUMAGUETE RURAL BANK, INC. (DRBI) herein represented by Mr. William D.S. Dichoso, *petitioners, vs.* **SPOUSES ZOSIMO DY, SR. and NATIVIDAD CHIU DY, SPOUSES MARCELINO MAXINO and REMEDIOS MAXINO, and SPOUSES FRANCISCO D. YAP and WHELMA S. YAP,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS; REDEMPTION; TO WHOM PAYMENT ON REDEMPTION MADE; COMPLIED WITH IN CASE AT BAR.— As to the second issue regarding the question as to whom payment of the redemption money should be made, Section 31, Rule 39 of the Rules of Court then applicable provides: SEC. 31. *Effect of redemption by judgment debtor, and a certificate to be delivered and recorded thereupon. To whom payments on redemption made.*— x x x **The payments mentioned in this and the last preceding sections may be made to the purchaser or redemptioner, or for him to the officer who made the sale.** Here, the Dys and the Maxinos complied with the above-quoted provision. Well within the redemption period, they initially attempted to pay the redemption money not only to the purchaser, DRBI, but also to the Yaps. Both DRBI and the Yaps however refused, insisting that the Dys and Maxinos should pay the whole purchase price at which all

the foreclosed properties were sold during the foreclosure sale. Because of said refusal, the Dys and Maxinos correctly availed of the alternative remedy by going to the sheriff who made the sale. As held in *Natino v. Intermediate Appellate Court,* the tender of the redemption money may be made to the purchaser of the land or to the sheriff. If made to the sheriff, it is his duty to accept the tender and execute the certificate of redemption.

2. ID.; ID.; ID.; ID.; SUCCESSORS-IN-INTEREST HAVE THE LEGAL PERSONALITY TO REDEEM THE SUBJECT PROPERTIES IN CASE AT BAR.— Contrary to petitioners' contention, the Dys and Maxinos have legal personality to redeem the subject properties despite the fact that the sale to the Dys and Maxinos was without DRBI's consent. In *Litonjua v. L & R Corporation,* this Court declared valid the sale by the mortgagor of mortgaged property to a third person notwithstanding the lack of written consent by the mortgagee, and likewise recognized the third person's right to redeem the foreclosed property, to wit: Coming now to the issue of whether the redemption offered by PWHAS on account of the spouses Litonjua is valid, we rule in the affirmative. The sale by the spouses Litonjua of the mortgaged properties to PWHAS is valid. Therefore, PWHAS stepped into the shoes of the spouses Litonjua on account of such sale and was in effect, their successor-in-interest. As such, it had the right to redeem the property foreclosed by L & R Corporation. x x x The right of PWHAS to redeem the subject properties finds support in *Section 6 of Act 3135* itself which gives not only the mortgagor-debtor the right to redeem, but also his successors-in-interest. As vendee of the subject properties, PWHAS qualifies as such a successor-in-interest of the spouses Litonjua. Likewise, we rule that the Dys and the Maxinos validly redeemed Lots 1 and 6.

3. ID.; ID.; ID.; ID.; REQUISITES OF A VALID REDEMPTION.— The requisites for a valid redemption are: (1) the redemption must be made within twelve (12) months from the time of the registration of the sale in the Office of the Register of Deeds; (2) payment of the purchase price of the property involved, plus 1% interest per month thereon in addition, up to the time of redemption, together with the amount of any assessments

or taxes which the purchaser may have paid thereon after the purchase, also with 1% interest on such last named amount; and (3) written notice of the redemption must be served on the officer who made the sale and a duplicate filed with the Register of Deeds of the province.

4. ID.; ID.; ID.; ID.; ID.; PROPER TIME AND MANNER OF REDEMPTION; PRESENT IN CASE AT BAR.— It is undisputed that the Dys and the Maxinos made the redemption within the 12-month period from the registration of the sale. The Dys and Maxinos effected the redemption on May 24, 1984, when they deposited ₱50,373.42 with the Provincial Sheriff, and on June 19, 1984, when they deposited an additional ₱83,850.50. Both dates were well within the one-year redemption period reckoned from the June 24, 1983 date of registration of the foreclosure sale.

5. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; DOCTRINE OF INDIVISIBILITY OF MORTGAGE; DOES NOT APPLY ONCE THE MORTGAGE IS EXTINGUISHED BY A COMPLETE FORECLOSURE THEREOF AS IN CASE AT BAR.— We cannot subscribe to the Yaps' argument on the indivisibility of the mortgage. As held in the case of *Philippine National Bank v. De los Reyes*, the doctrine of indivisibility of mortgage does not apply once the mortgage is extinguished by a complete foreclosure thereof as in the instant case. The Court held: x x x [W]hat the law proscribes is the foreclosure of only a portion of the property or a number of the several properties mortgaged corresponding to the unpaid portion of the debt where before foreclosure proceedings partial payment was made by the debtor on his total outstanding loan or obligation. This also means that the debtor cannot ask for the release of any portion of the mortgaged property or of one or some of the several lots mortgaged unless and until the loan thus, secured has been fully paid, notwithstanding the fact that there has been a partial fulfillment of the obligation. Hence, it is provided that the debtor who has paid a part of the debt cannot ask for the proportionate extinguishment of the mortgage as long as the debt is not completely satisfied. That the situation obtaining in the case at bar is not within the purview of the aforesaid rule on indivisibility is obvious since the aggregate number of the lots which comprise the collaterals for the

mortgage had already been foreclosed and sold at public auction. There is no partial payment nor partial extinguishment of the obligation to speak of. The aforesaid doctrine, which is actually intended for the protection of the mortgagee, specifically refers to the release of the mortgage which secures the satisfaction of the indebtedness and naturally presupposes that the mortgage is existing. **Once the mortgage is extinguished by a complete foreclosure thereof, said doctrine of indivisibility ceases to apply since, with the full payment of the debt, there is nothing more to secure**. Nothing in the law prohibits the piecemeal redemption of properties sold at one foreclosure proceeding. In fact, in several early cases decided by this Court, the right of the mortgagor or redemptioner to redeem one or some of the foreclosed properties was recognized.

6. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS; REDEMPTION; REQUISITES OF A VALID REDEMPTION; AMOUNTS PAYABLE ON REDEMPTION; CASE AT BAR.— Contrary to the Yaps' contention, the amount paid by the Dys and Maxinos within the redemption period **for the redemption of <u>just two</u> parcels of land was not only ₱40,000.00 but totaled to <u>₱134,223.92</u>** (₱50,373.42 paid on May 28, 1984 plus ₱83,850.50 paid on June 19, 1984). That is more than **60% of the purchase price for the five foreclosed properties, to think the Dys and Maxinos were only redeeming two properties.** We find that it can be considered a sufficient amount if we were to base the proper purchase price on the proportion of the size of Lots 1 and 6 with the total size of the five foreclosed properties, x x x The two subject properties to be redeemed, Lots 1 and 6, have a total area of 77,458 square meters or roughly 52% of the total area of the foreclosed properties. Even with this rough approximation, we rule that there is no reason to invalidate the redemption of the Dys and Maxinos since they tendered 60% of the total purchase price for properties constituting only 52% of the total area. However, there is a need to remand the case for computation of the pro-rata value of Lots 1 and 6 based on their true values at that time of redemption for the purposes of determining if there is any deficiency or overpayment on the part of the Dys and Maxinos.

7. CIVIL LAW; DAMAGES; MORAL DAMAGES; AWARD THEREOF, PROPER IN CASE AT BAR.— [T]he CA also correctly awarded moral damages. Paragraph 10, Article 2219 of the Civil Code provides that moral damages may be recovered in case of acts and actions referred to in Article 21 of the same Code. Article 21 reads: ART. 21 Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage. As previously discussed, DRBI's act of maliciously including two additional properties in the Sheriff's Certificate of Sale even if they were not included in the foreclosed properties caused the Dys and Maxinos pecuniary loss. Hence, DRBI is liable to pay moral damages.

8. ID.; ID.; EXEMPLARY DAMAGES AND ATTORNEY'S FEES; AWARD, WARRANTED IN CASE AT BAR.— The award of exemplary damages is similarly proper. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages. We cannot agree more with the following ratio of the appellate court in granting the same: Additionally, what is alarming to the sensibilities of the Court is the deception employed by the bank in adding other properties in the certificate of sale under public auction without them being included in the public auction conducted. It cannot be overemphasized that being a lending institution, prudence dictates that it should employ good faith and due diligence with the properties entrusted to it. It was the bank which submitted the properties ought to be foreclosed to the sheriff. It only submitted five (5) properties for foreclosure. Yet, it caused the registration of the Certificate of Sale under public auction which listed more properties than what was foreclosed. On this aspect, exemplary damages in the amount of ₱200,000.00 are in order. There being an award of exemplary damages, the award of attorney's fees is likewise proper as provided in paragraph 1, Article 2208 of the Civil Code.

APPEARANCES OF COUNSEL

Yap-Siton Law Offices for Sps. Yap.
Joel Cadiogan Obar for Dumaguete Rural Bank, Inc.
Augusto Gatmaytan for Sps. Dy.

D E C I S I O N

VILLARAMA, JR., *J.*:

May persons to whom several mortgaged lands were transferred without the knowledge and consent of the creditor redeem only several parcels if all the lands were sold together for a single price at the foreclosure sale? This is the principal issue presented to us for resolution in these two petitions for review on *certiorari* assailing the May 17, 2005 Decision[1] and March 15, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. C.V. No. 57205.

The antecedents are as follows:

The spouses Tomas Tirambulo and Salvacion Estorco (Tirambulos) are the registered owners of several parcels of land located in Ayungon, Negros Oriental, registered under Transfer Certificate of Title (TCT) Nos. T-14794, T-14777, T-14780, T-14781, T-14783 and T-20301 of the Registry of Deeds of Negros Oriental, and more particularly designated as follows:

(1)	TCT No. T-14777	Lot 1 of Plan Pcs-11728	61,371 sq.m.
(2)	TCT No. T-20301	Lot 3 of Plan Psu-124376	17,373 sq.m.
(3)	TCT No. T-14780	Lot 4 of Plan Pcs-11728	27,875 sq.m.
(4)	TCT No. T-14794	Lot 5 of Plan Psu-124376	2,900 sq.m.
(5)	TCT No. T-14781	Lot 6 of Plan Pcs-11728	16,087 sq.m.
(6)	TCT No. T-14783	Lot 8 of Plan Pcs-11728	39,888 sq.m.

The Tirambulos likewise own a parcel of land denominated as Lot 846, covered by Tax Declaration No. 08109.

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[1] *Rollo* (G.R. No. 171991), pp. 27-41. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Mercedes Gozo-Dadole and Sesinando E. Villon concurring.

[2] *Id.* at 53-61. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, Jr. concurring.

On December 3, 1976, the Tirambulos executed a Real Estate Mortgage[3] over Lots 1, 4, 5, 6 and 8 in favor of the Rural Bank of Dumaguete, Inc., predecessor of Dumaguete Rural Bank, Inc. (DRBI), to secure a ₱105,000 loan extended by the latter to them. Later, the Tirambulos obtained a second loan for ₱28,000 and also executed a Real Estate Mortgage[4] over Lots 3 and 846 in favor of the same bank on August 3, 1978.

Subsequently, on October 27, 1979, the Tirambulos sold all seven mortgaged lots to the spouses Zosimo Dy, Sr. and Natividad Chiu (the Dys) and the spouses Marcelino C. Maxino and Remedios Lasola (the Maxinos) without the consent and knowledge of DRBI. This sale, which was embodied in a Deed of Absolute Sale,[5] was followed by a default on the part of the Tirambulos to pay their loans to DRBI. Thus, DRBI extrajudicially foreclosed the December 3, 1976 mortgage and had Lots 1, 4, 5, 6 and 8 sold at public auction on March 31, 1982.

At the auction sale, DRBI was proclaimed the highest bidder and bought said lots for ₱216,040.93. The Sheriff's Certificate of Sale[6] stated that the "sale is subject to the rights of redemption of the mortgagor (s) or any other persons authorized by law so to do, within a period of one (1) year from registration hereof."[7] The certificate of sale, however, was not registered until almost a year later, or on June 24, 1983.

On July 6, 1983, or twelve (12) days after the sale was registered, DRBI sold Lots 1, 3 and 6 to the spouses Francisco D. Yap and Whelma D. Yap (the Yaps) under a Deed of Sale with Agreement to Mortgage.[8] It is important to note, however, that **Lot 3 was not among the five properties foreclosed and bought by DRBI at public auction.**

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[3] Records (Civil Case No. 8439), Vol. 1, p. 9.

[4] *Id.* at 10.

[5] *Id.* at 14-17.

[6] *Id.* at 18-20.

[7] *Id.* at 20.

[8] Records (Civil Case No. 8426), Vol. I, pp. 23-25.

On August 8, 1983, or well within the redemption period, the Yaps filed a Motion for Writ of Possession[9] alleging that they have acquired all the rights and interests of DRBI over the foreclosed properties and are entitled to immediate possession of the same because the one-year redemption period has lapsed without any redemption being made. Said motion, however, was ordered withdrawn on August 22, 1983[10] upon motion of the Yaps, who gave no reason therefor.[11] Three days later, or on August 25, 1983, the Yaps again filed a Motion for Writ of Possession.[12] This time the motion was granted, and a Writ of Possession[13] over Lots 1, 3 and 6 was issued in favor of the Yaps on September 5, 1983. They were placed in possession of Lots 1, 3 and 6 seven days later.

On May 22, 1984, roughly a month before the one-year redemption period was set to expire, the Dys and the Maxinos attempted to redeem Lots 1, 3 and 6. They tendered the amount of ₱40,000.00 to DRBI and the Yaps,[14] but both refused, contending that the redemption should be for the full amount of the winning bid of ₱216,040.93 plus interest for all the foreclosed properties.

Thus, on May 28, 1984, the Dys and the Maxinos went to the Office of the Sheriff of Negros Oriental and paid ₱50,625.29 (₱40,000.00 for the principal plus ₱10,625.29 for interests and Sheriff's Commission) to effect the redemption.[15] Noticing that Lot 3 was not included in the foreclosure proceedings, Benjamin V. Diputado, Clerk of Court and Provincial Sheriff, issued a Certificate of Redemption[16] in favor of the Dys and the Maxinos

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[9] *Id.* at 26-28.

[10] *Id.* at 30.

[11] *Id.* at 29.

[12] *Id.* at 31-33.

[13] *Id.* at 34-35.

[14] *Id.* at 36-37.

[15] *Id.* at 38-39.

[16] *Id.* at 43-45.

only for Lots 1 and 6, and stated in said certificate that Lot 3 is not included in the foreclosure proceedings. By letter[17] of even date, Atty. Diputado also duly notified the Yaps of the redemption of Lots 1 and 6 by the Dys and the Maxinos, as well as the non-inclusion of Lot 3 among the foreclosed properties. He advised the Yaps to personally claim the redemption money or send a representative to do so.

In a letter to the Provincial Sheriff on May 31, 1984, the Yaps refused to take delivery of the redemption price arguing that one of the characteristics of a mortgage is its indivisibility and that one cannot redeem only some of the lots foreclosed because all the parcels were sold for a single price at the auction sale.[18]

On June 1, 1984, the Provincial Sheriff wrote the Dys and the Maxinos informing them of the Yaps' refusal to take delivery of the redemption money and that in view of said development, the tender of the redemption money was being considered as a consignation.[19]

On June 15, 1984, the Dys and the Maxinos filed Civil Case No. 8426 with the Regional Trial Court of Negros Oriental for accounting, injunction, declaration of nullity (with regard to Lot 3) of the Deed of Sale with Agreement to Mortgage, and damages against the Yaps and DRBI. In their complaint,[20] they prayed

a) That the Deed of Sale With Agreement to Mortgage … be declared null and void *ab initio*;

b) That defendant Yap[s'] possession of Lot No. 3, TCT No. T20301 based as it was on a void sale, be declared illegal from the very beginning;

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[17] *Id.* at 46.

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

[19] *Id.* at 50.

[20] *Id.* at 1-17.

c) That defendants be ordered to render to plaintiffs a fair accounting of the harvests and income which defendants made from said Lot No. 3 and, in addition, be ordered to pay to plaintiffs damages for wrongfully depriving plaintiffs of the use and enjoyment of said property;

d) That the redemption which plaintiffs made of Lot No. 1, TCT No. 14777, and Lot No. 6, TCT No. 14781, through the Provincial Sheriff of Negros Oriental, be declared valid and binding on the defendants, thereby releasing and freeing said parcels of land from whatever liens or claims that said defendants might have on them;

e) That defendants be likewise ordered to render to plaintiffs full and fair accounting of all the harvests, fruits, and income that they or either of them might have derived from said two parcels of land starting from the time defendant Yap first took possession thereof and harvested the coconuts in September, 1983;

f) That, after the accounting herein prayed for, defendants be required to deliver to plaintiffs the net proceeds of the income from the three parcels of land subject of this case, together with interest at the legal rate;

g) That for his acts of misrepresentation and deceit in obtaining a writ of possession over the three parcels of land subject of this case, and for the highly irregular and anomalous procedures and maneuvers employed by defendant Yap in securing said writ, as well as for harvesting the coconuts even after knowing that plaintiffs had already fully redeemed the properties in question and, with respect to Lot No. 3, after knowing that the same was not in fact included in the foreclosure and, therefore, could not have been validly sold by the bank to him, said defendant Yap be condemned to pay plaintiffs moral damages in the amount of ₱200,000.00, plus punitive and exemplary damages in the amount of ₱100,000.00;

h) That for falsifying the Sheriff's Certificate of Sale and selling unlawfully Lot No. 3, TCT No. T-20301, to its co-defendant Yap, defendant DRBI be condemned to pay to plaintiffs actual damages in the amount of ₱50,000.00; moral damages in the amount of ₱200,000.00; and punitive and exemplary damages in the amount of ₱100,000.00;

i) That defendants be condemned to pay solidarily to plaintiffs attorney's fees in the amount of ₱50,000.00; other legitimate expenses of litigation in the amount of ₱30,000.00; and the costs of suit;

j) That pending hearing of this case, a writ of preliminary injunction be issued enjoining and restraining the defendants, particularly defendant Yap, from disturbing and interfering the plaintiffs' possession and other rights of ownership over the land in question;

k) That pending hearing of the petition for preliminary injunction, a temporary restraining order be issued against the defendants, particularly against defendant Yap, to serve the same purpose for which the writ of preliminary injunction is herein prayed for; and

l) That, after hearing of the main case, said preliminary injunction be made permanent.

Furthermore, plaintiffs pray for all other reliefs which may be just and equitable in the premises.[21]

Thereafter, on June 19, 1984, the Dys and the Maxinos consigned to the trial court an additional sum of ₱83,850.50 plus sheriff's commission fee of ₱419.25 representing the remaining balance of the purchase price that the Yaps still owed DRBI by virtue of the sale to them by the DRBI of Lots 1, 3 and 6.[22]

Meanwhile, by letter[23] dated June 27, 1984, the Yaps told DRBI that no redemption has been made by the Tirambulos or their successors-in-interest and requested DRBI to consolidate its title over the foreclosed properties by requesting the Provincial Sheriff to execute the final deed of sale in favor of the bank so that the latter can transfer the titles of the two foreclosed properties to them.

On the same date, the Yaps also wrote the Maxinos informing the latter that during the last harvest of the lots bought from DRBI, they excluded from the harvest Lot 3 to show their good faith. Also, they told the Maxinos that they were formally turning over the possession of Lot 3 to the Maxinos, without

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

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

[23] Records (Civil Case No. 8439), p. 32.

prejudice to the final determination of the legal implications concerning Lot 3. As to Lots 1 and 6, however, the Yaps stated that they intended to consolidate ownership over them since there has been no redemption as contemplated by law. Included in the letter was a liquidation of the copra proceeds harvested from September 7, 1983 to April 30, 1984 for Lots 1, 3 and 6.[24]

Later, on July 5, 1984, the Yaps filed Civil Case No. 8439 for consolidation of ownership, annulment of certificate of redemption, and damages against the Dys, the Maxinos, the Provincial Sheriff of Negros Oriental and DRBI. In their complaint,[25] the Yaps prayed

> 1. That [they] be declared the exclusive owners of Lot No. 1 covered by TCT No. T-14777 and Lot No. 6 covered by TCT No. T-14781 for failure on the part of defendants Zosimo Dy, Sr., and Marcelino Maxino to redeem the properties in question within one (1) year from the auction sale.
>
> 2. That defendants be [declared] solidarily liable to pay moral damages in the amount of ONE HUNDRED THOUSAND PESOS (₱100,000.00), THIRTY[-]FIVE THOUSAND PESOS (₱35,000.00) as attorney's fees and FIFTEEN THOUSAND PESOS (₱15,000.00) as exemplary damages;
>
> 3. That the Provincial Sheriff be required to execute the final Deed of Sale in favor of the bank and the bank be in turn required to transfer the property to the plaintiffs in accordance with the Deed of Sale with Mortgage.
>
> 4. That the court grant such other relief as may be deemed just and equitable under the premises.[26]

Civil Case Nos. 8426 and 8439 were tried jointly.

On October 24, 1985, the Yaps, by counsel, filed a motion to withdraw from the provincial sheriff the redemption money

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

[25] *Id.* at 2-8.

[26] *Id.* at 7-8.

amounting to ₱50,373.42.[27] Said motion was granted on October 28, 1985 after a Special Power of Attorney executed by Francisco Yap in favor of his brother Valiente Yap authorizing the latter to receive the ₱50,373.42 redemption money was presented in court.[28]

On February 12, 1997, the trial court rendered decision[29] in favor of the Yaps. The *fallo* reads:

> WHEREFORE, judgment is hereby rendered as follows:
>
> 1. Dismissing the complaint of Dy and Maxino spouses in Civil Case No. 8426 as well as the bank and the Yap spouses counterclaim for lack of factual and legal basis;
>
> 2. In Civil Case No. 8439:
>
> a) Declaring the Yap spouses, plaintiffs therein, the exclusive owners of Lot No. 1 covered by TCT No. T-14777 and Lot No. 6 covered by TCT No. T-14781 for failure on the part of the Dy and Maxino spouses, defendants therein, to redeem the properties in question within one (1) year from the auction sale.
>
> b) Directing the Provincial Sheriff of Negros Oriental to execute the Final Deed of Sale in favor of the bank and the latter to transfer the subject properties to the Yap spouses in accordance with the Deed of Sale With Mortgage….
>
> SO ORDERED.[30]

On March 7, 1997, the trial court amended the above dispositive portion upon motion of DRBI, as follows:

> Wherefore, judgment is hereby rendered as follows:
>
> 1. The Certificate of Redemption issued by the Provincial Sheriff (Exh. "M") is hereby declared null and void;

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[27] Records (Civil Case No. 8426), Vol. I, pp. 346-347.

[28] *Id.* at 348.

[29] *Rollo* (G.R. No. 171991), pp. 93-109.

[30] *Id.* at 108-109.

2. The Provincial Sheriff of Negros Oriental is hereby ordered to execute a Final Deed of Sale of the foreclosed properties in favor of the defendant Dumaguete Rural Bank, Inc., subject to the rights of the Yap spouses acquired in accordance with the Deed of Sale with Mortgage…;

3. The Deed of Sale dated [October] 27, 1979, made by Tirambulo and Estorco in favor of the Dys and Maxinos covering all the seven (7) parcels of land in question, is hereby declared null and void;

4. In Civil Case No. 8439, declaring the Yap Spouses, the exclusive owners of Lot No. 1, covered by TCT No. T-14777, and Lot No. 6, covered by TCT No. T-14781, for failure on the part of the Dy and Maxino Spouses, to redeem said properties within one (1) year from the date of the registration of the auction sale;

5. All other claims and counterclaims are hereby dismissed for lack of merit.

SO ORDERED.[31]

The trial court held that the Dys and the Maxinos failed to formally offer their evidence; hence, the court could not consider the same. It also upheld the Deed of Sale with Agreement to Mortgage between the Yaps and DRBI, ruling that its genuineness and due execution has been admitted by the Dys and the Maxinos and that it is not contrary to law, morals, good customs, public policy or public order. Thus, ownership of Lots 1, 3 and 6 was transferred to the Yaps.

The trial court further held that the Dys and the Maxinos failed to exercise their rights of redemption properly and timely. They merely deposited the amount of ₱50,625.29 with the Sheriff, whereas the amount due on the mortgage deed is ₱216,040.93.

Aggrieved by the above ruling, the Dys and the Maxinos elevated the case to the CA. They argued that the trial court erred in:

1) ... failing to consider plaintiffs' evidence [testimonial, including the testimony of the Provincial Sheriff of Negros

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[31] *Id.* at 110-111.

Oriental (Attorney Benjamin V. Diputado) and plaintiff Attorney Marcelino C. Maxino] and documentary [Exhibits A through TT (admitted under Order of 3 March 1995)];

2) …failing to declare void or annul the purported contract of sale by Dumaguete Rural Bank, Inc. to Francisco D. Yap and Whelma S. Yap of Lots 1, 3, and 6, during the redemption period [the purported seller (bank) not being the owner thereof, and Lot 3 not being included in the foreclosure/ auction sale and could not have been acquired by the Bank thereat];

3) …not holding that the parcels of land had been properly and validly redeemed in good faith, defendant Yap, the Provincial Sheriff, the Clerk of Court, and Mr. Mario Dy, having accepted redemption/consignation (or, in not fixing the redemption price and allowing redemption);

4) …not holding that by withdrawing the redemption money consigned/deposited by plaintiffs to the Court, and turning over possession of the parcels of land to plaintiffs, defendants Yap accepted, ratified, and confirmed redemption by plaintiffs of the parcels of land acquired at foreclosure/ auction sale by the Bank and purportedly sold by it to and purchased by Yap;

5) …not finding and holding that all the parcels of land covered by the foreclosed mortgage held by Dumaguete Rural Bank had been acquired by and are in the possession of plaintiffs as owners and that defendants bank and Yap had disposed of and/or lost their rights and interests and/or any cause of action and their claims had been extinguished and mooted or otherwise settled, waived and/or merged in plaintiffs-appellants;

6) …not holding that defendants Yap have no cause of action to quiet title as they had no title or possession of the parcels of land in question and in declaring defendants Yap spouses the exclusive owners of Lot No. 1 covered by TCT No. T-14777 and Lot No. 6 covered by TCT No. T-14781 and in directing the Provincial Sheriff to execute the final deed of sale in favor of the bank and the latter to transfer the subject properties to the Yap spouses in accordance with the Deed of Sale with Mortgage which included Lot No. 3 which was not foreclosed by the Sheriff and was not included

in the certificate of sale issued by him and despite their acceptance, ratification, and confirmation of the redemption as well as acknowledgment of possession of the parcels of land by plaintiffs;

7) …issuing an amended decision after perfection of plaintiff's appeal and without waiting for their comment (declaring the Certificate of Redemption issued by the Provincial Sheriff (Exh. "M") null and void; ordering the Provincial Sheriff of Negros Oriental to execute a Final Deed of Sale of the foreclosed properties in favor of the defendant Dumaguete Rural Bank, Inc., subject to the rights of the Yap spouses acquired in accordance with the Deed of Sale with Mortgage (Exh. "B" — Maxino and Dy; Exh. "1" — Yap); declaring null and void the Deed of Sale dated Oct[ober] 27, 1979, made by Tirambulo and Estorco in favor of the Dys and Maxinos covering all the seven (7) parcels of land in question; in Civil Case No. 8439, declaring the Yap spouses, the exclusive owners of Lot No. 1, covered by TCT No. T-14777, and Lot No. 6, covered by TCT No. T-14781, for failure on the part of the Dy and Maxino spouses, to redeem said properties within (1) year from the date of registration of the auction sale) after plaintiffs had perfected appeal of the 12 February 1997 decision, without hearing or awaiting plaintiffs' comment, and in the face of the records showing that the issues were never raised, much less litigated, insofar as Tirambulo, as well in the face of the foregoing circumstances, especially dismissal of defendants' claims and counterclaims and acquisition of ownership and possession of the parcels of land by plaintiffs as well as disposition and/or loss of defendants rights and interests and cause of action in respect thereof and/or settlement, waiver, and/or extinguishment of their claims, and merger in plaintiffs-appellants, and without stating clearly the facts and the law upon which it is based[; and]

8) …not finding, holding and ruling that defendants acted in bad faith and in an abusive and oppressive manner, if not contrary to law; and in not awarding plaintiffs damages.[32]

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[32] CA *rollo*, pp. 45-48.

On May 17, 2005, the CA rendered a decision reversing the March 7, 1997 amended decision of the trial court. The dispositive portion of the assailed CA decision reads:

> IN LIGHT OF THE FOREGOING, this appeal is GRANTED. The decision as well as the amended decision of the Regional Trial Court is REVERSED AND SET ASIDE. In lieu thereof[,] judgment is hereby rendered as follows:
>
> 1. Declaring the sale made by Dumaguete Rural Bank Inc. to Sps. Francisco and Whelma Yap with respect to Lot No. 3 under TCT No. T-20301 as null and void;
>
> 2. Declaring the redemption made by Spouses Dy and Spouses Maxino with regards to Lot No. 6 under TCT No. T-14781 and Lot No. 1 under TCT No. [T-]14777 as valid;
>
> 3. Ordering defendants, Sps. Yap, to deliver the possession and ownership thereof to Sps. Dy and Sps. Maxino; to give a fair accounting of the proceeds of these three parcels of land and to tender and deliver the corresponding amount of income from October 24, 1985 until the finality of this judgment[; and]
>
> 4. Condemning the defendant bank to pay damages to Spouses Dy and Spouses Maxino the amount of ₱20,000.00 as moral damages and ₱200,000.00 as exemplary damages and attorney's fees in the amount of ₱50,000.00.
>
> All other claims are dismissed.
>
> Costs against the appellees.
>
> SO ORDERED.[33]

The CA held that the trial court erred in ruling that it could not consider the evidence for the Dys and the Maxinos allegedly because they failed to formally offer the same. The CA noted that although the testimonies of Attys. Marcelino C. Maxino and Benjamin V. Diputado were not formally offered, the procedural lapse was cured when the opposing counsel cross-examined said witnesses. Also, while the original TSNs of the witnesses for the plaintiffs in Civil Case No. 8426 were burned,

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[33] *Rollo* (G.R. No. 171991), pp. 40-41.

the latter's counsel who had copies thereof, furnished the Yaps copies for their scrutiny and comment. The CA further noted that the trial court also admitted all the documentary exhibits of the Dys and the Maxinos on March 3, 1995. Unfortunately, however, the trial court simply failed to locate the pertinent documents in the voluminous records of the cases.

On the merits, the CA ruled that the Dys and the Maxinos had proven their cause of action sufficiently. The CA noted that their claim that Lot 3 was not among the properties foreclosed was duly corroborated by Atty. Diputado, the Provincial Sheriff who conducted the foreclosure sale. The Yaps also failed to rebut their contention regarding the former's acceptance of the redemption money and their delivery of the possession of the three parcels of land to the Dys and the Maxinos. The CA also noted that not only did the Yaps deliver possession of Lot 3 to the Dys and the Maxinos, they also filed a Motion to Withdraw the Redemption Money from the Provincial Sheriff and withdrew the redemption money.

As to the question whether the redemption was valid or not, the CA found no need to discuss the issue. It found that the bank was in bad faith and therefore cannot insist on the protection of the law regarding the need for compliance with all the requirements for a valid redemption while estoppel and unjust enrichment operate against the Yaps who had already withdrawn the redemption money.

Upon motion for reconsideration of the Yaps, however, the CA amended its decision on March 15, 2006 as follows:

> IN LIGHT OF THE FOREGOING, this appeal is GRANTED. The decision as well as the amended decision of the Regional Trial Court is REVERSED AND SET ASIDE. In lieu thereof[,] judgment is hereby rendered as follows:
>
> 1.Declaring the sale made by Dumaguete Rural Bank Inc. to Sps. Francisco and Whelma Yap with respect to Lot No. 3 under TCT No. T-20301 null and void;
>
> 2.Declaring the redemption made by Spouses Dy and Spouses Maxino with regards to Lot No. 6 under TCT No. T-14781 and Lot No. 1 under TCT No. [T-]14777 as valid;

3. Condemning the defendant bank to pay damages to Spouses Dy and Spouses Maxino the amount of ₱20,000.00 as moral damages and ₱200,000.00 as exemplary damages and attorney's fees in the amount of ₱50,000.00.

All other claims are dismissed.

Costs against the appellees.

SO ORDERED.[34]

Hence, the consolidated petitions assailing the appellate court's decision.

The Yaps argue in the main that there is no valid redemption of the properties extrajudicially foreclosed. They contend that the ₱40,000.00 cannot be considered a valid tender of redemption since the amount of the auction sale is ₱216,040.93. They also argue that a valid tender of payment for redemption can only be made to DRBI since at that time, their rights were subordinate to the final consolidation of ownership by the bank.

DRBI, aside from insisting that all seven mortgaged properties (which thus includes Lot 3) were validly foreclosed, argues, for its part, that the appellate court erred in sustaining the redemption made by the Dys and Maxinos. It anchors its argument on the fact that the sale of the Tirambulos to the Dys and Maxinos was without the bank's consent. The Dys and Maxinos therefore could not have assumed the character of debtors because a novation of the contract of mortgage between the Tirambulos and DRBI did not take place as such a novation is proscribed by Article 1293 of the Civil Code. And there being no valid redemption within the contemplation of law and DRBI being the highest bidder during the auction sale, DRBI has become the absolute owner of the properties mortgaged when the redemption period expired.

DRBI further argues that it was unfair and unjust for them to be held liable for damages for supposedly wrongfully foreclosing on Lot 3, depriving the Dys and the Maxinos of the use of the

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[34] *Id.* at 61.

land, and registering the Certificate of Sale which included Lot 3 when it should have excluded the same. DRBI argues that as a juridical person, it only authorized and consented, through its Board of Directors, to lawful processes. The unlawful acts of the Sheriff, who is considered as an agent of the bank in the foreclosure proceedings, cannot bind DRBI. Moreover, DRBI cannot be liable for damages on the basis of an affidavit that was submitted only before the CA as the bank had no chance to cross-examine the affiant and determine the veracity and propriety of the statements narrated in said affidavit.

Thus, the issues to be resolved in the instant case are essentially as follows: (1) Is Lot 3 among the foreclosed properties? (2) To whom should the payment of redemption money be made? (3) Did the Dys and Maxinos validly redeem Lots 1 and 6? and (4) Is DRBI liable for damages?

As to the first issue, we find that the CA correctly ruled that the Dys and Maxinos were able to prove their claim that Lot 3 was not among the properties foreclosed and that it was merely inserted by the bank in the Sheriff's Certificate of Sale. As Atty. Diputado, the Provincial Sheriff, testified, the application for foreclosure was only for five parcels of land, namely, Lots 1, 4, 5, 6 and 8. Accordingly, only said five parcels of land were included in the publication and sold at the foreclosure sale. When he was shown a copy of the Sheriff's Certificate of Sale consisting of three pages, he testified that it was altered because Lot 3 and Lot 846 were included beyond the "xxx" that marked the end of the enumeration of the lots foreclosed.[35] Also, a perusal of DRBI's application for foreclosure of real estate mortgage[36] shows that it explicitly refers to only one deed of mortgage to settle the Tirambulos' indebtedness amounting to ₱216,040.93. This is consistent with the Notice of Extrajudicial Sale of Mortgaged Property, published in the Dumaguete Star Informer on February 18, 25 and March 4, 1982,[37] announcing

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[35] TSN, August 30, 1985, pp. 4-6.

[36] Records (Civil Case No. 8426), Vol. I, p. 245.

[37] *Id.* at 246-248.

the sale of Lots 1, 4, 5, 6 and 8 for the satisfaction of the indebtedness amounting to ₱216,040.93. It is also consistent with the fact that Lots 1, 4, 5, 6 and 8 are covered by only one real estate mortgage, the Real Estate Mortgage[38] dated December 3, 1976. Indeed, that the foreclosure sale refers only to Lots 1, 4, 5, 6 and 8 is clear from the fact that Lots 1, 4, 5, 6 and 8 and Lot 3 are covered by two separate real estate mortgages. DRBI failed to refute these pieces of evidence against it.

As to the second issue regarding the question as to whom payment of the redemption money should be made, Section 31,[39] Rule 39 of the Rules of Court then applicable provides:

SEC. 31. *Effect of redemption by judgment debtor, and a certificate to be delivered and recorded thereupon. To whom payments on redemption made*.—If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner, whereupon the effect of the sale is terminated and he is restored to his estate, and the person to whom the payment is made must execute and deliver to him a certificate of redemption acknowledged or approved before a notary public or other officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the registrar

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[38] Records (Civil Case No. 8439), Vol. I, p. 9.

[39] Now Section 29, Rule 39 of the 1997 Rules of Civil Procedure, as amended. Section 29 provides as follows:

> SEC. 29. *Effect of redemption by judgment obligor, and a certificate to be delivered and recorded thereupon; to whom payments on redemption made*.—If the judgment obligor redeems, he must make the same payments as are required to effect a redemption by a redemptioner, whereupon, no further redemption shall, be allowed and he is restored to his estate. The person to whom the redemption payment is made must execute and deliver to him a certificate of redemption acknowledged before a notary public or other officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the registry of deeds of the place in which the property is situated, and the registrar of deeds must note the record thereof on the margin of the record of the certificate of sale. The payments mentioned in this and the last preceding sections may be made to the purchaser or redemptioner, or for him to the officer who made the sale.

of deeds of the province in which the property is situated, and the registrar of deeds must note the record thereof on the margin of the record of the certificate of sale. **The payments mentioned in this and the last preceding sections may be made to the purchaser or redemptioner, or for him to the officer who made the sale.** (Emphasis supplied.)

Here, the Dys and the Maxinos complied with the above-quoted provision. Well within the redemption period, they initially attempted to pay the redemption money not only to the purchaser, DRBI, but also to the Yaps. Both DRBI and the Yaps however refused, insisting that the Dys and Maxinos should pay the whole purchase price at which all the foreclosed properties were sold during the foreclosure sale. Because of said refusal, the Dys and Maxinos correctly availed of the alternative remedy by going to the sheriff who made the sale. As held in *Natino v. Intermediate Appellate Court*,[40] the tender of the redemption money may be made to the purchaser of the land or to the sheriff. If made to the sheriff, it is his duty to accept the tender and execute the certificate of redemption.

But were the Dys and Maxinos entitled to redeem Lots 1 and 6 in the first place? We rule in the affirmative.

The Dys and the Maxinos have legal personality to redeem the subject properties.

Contrary to petitioners' contention, the Dys and Maxinos have legal personality to redeem the subject properties despite the fact that the sale to the Dys and Maxinos was without DRBI's consent. In *Litonjua v. L & R Corporation*,[41] this Court declared valid the sale by the mortgagor of mortgaged property to a third person notwithstanding the lack of written consent by the mortgagee, and likewise recognized the third person's right to redeem the foreclosed property, to wit:

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[40] G.R. No. 73573, May 23, 1991, 197 SCRA 323, 332.

[41] G.R. No. 130722, December 9, 1999, 320 SCRA 405.

Coming now to the issue of whether the redemption offered by PWHAS on account of the spouses Litonjua is valid, we rule in the affirmative. The sale by the spouses Litonjua of the mortgaged properties to PWHAS is valid. Therefore, PWHAS stepped into the shoes of the spouses Litonjua on account of such sale and was in effect, their successor-in-interest. As such, it had the right to redeem the property foreclosed by L & R Corporation. Again, *Tambunting, supra*, clarifies that —

> "x x x. The acquisition by the Hernandezes of the Escuetas' rights over the property carried with it the assumption of the obligations burdening the property, as recorded in the Registry of Property, *i.e.*, the mortgage debts in favor of the RFC (DBP) and the Tambuntings. The Hernandezes, by stepping into the Escuetas' shoes as assignees, had the obligation to pay the mortgage debts, otherwise, these debts would and could be enforced against the property subject of the assignment. Stated otherwise, the Hernandezes, by the assignment, obtained the right to remove the burdens on the property subject thereof by paying the obligations thereby secured; that is to say, they had the right of redemption as regards the first mortgage, to be exercised within the time and in the manner prescribed by law and the mortgage deed; and as regards the second mortgage, sought to be judicially foreclosed but yet unforeclosed, they had the so-called equity of redemption."

The right of PWHAS to redeem the subject properties finds support in *Section 6 of Act 3135* itself which gives not only the mortgagor-debtor the right to redeem, but also his successors-in-interest. As vendee of the subject properties, PWHAS qualifies as such a successor-in-interest of the spouses Litonjua.[42]

Likewise, we rule that the Dys and the Maxinos validly redeemed Lots 1 and 6.

The requisites of a valid redemption are present

The requisites for a valid redemption are: (1) the redemption must be made within twelve (12) months from the time of the

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[42] *Id.* at 418-419.

registration of the sale in the Office of the Register of Deeds; (2) payment of the purchase price of the property involved, plus 1% interest per month thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after the purchase, also with 1% interest on such last named amount; and (3) written notice of the redemption must be served on the officer who made the sale and a duplicate filed with the Register of Deeds of the province.[43]

There is no issue as to the first and third requisites. It is undisputed that the Dys and the Maxinos made the redemption within the 12-month period from the registration of the sale. The Dys and Maxinos effected the redemption on May 24, 1984, when they deposited ₱50,373.42 with the Provincial Sheriff, and on June 19, 1984, when they deposited an additional ₱83,850.50. Both dates were well within the one-year redemption period reckoned from the June 24, 1983 date of registration of the foreclosure sale. Likewise, the Provincial Sheriff who made the sale was properly notified of the redemption since the Dys and Maxinos deposited with him the redemption money after both DRBI and the Yaps refused to accept it.

The second requisite, the proper redemption price, is the main subject of contention of the opposing parties.

The Yaps argue that ₱40,000.00 cannot be a valid tender of redemption since the amount of the auction sale was ₱216,040.93. They further contend that the mortgage is indivisible so in order for the tender to be valid and effectual, it must be for the entire auction price plus legal interest.

We cannot subscribe to the Yaps' argument on the indivisibility of the mortgage. As held in the case of *Philippine National Bank v. De los Reyes*,[44] the doctrine of indivisibility of mortgage

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[43] *Rosales v. Yboa*, No. L-42282, February 28, 1983, 120 SCRA 869, 874.

[44] G.R. Nos. L-46898-99, November 28, 1989, 179 SCRA 619.

does not apply once the mortgage is extinguished by a complete foreclosure thereof as in the instant case. The Court held:

> The parties were accordingly embroiled in a hermeneutic disparity on their aforesaid contending positions. Yet, the rule on the indivisibility of mortgage finds no application to the case at bar. The particular provision of the Civil Code referred to provides:
>
> > Art. 2089. A pledge or mortgage is indivisible, even though the debt may be divided among the successors in interest of the debtor or of the creditor.
> >
> > Therefore, the debtor's heir who has paid a part of the debt cannot ask for the proportionate extinguishment of the pledge or mortgage as long as the debt is not completely satisfied.
>
> Neither can the creditor's heir who received his share of the debt return the pledge or cancel the mortgage, to the prejudice of the other heirs who have not been paid.
>
> From these provisions is excepted the case in which, there being several things given in mortgage or pledge, each one of these guarantees only a determinate portion of the credit.
>
> The debtor, in this case, shall have a right to the extinguishment of the pledge or mortgage as the portion of the debt for which each thing is specially answerable is satisfied.
>
> From the foregoing, it is apparent that what the law proscribes is the foreclosure of only a portion of the property or a number of the several properties mortgaged corresponding to the unpaid portion of the debt where before foreclosure proceedings partial payment was made by the debtor on his total outstanding loan or obligation. This also means that the debtor cannot ask for the release of any portion of the mortgaged property or of one or some of the several lots mortgaged unless and until the loan thus, secured has been fully paid, notwithstanding the fact that there has been a partial fulfillment of the obligation. Hence, it is provided that the debtor who has paid a part of the debt cannot ask for the proportionate extinguishment of the mortgage as long as the debt is not completely satisfied.
>
> That the situation obtaining in the case at bar is not within the purview of the aforesaid rule on indivisibility is obvious since the aggregate number of the lots which comprise the collaterals for the mortgage had already been foreclosed and sold at public auction.

There is no partial payment nor partial extinguishment of the obligation to speak of. The aforesaid doctrine, which is actually intended for the protection of the mortgagee, specifically refers to the release of the mortgage which secures the satisfaction of the indebtedness and naturally presupposes that the mortgage is existing. **Once the mortgage is extinguished by a complete foreclosure thereof, said doctrine of indivisibility ceases to apply since, with the full payment of the debt, there is nothing more to secure**.[45] (Emphasis supplied.)

Nothing in the law prohibits the piecemeal redemption of properties sold at one foreclosure proceeding. In fact, in several early cases decided by this Court, the right of the mortgagor or redemptioner to redeem one or some of the foreclosed properties was recognized.

In the 1962 case of *Castillo v. Nagtalon*,[46] ten parcels of land were sold at public auction. Nagtalon, who owned three of the ten parcels of land sold, wanted to redeem her properties. Though the amount she tendered was found as insufficient to effectively release her properties, the Court held that the tender of payment was made timely and in good faith and thus, in the interest of justice, Nagtalon was given the opportunity to complete the redemption purchase of three of the ten parcels of land foreclosed.

Also, in the later case of *Dulay v. Carriaga*,[47] wherein Dulay redeemed eight of the seventeen parcels of land sold at public auction, the trial court declared the piecemeal redemption of Dulay as void. Said order, however, was annulled and set aside by the Court on *certiorari* and the Court upheld the redemption of the eight parcels of land sold at public auction.

Clearly, the Dys and Maxinos can effect the redemption of even only two of the five properties foreclosed. And since they can effect a partial redemption, they are not required to pay the

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[45] *Id.* at 625-627.

[46] No. L-17079, January 29, 1962, 4 SCRA 48, 54.

[47] No. 52831, July 29, 1983, 123 SCRA 794.

₱216,040.93 considering that it is the purchase price for all the five properties foreclosed.

So what amount should the Dys and Maxinos pay in order for their redemption of the two properties be deemed valid considering that when the five properties were auctioned, they were not separately valued?

Contrary to the Yaps' contention, the amount paid by the Dys and Maxinos within the redemption period **for the redemption of just two parcels of land was not only ₱40,000.00 but totaled to ₱134,223.92** (₱50,373.42 paid on May 28, 1984 plus ₱83,850.50 paid on June 19, 1984). That is more than **60% of the purchase price for the five foreclosed properties, to think the Dys and Maxinos were only redeeming two properties.** We find that it can be considered a sufficient amount if we were to base the proper purchase price on the proportion of the size of Lots 1 and 6 with the total size of the five foreclosed properties, which had the following respective sizes:

Lot 1	61,371 square meters
Lot 6	16,087 square meters
Lot 5	2,900 square meters
Lot 4	27,875 square meters
Lot 8	39,888 square meters
TOTAL	148,121 square meters

The two subject properties to be redeemed, Lots 1 and 6, have a total area of 77,458 square meters or roughly 52% of the total area of the foreclosed properties. Even with this rough approximation, we rule that there is no reason to invalidate the redemption of the Dys and Maxinos since they tendered 60% of the total purchase price for properties constituting only 52% of the total area. However, there is a need to remand the case for computation of the pro-rata value of Lots 1 and 6 based on their true values at that time of redemption for the purposes of determining if there is any deficiency or overpayment on the part of the Dys and Maxinos.

As to the award of damages in favor of the Dys and Maxinos, we agree with the appellate court for granting the same.

The CA correctly observed that the act of DRBI in falsifying the Sheriff's Certificate of Sale to include Lots 3 and 846, even if said additional lots were not among the properties foreclosed, was the proximate cause of the pecuniary loss suffered by the Dys and Maxinos in the form of lost income from Lot 3.

Likewise, the CA also correctly awarded moral damages. Paragraph 10, Article 2219 of the Civil Code provides that moral damages may be recovered in case of acts and actions referred to in Article 21 of the same Code. Article 21 reads:

> ART. 21 Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

As previously discussed, DRBI's act of maliciously including two additional properties in the Sheriff's Certificate of Sale even if they were not included in the foreclosed properties caused the Dys and Maxinos pecuniary loss. Hence, DRBI is liable to pay moral damages.

The award of exemplary damages is similarly proper. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.[48] We cannot agree more with the following ratio of the appellate court in granting the same:

> Additionally, what is alarming to the sensibilities of the Court is the deception employed by the bank in adding other properties in the certificate of sale under public auction without them being included in the public auction conducted. It cannot be overemphasized that being a lending institution, prudence dictates that it should employ good faith and due diligence with the properties entrusted to it. It was the bank which submitted the properties ought to be foreclosed to the sheriff. It only submitted five (5) properties for foreclosure.

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[48] Article 2229, CIVIL CODE OF THE PHILIPPINES.

Yet, it caused the registration of the Certificate of Sale under public auction which listed more properties than what was foreclosed. On this aspect, exemplary damages in the amount of ₱200,000.00 are in order.[49]

There being an award of exemplary damages, the award of attorney's fees is likewise proper as provided in paragraph 1, Article 2208 of the Civil Code.

WHEREFORE, the petitions for review on *certiorari* are *DENIED* for lack of merit. The Decision dated May 17, 2005 and Resolution dated March 15, 2006 of the Court of Appeals in CA-G.R. C.V. No. 57205 are hereby *AFFIRMED with the MODIFICATION* that the case is *REMANDED* to the Regional Trial Court of Negros Oriental, Branch 44, Dumaguete City, for the computation of the pro-rata value of properties covered by TCT No. T-14777 (Lot 1) and TCT No. T-14781 (Lot 6) of the Registry of Deeds of Negros Oriental at the time of redemption to determine if there is a deficiency to be settled by or overpayment to be refunded to respondent Spouses Zosimo Dy, Sr. and Natividad Chiu and Spouses Marcelino C. Maxino and Remedios Lasola with regard to the redemption money they paid.

With costs against the petitioners.

SO ORDERED.

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

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[49] *Rollo* (G.R. No. 171991), pp. 39-40.

FIRST DIVISION

[G.R. No. 172506. July 27, 2011]

JERRY MAPILI, *petitioner, vs.* **PHILIPPINE RABBIT BUS LINES, INC./NATIVIDAD NISCE,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TERMINATION BY EMPLOYER; JUST CAUSES; VIOLATION OF COMPANY RULES THAT WAS INTENTIONAL, WILLFUL, SERIOUS; A CASE OF.— Based on [petitioner's] testimony, it is quite apparent that petitioner was aware that the infraction he committed constituted a grave offense but he still persisted in committing the same out of gratitude to the passenger. Hence, as correctly found by the CA, there was deliberate intent on the part of the petitioner to commit the violation in order to repay a personal debt at the expense of the company. Petitioner chose to violate company rules for his benefit without regard to his responsibilities to the company. Also, if not for the inspector who discovered the incident, the company would have been defrauded by the amount of fare. x x x We also cannot agree with petitioner's contention that his infraction was trivial. As a bus conductor whose duties primarily include the collection of transportation fares, which is the lifeblood of the PRBLI, petitioner should have exercised the required diligence in the performance thereof and his habitual failure to exercise the same cannot be taken for granted. As correctly observed by the CA, petitioner's position is imbued with trust and confidence because it involves handling of money and failure to collect the proper fare from the riding public constitutes a grave offense which justifies his dismissal. Moreover, petitioner's "series of irregularities when put together may constitute serious misconduct."

2. ID.; ID.; ID.; ID.; ID.; PETITIONER'S RECORD OF OFFENSES OF THE SAME NATURE AS HIS PRESENT INFRACTION JUSTIFIES HIS DISMISSAL; CASE AT BAR.— Petitioner's past infractions can be gleaned from his employment record of offenses which was presented by the

respondents. This piece of evidence was not disputed by petitioner. Hence, petitioner cannot claim that the finding of his past company infractions was based merely on allegations. As petitioner's employment record shows, this is not the first time that petitioner refused to collect fares from passengers. In fact, this is already the third instance that he failed to collect fares from the riding public. Although petitioner already suffered the corresponding penalties for his past misconduct, those infractions are still relevant and may be considered in assessing his liability for his present infraction.

APPEARANCES OF COUNSEL

Nenita C. Mahinay for petitioner.

Inocentes De leon Leogardo Atienza Magnaye and Azucena Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

An employee's propensity to commit repetitious infractions evinces wrongful intent, making him undeserving of the compassion accorded by law to labor.

This Petition for Review on *Certiorari*[1] assails the Decision[2] dated January 16, 2006 and Resolution[3] dated April 6, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 89733, which affirmed the Decision[4] dated November 25, 2004 and Resolution[5] dated February 28, 2005 of the National Labor Relations

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[1] *Rollo,* pp. 8-26.

[2] CA *rollo*, pp. 120-124; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Remedios A. Salazar-Fernando and Estela M. Perlas-Bernabe.

[3] *Id.* at 135.

[4] *Id.* at 77-83; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[5] *Id.* at 86-87.

Commission (NLRC) finding petitioner Jerry Mapili (petitioner) to have been dismissed for cause.

Factual Antecedents

Respondent Natividad P. Nisce (Nisce) is the President of respondent Philippine Rabbit Bus Lines, Inc. (PRBLI), an entity engaged in the transportation business. On April 7, 1993, PRBLI hired petitioner as bus conductor with a salary of ₱510.00 per trip. On October 7, 2001, while on duty en route from Manila to Alaminos, Pangasinan, petitioner was caught by PRBLI's field inspector extending a free ride to a lady passenger who boarded at *Barangay* Magtaking, Labrador, Pangasinan. Upon order of the field inspector, the lady passenger, who happened to be the wife of Julio Ricardo, petitioner's co-employee and one of PRBLI's drivers, was immediately issued a passenger ticket for which she paid ₱50.00.[6]

On October 9, 2001, petitioner was preventively suspended and was directed to appear in an administrative investigation.[7] Thereafter, a formal hearing was conducted during which petitioner was given an opportunity to present and explain his side. Consequently, through a memorandum[8] dated November 9, 2001, petitioner was terminated from employment for committing a serious irregularity by extending a free ride to a passenger in violation of company rules. Notably, that was already the third time that petitioner committed said violation.

On February 19, 2002, petitioner filed with the NLRC a Complaint[9] for illegal dismissal against PRBLI, Nisce, and Ricardo Paras (Paras), PRBLI's General Manager.

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[6] *Id.* at 99.

[7] *Id.* at 23.

[8] *Id.* at 24.

[9] *Id.* at 15.

Parties' Respective Arguments

Petitioner alleged that his employment was terminated without cause and due process. He argued that the infraction was only trivial. It was done without malice and resulted from his honest belief that immediate family members of PRBLI's employees are entitled to free ride. He argued that his two previous violations of the same company regulation cannot be considered in the imposition of the penalty of dismissal since those previous infractions were not too serious. The first involved a police officer supposedly on official duty who refused to pay for a passenger ticket, while the second involved a former employee of PRBLI who misrepresented himself to be a current employee by virtue of a company ID duly presented. Moreover, he has already been penalized for these previous violations and to consider them anew would be tantamount to penalizing him twice for the same offense. Under these circumstances and considering further his length of service, petitioner advanced that his violations are not sufficient to merit the penalty of dismissal. Petitioner thus prayed that his dismissal be declared illegal and that he be awarded separation pay in lieu of reinstatement, backwages, 13th month pay, damages, attorney's fees and refund of cash bond in the amount of ₱5,000.00.

Respondents argued that petitioner's admissions during the investigation that he indeed offered a free ride out of gratitude to the wife of his co-employee and that it was his third offense, justified his termination considering that his position is imbued with trust and confidence. They claimed that petitioner's failure to collect fares from the riding public, coupled with his past record of serious offenses ranging from non-issuance, improper passenger tickets to collecting fares without issuing tickets, and allowing passengers to board without fare coupons, for which different penalties have been imposed against him, are grounds for valid dismissal. Respondents also argued that due process was observed when petitioner was accorded a chance to defend himself in an investigation conducted for that purpose. Respondents further disclaimed bad faith, malice, and liability to petitioner's money claims.

Ruling of the Labor Arbiter

In a Decision[10] dated July 2, 2003, the Labor Arbiter held that petitioner had no intention to defraud the company by his failure to issue a ticket to the wife of a co-employee as the same was done out of gratitude and under the wrong impression that she is entitled to such privilege. Besides, the amount of the fare was subsequently collected from and paid by the passenger. The Labor Arbiter opined that petitioner's actuations merited a less punitive penalty such as suspension of 30 days which he already served during his preventive suspension. The Labor Arbiter also found that petitioner was not denied due process since he was given the opportunity to present his side. As regards Nisce and Paras, the Labor Arbiter held that they cannot be held personally liable for lack of bad faith on their part. The dispositive portion of said Decision reads:

> PREMISES CONSIDERED, judgment is hereby rendered declaring complainant Jerry B. Mapili to have been illegally dismissed from employment. Respondent Philippine Rabbit Bus Lines, Inc. is hereby ordered to reinstate complainant to his former position or to a similar one without loss of seniority rights and pay him the following:
>
> a.) Backwages amounting to Php271,320.00;
> b.) 13th month pay of Php24,650.00;
> c.) Php5,000.00 as refund of bond.
>
> All in the total amount of Php300,970.00.
>
> A detailed computation is attached as Annex 'A'.
>
> SO ORDERED.[11]

Ruling of the National Labor Relations Commission

The NLRC, in a Decision[12] dated November 25, 2004 set aside the findings of the Labor Arbiter upon appeal by respondents. It found that the non-issuance of a ticket to the lady passenger

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[10] *Id.* at 39-45.

[11] *Id.* at 43-44.

[12] *Id.* at 77-83.

and failure to collect money due to the company was a deliberate and intentional act of petitioner which prejudiced the company's interests. In ruling that petitioner's dismissal was for just cause, the NLRC opined that petitioner's past record of committing several acts of misconduct and his propensity to commit similar infractions do not merit the compassion of law. Thus, the NLRC disposed of the case as follows:

> WHEREFORE, premises considered, the decision under review is hereby, REVERSED and SET ASIDE, and another entered in its stead, DISMISSING the complaint for lack of merit.
>
> Respondents are, however, ordered to refund complainant's cash bond in the amount of FIVE THOUSAND PESOS (₱5,000.00), and his proportionate 13th month pay for the year 2001 in the amount of ELEVEN THOUSAND THREE HUNDRED NINETY Pesos (₱11,390.00), or a total amount of SIXTEEN THOUSAND THREE HUNDRED NINETY Pesos (₱16,390.00).
>
> SO ORDERED.[13]

Petitioner filed his Motion for Reconsideration[14] which was denied by the NLRC in a Resolution[15] dated February 28, 2005.

Ruling of the Court of Appeals

Petitioner filed with the CA a petition for *certiorari*.[16] The CA, in its Decision[17] dated January 16, 2006, however, found no grave abuse of discretion on the part of the NLRC in ruling that petitioner was validly dismissed. The CA agreed that petitioner has a history of committing violations of company rules, the last one being a repeat violation against extending free rides to passengers. This infraction is considered as a grave offense and serious misconduct which merits the penalty of dismissal.

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[13] *Id.* at 82.

[14] *Id.* at 84-85.

[15] *Id.* at 86-87.

[16] *Id.* at 2-14.

[17] *Id.* at 120-124.

The CA also agreed that there was intent to cheat the company of its funds.

Petitioner's Motion for Reconsideration[18] was likewise denied in the CA Resolution[19] dated April 6, 2006.

Hence, the instant petition.

Issues

Petitioner raised the following grounds:

I.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN NOT HOLDING THAT DISMISSAL FROM EMPLOYMENT IS NOT [A COMMENSURATE] PENALTY [FOR] THE INFRACTION COMMITTED AS A MERE ERROR IN JUDGMENT, SUCH AS PETITIONER'S ACT OF EXTENDING A FREE BUS RIDE TO THE CO-EMPLOYEE BUS DRIVER'S WIFE ON THE HONEST BELIEF THAT AN IMMEDIATE FAMILY MEMBER OF AN EMPLOYEE IN THE COMPANY IS ENTITLED TO A FREE RIDE;

II.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN EQUATING AS PROOF RESPONDENTS' MERE ALLEGATIONS OF VARIOUS PAST INFRACTIONS AGAINST YOUR PETITIONER; and

III.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN NOT HOLDING THAT THE PAST TWO SIMILAR INFRACTIONS [FOR] WHICH AN EMPLOYEE HAS ALREADY SUFFERED THE CORRESPONDING PENALTY OF WARNING AND SUSPENSION, CANNOT BE USED AS X X X JUSTIFICATION[S] FOR THE EMPLOYEE'S DISMISSAL FROM SERVICE.[20]

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[18] *Id.* at 125-133.

[19] *Id.* at 135.

[20] *Rollo*, pp. 15-16.

Petitioner asserts that the penalty of dismissal is grossly disproportionate to the infraction he committed because his act of extending a free ride was not deliberate but was done on a wrong assumption that immediate family members of company employees are entitled to free rides. He insists that his past infractions, unsupported by proof, and his previous two offenses of not issuing fare tickets to a police officer and former company employee cannot be used as bases for his termination considering that his actuations for the latter offenses were justified under the circumstances and that he was already penalized for all these past violations. It is petitioner's view that his infraction merits only a 30-day suspension, as imposed by the Labor Arbiter.

Our Ruling

We deny the petition.

Petitioner's violation of company rules was intentional, willful, serious and a just cause for dismissal.

Petitioner assails the CA's finding that petitioner's non-issuance of a passenger ticket to the lady passenger is a grave offense, that it was committed with deliberate intent and a repeat violation of a company rule which merits dismissal. Petitioner insists that his infraction was merely trivial because he was under the impression that immediate family members of employees are entitled to free ride. Petitioner cites Section 13, Article VIII[21] of the Collective Bargaining Agreement which provides:

> ***Section 13. Free Ride and Passes*** — All employees covered by this Agreement shall be provided a free ride in all units of Philippine Rabbit Bus Line, Inc. as presently practiced. However, members of his/her immediate family shall be given passes upon request to the COMPANY.

Petitioner insists that his act of extending a free ride is in accordance with the aforequoted provision and the fact that he may have overlooked the requirement of passes with respect to

[21] *Id.* at 137.

immediate family members is not so serious as to characterize the offense he committed to have been performed with malicious intent.

We are not persuaded.

The above provision is clear and unequivocal that free rides are available only to employees of PRBLI. The benefit is not automatically extended to members of the employee's immediate family as passes must first be requested for them. Petitioner should be conversant of this provision considering his previous infractions of this same provision for which he was duly penalized. Besides, petitioner's claim of good faith is belied by his testimony to the effect that he extended a free ride out of gratitude to the wife of a co-employee who assisted him in his financial troubles. During the administrative investigation conducted on October 15, 2001, petitioner narrated thus:

Q-9 Why on October 07 you [gave] a free ride to the wife of Driver Ricardo?

A-9 I did this because I want to pay my gratitude to her, sir.

Q-10 What are your gratitude/s to the woman?

A-10 Many times she [helped] me in my problem especially in financial, sir.

Q-11 Why [do] you need to pay your gratitude [at] the expense of the company?

A-11 For what I have done compel [sic] myself to do. *Napasubo lang po ako.* I admit this is a grave offense against the company. Whatever suspension that you may impose to [sic] me I am ready to accept, sir.[22]

Based on this testimony, it is quite apparent that petitioner was aware that the infraction he committed constituted a grave offense but he still persisted in committing the same out of gratitude to the passenger. Hence, as correctly found by the CA, there was deliberate intent on the part of the petitioner to

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[22] CA *rollo,* p. 100.

commit the violation in order to repay a personal debt at the expense of the company. Petitioner chose to violate company rules for his benefit without regard to his responsibilities to the company. Also, if not for the inspector who discovered the incident, the company would have been defrauded by the amount of fare.

It bears stressing that petitioner has been in the employ of PRBLI for more than eight years already and is a member of the company's labor union. As such, he ought to know the specific company rules pertaining to his line of work as a bus conductor. For that matter, his length of service has even aggravated the resulting consequences of his transgressions. In addition, on April 8, 1994 and May 3, 1995, he committed similar infractions of extending free ride to a police officer and a former employee, respectively. These had been brought to the attention of the petitioner and for which the penalties of relief from duty and suspension were meted out upon him.[23] Hence, he ought to have known better than to repeat the same violation as he is presumed to be thoroughly acquainted with the prohibitions and restrictions against extending free rides. We also cannot agree with petitioner's contention that his infraction was trivial. As a bus conductor whose duties primarily include the collection of transportation fares, which is the lifeblood of the PRBLI, petitioner should have exercised the required diligence in the performance thereof and his habitual failure to exercise the same cannot be taken for granted. As correctly observed by the CA, petitioner's position is imbued with trust and confidence because it involves handling of money and failure to collect the proper fare from the riding public constitutes a grave offense which justifies his dismissal. Moreover, petitioner's "series of irregularities when put together may constitute serious misconduct."[24]

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[23] See petitioner's record of past violations and minutes of October 15, 2001 investigation, *id.* at 98 and 100, respectively.

[24] *Quiambao v. Manila Electric Company*, G.R. No. 171023, December 18, 2009, 608 SCRA 511, 518.

Petitioner's record of offenses of the same nature as his present infraction justifies his dismissal.

Petitioner's past infractions can be gleaned from his employment record of offenses which was presented by the respondents. This piece of evidence was not disputed by petitioner. Hence, petitioner cannot claim that the finding of his past company infractions was based merely on allegations.

As petitioner's employment record shows, this is not the first time that petitioner refused to collect fares from passengers. In fact, this is already the third instance that he failed to collect fares from the riding public. Although petitioner already suffered the corresponding penalties for his past misconduct, those infractions are still relevant and may be considered in assessing his liability for his present infraction.[25] We thus held in *Philippine Rabbit Bus Lines, Inc. v. National Labor Relations Commission*[26] that:

> Nor can it be plausibly argued that because the offenses were already given the appropriate sanctions, they cannot be taken against him. They are relevant in assessing private respondent's liability for the present violation for the purpose of determining the appropriate penalty. To sustain private respondent's argument that the past violation should not be considered is to disregard the warnings previously issued to him.

As suspension may not anymore suffice as penalty for the violation done as shown by petitioner's disregard of previous warnings and propensity to commit the same infraction over the years of his employment, and to deter other employees who may be wont to violate the same company policy, petitioner's termination from employment is only proper.

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[25] *Philippine Rabbit Bus Lines, Inc. v. National Labor Relations Commission*, 344 Phil. 522, 531 (1997).

[26] *Id.* at 530-531.

WHEREFORE, the petition is *DENIED.* The Decision dated January 16, 2006 and Resolution dated April 6, 2006 of the Court of Appeals in CA-G.R. SP No. 89733 are *AFFIRMED.*

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172699. July 27, 2011]

ELECTROMAT MANUFACTURING and RECORDING CORPORATION, *petitioner, vs.* **HON. CIRIACO LAGUNZAD, in his capacity as Regional Director, National Capital Region, Department of Labor and Employment; and HON. HANS LEO J. CACDAC, in his capacity as Director of Bureau of Labor Relations, Department of Labor and Employment,** *public respondents.*

NAGKAKAISANG SAMAHAN NG MANGGAGAWA NG ELECTROMAT-WASTO, *private respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; RULES IMPLEMENTING THE LABOR CODE; UNION AFFILIATION; THE COURT HAS PREVIOUSLY UPHELD THE GOVERNMENT'S IMPLEMENTING POLICY EXPRESSED IN THE OLD RULES THAT THE INTENT OF THE LAW IN IMPOSING LESSER REQUIREMENTS IN THE CASE OF A BRANCH OR LOCAL OF A REGISTERED FEDERATION OR NATIONAL UNION IN ORDER TO INCREASE THE LOCAL UNION'S BARGAINING POWERS RESPECTING TERMS AND CONDITIONS OF LABOR.— Earlier in *Progressive*

Development Corporation v. Secretary, Department of Labor and Employment, the Court encountered a similar question on the validity of the old Section 3, Rule II, Book V of the Rules Implementing the Labor Code which stated: *Union affiliation; direct membership with a national union*. — The affiliate of a labor federation or national union may be a local or chapter thereof or an independently registered union. a) The labor federation or national union concerned shall issue a charter certificate indicating the creation or establishment of a local or chapter, copy of which shall be submitted to the Bureau of Labor Relations within thirty (30) days from issuance of such charter certificate. x x x e) The local or chapter of a labor federation or national union shall have and maintain a constitution and by-laws, set of officers and books of accounts. For reporting purposes, the procedure governing the reporting of independently registered unions, federations or national unions shall be observed. Interpreting these provisions of the old rules, the Court said that by force of law, the local or chapter of a labor federation or national union becomes a legitimate labor organization upon compliance with Section 3, Rule II, Book V of the Rules Implementing the Labor Code, the only requirement being the submission of the charter certificate to the BLR. Further, the Court noted that Section 3 omitted several requirements which are otherwise required for union registration, as follows: 1) The requirement that the application for registration must be signed by at least 20% of the employees in the appropriate bargaining unit; 2) The submission of officers' addresses, principal address of the labor organization, the minutes of organization meetings and the list of the workers who participated in such meetings; 3) The submission of the minutes of the adoption or ratification of the constitution and by-laws and the list of the members who participated in it. Notwithstanding these omissions, the Court upheld the government's implementing policy expressed in the old rules when it declared in *Progressive Development* — Undoubtedly, the intent of the law in imposing lesser requirements in the case of a branch or local of a registered federation or national union is to encourage the affiliation of a local union with a federation or national union in order to increase the local union's bargaining powers respecting terms and conditions of labor.

2. ID.; ID.; DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE); RULE-MAKING POWERS; DEPARTMENT

ORDER NO. (D.O.) 40-03 IS A VALID EXERCISE OF RULE-MAKING POWER OF THE DOLE.— It was this same Section 3 of the old rules that D.O. 40-03 fine-tuned when the DOLE amended the rules on Book V of the Labor Code, thereby modifying the government's implementing policy on the registration of locals or chapters of labor federations or national unions. The company now assails this particular amendment as an invalid exercise of the DOLE's rule-making power. **We disagree**. As in the case of D.O. 9 (which introduced the above-cited Section 3 of the old rules) in *Progressive Development*, D.O. 40-03 represents an expression of the government's implementing policy on trade unionism. It builds upon the old rules by further simplifying the requirements for the establishment of locals or chapters. As in D.O. 9, we see nothing contrary to the law or the Constitution in the adoption by the Secretary of Labor and Employment of D.O. 40-03 as this department order is consistent with the intent of the government to encourage the affiliation of a local union with a federation or national union to enhance the local's bargaining power. If changes were made at all, these were those made to recognize the distinctions made in the law itself between federations and their local chapters, and independent unions; local chapters seemingly have lesser requirements because they and their members are deemed to be direct members of the federation to which they are affiliated, which federations are the ones subject to the strict registration requirements of the law. In any case, the local union in the present case has more than satisfied the requirements the petitioner complains about; specifically, the union has submitted: (1) copies of the ratified CBL; (2) the minutes of the CBL's adoption and ratification; (3) the minutes of the organizational meetings; (4) the names and addresses of the union officers; (5) the list of union members; (6) the list of rank-and-file employees in the company; (7) a certification of non-existence of a CBA in the company; (8) the resolution of affiliation with WASTO and the latter's acceptance; and (9) their Charter Certificate. These submissions were properly verified as required by the rules. In sum, the petitioner has no factual basis for questioning the union's registration, as even the requirements for registration as an independent local have been substantially complied with. We, thus, find no compelling justification to nullify D.O. 40-03. Significantly, the Court declared in another case:

APPEARANCES OF COUNSEL

M.M. Lazaro and Associates for petitioner.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari*[1] assailing the decision[2] and the resolution[3] of the Court of Appeals (*CA*) dated February 3, 2006 and May 11, 2006, respectively, rendered in CA G.R. SP No. 83847.

The Antecedents

The private respondent Nagkakaisang Samahan ng Manggagawa ng Electromat-Wasto (*union*), a charter affiliate of the Workers Advocates for Struggle, Transformation and Organization (*WASTO*), applied for registration with the Bureau of Labor Relations (*BLR*). Supporting the application were the following documents: (1) copies of its ratified constitution and by-laws (*CBL*); (2) minutes of the CBL's adoption and ratification; (3) minutes of the organizational meetings; (4) names and addresses of the union officers; (5) list of union members; (6) list of rank-and-file employees in the company; (7) certification of non-existence of a collective bargaining agreement (*CBA*) in the company; (8) resolution of affiliation with WASTO, a labor federation; (9) WASTO's resolution of acceptance; (10) Charter Certificate; and (11) Verification under oath.

The BLR thereafter issued the union a Certification of Creation of Local Chapter (equivalent to the certificate of registration of

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[1] *Rollo,* pp. 22-59; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 12-19; penned by Associate Justice Rosmari D. Carandang, and concurred in by Associate Justices Andres B. Reyes, Jr. and Monina Arevalo-Zeñarosa.

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

an independent union), pursuant to Department Order No. (D.O.) 40-03.[4]

On October 1, 2003, the petitioner Electromat Manufacturing and Recording Corporation (*company*) filed a petition for cancellation of the union's registration certificate, for the union's failure to comply with Article 234 of the Labor Code. It argued that D.O. 40-03 is an unconstitutional diminution of the Labor Code's union registration requirements under Article 234.

On November 27, 2003, Acting Director Ciriaco A. Lagunzad of the Department of Labor and Employment (DOLE)-National Capital Region dismissed the petition.[5]

In the appeal by the company, BLR Director Hans Leo J. Cacdac affirmed the dismissal.[6] The company thereafter sought relief from the CA through a petition for *certiorari*, contending that the BLR committed grave abuse of discretion in affirming the union's registration despite its non-compliance with the requirements for registration under Article 234 of the Labor Code. It assailed the validity of D.O. 40-03 which amended the rules of Book V (*Labor Relations*) of the Labor Code. It posited that the BLR should have strictly adhered to the union registration requirements under the Labor Code, instead of relying on D.O. 40-03 which it considered as an invalid amendment of the law since it reduced the requirements under Article 234 of the Labor Code. It maintained that the BLR should not have granted the union's registration through the issuance of a Certification of Creation of Local Chapter since the union submitted only the Charter Certificate issued to it by WASTO.

The CA Decision

In its decision rendered on February 3, 2006,[7] the CA Tenth Division dismissed the petition and affirmed the assailed BLR

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[4] Series of 2003, Amending the Implementing Rules of Book V of the Labor Code.

[5] *Rollo*, p. 142.

[6] *Id.* at 175-180; Decision dated March 8, 2004.

[7] *Supra* note 2.

ruling. It brushed aside the company's objection to D.O. 40-03, and its submission that D.O. 40-03 removed the safety measures against the commission of fraud in the registration of unions. It noted that "there are sufficient safeguards found in other provisions of the Labor Code to prevent the same."[8] In any event, it pointed out that D.O. 40-03 was issued by the DOLE pursuant to its rule-making power under the law.[9]

The company moved for reconsideration, arguing that the union's registration certificate was invalid as there was no showing that WASTO, the labor federation to which the union is affiliated, had at least ten (10) locals or chapters as required by D.O. 40-03. The CA denied the motion,[10] holding that no such requirement is found under the rules. Hence, the present petition.

The Case for the Petitioner

The company seeks a reversal of the CA rulings, through its submissions (the petition[11] and the memorandum[12]), on the ground that the CA seriously erred and gravely abused its discretion in affirming the registration of the union in accordance with D.O. 40-03. Specifically, it assails as unconstitutional Section 2(E), Rule III of D.O. 40-03 which provides:

> The report of creation of a chartered local shall be accompanied by a charter certificate issued by the federation or national union indicating the creation or establishment of the chartered local.

The company points out that D.O. 40-03 delisted some of the requirements under Article 234 of the Labor Code for the registration of a local chapter. Article 234 states:

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[8] *Id*. at 17, last paragraph.

[9] LABOR CODE, Article 5.

[10] *Supra* note 3.

[11] *Supra* note 1.

[12] *Rollo*, pp. 336-364.

ART. 234. Requirements of Registration.[13] Any applicant labor organization, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

(a) Fifty pesos (₱50.00) registration fee;

(b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of the workers who participated in such meetings;

(c) The names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate;

(d) If the applicant union has been in existence for one or more years, copies of its annual financial reports; and

(e) Four (4) copies of the constitution and by-laws of the applicant union, minutes of its adoption or ratification, and the list of the members who participated in it.

The company contends that the enumeration of the requirements for union registration under the law is exclusive and should not be diminished, and that the same requirements should apply to all labor unions whether they be independent labor organizations, federations or local chapters. It adds that in making a different rule for local chapters, D.O. 40-03 expanded or amended Article 234 of the Labor Code, resulting in an invalid exercise by the DOLE of its delegated rule-making power. It thus posits that the union's certificate of registration which was issued "in violation of the letters of Article 234 of the Labor Code"[14] is void and of no effect, and that the CA committed grave abuse of discretion when it affirmed the union's existence.

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[13] Before its amendment by Republic Act No. 9481 which lapsed into law on May 25, 2007.

[14] *Rollo*, p. 348; Memorandum, p. 13, par. 2.

The Case for the Union

In a Resolution dated January 16, 2008,[15] the Court directed union board member Alex Espejo, in lieu of union President Roberto Beltran whose present address could not be verified, to furnish the Court a copy of the union comment/opposition to the company's motion for reconsideration dated February 22, 2006 in CA G.R. SP No. 83847, which the union adopted as its comment on the present petition.[16]

Through this comment/opposition,[17] the union submits that the company failed to show that the CA committed reversible error in upholding the registration certificate issued to it by the BLR. Citing *Castillo v. National Labor Relations Commission*,[18] it stressed that the issuance of the certificate by the DOLE agencies was supported by substantial evidence, which should be entitled to great respect and even finality.

The Court's Ruling

We resolve the core issue of **whether D.O. 40-03 is a valid exercise of the rule-making power of the DOLE**.

We rule in the affirmative. Earlier in *Progressive Development Corporation v. Secretary, Department of Labor and Employment*,[19] the Court encountered a similar question on the validity of the old Section 3, Rule II, Book V of the Rules Implementing the Labor Code[20] which stated:

Union affiliation; direct membership with a national union. — The affiliate of a labor federation or national union may be a local or chapter thereof or an independently registered union.

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[15] *Id.* at 279.

[16] *Id.* at 281-A; Resolution dated August 4, 2008.

[17] *Id.* at 285-286.

[18] 367 Phil. 605 (1999).

[19] G.R. No. 96425, February 4, 1992, 205 SCRA 802.

[20] As amended by D.O. 9, Series of 1997.

a) The labor federation or national union concerned shall issue a charter certificate indicating the creation or establishment of a local or chapter, copy of which shall be submitted to the Bureau of Labor Relations within thirty (30) days from issuance of such charter certificate.

x x x x x x x x x

e) The local or chapter of a labor federation or national union shall have and maintain a constitution and by-laws, set of officers and books of accounts. For reporting purposes, the procedure governing the reporting of independently registered unions, federations or national unions shall be observed.

Interpreting these provisions of the old rules, the Court said that by force of law,[21] the local or chapter of a labor federation or national union becomes a legitimate labor organization upon compliance with Section 3, Rule II, Book V of the Rules Implementing the Labor Code, the only requirement being the submission of the charter certificate to the BLR. Further, the Court noted that Section 3 omitted several requirements which are otherwise required for union registration, as follows:

1) The requirement that the application for registration must be signed by at least 20% of the employees in the appropriate bargaining unit;

2) The submission of officers' addresses, principal address of the labor organization, the minutes of organization meetings and the list of the workers who participated in such meetings;

3) The submission of the minutes of the adoption or ratification of the constitution and by-laws and the list of the members who participated in it.[22]

Notwithstanding these omissions, the Court upheld the government's implementing policy expressed in the old rules when it declared in *Progressive Development* —

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[21] LABOR CODE, Article 212(h); definition of "legitimate labor organization."

[22] *Progressive Development Corporation v. Secretary, Department of Labor and Employment*, *supra* note 19, at 811.

Undoubtedly, the intent of the law in imposing lesser requirements in the case of a branch or local of a registered federation or national union is to encourage the affiliation of a local union with a federation or national union in order to increase the local union's bargaining powers respecting terms and conditions of labor.[23]

It was this same Section 3 of the old rules that D.O. 40-03 fine-tuned when the DOLE amended the rules on Book V of the Labor Code, thereby modifying the government's implementing policy on the registration of locals or chapters of labor federations or national unions. The company now assails this particular amendment as an invalid exercise of the DOLE's rule-making power.

We disagree. As in the case of D.O. 9 (which introduced the above-cited Section 3 of the old rules) in *Progressive Development*, D.O. 40-03 represents an expression of the government's implementing policy on trade unionism. It builds upon the old rules by further simplifying the requirements for the establishment of locals or chapters. As in D.O. 9, we see nothing contrary to the law or the Constitution in the adoption by the Secretary of Labor and Employment of D.O. 40-03 as this department order is consistent with the intent of the government to encourage the affiliation of a local union with a federation or national union to enhance the local's bargaining power. If changes were made at all, these were those made to recognize the distinctions made in the law itself between federations and their local chapters, and independent unions; local chapters seemingly have lesser requirements because they and their members are deemed to be direct members of the federation to which they are affiliated, which federations are the ones subject to the strict registration requirements of the law.

In any case, the local union in the present case has more than satisfied the requirements the petitioner complains about; specifically, the union has submitted: (1) copies of the ratified CBL; (2) the minutes of the CBL's adoption and ratification; (3) the minutes of the organizational meetings; (4) the names

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[23] *Ibid.*

and addresses of the union officers; (5) the list of union members; (6) the list of rank-and-file employees in the company; (7) a certification of non-existence of a CBA in the company; (8) the resolution of affiliation with WASTO and the latter's acceptance; and (9) their Charter Certificate. These submissions were properly verified as required by the rules. In sum, the petitioner has no factual basis for questioning the union's registration, as even the requirements for registration as an independent local have been substantially complied with.

We, thus, find no compelling justification to nullify D.O. 40-03. Significantly, the Court declared in another case:[24]

> Pagpalain cannot also allege that Department Order No. 9 is violative of public policy. x x x [T]he sole function of our courts is to apply or interpret the laws. It does not formulate public policy, which is the province of the legislative and executive branches of government. It cannot, thus, be said that the principles laid down by the Court in *Progressive* and *Protection Technology* constitute public policy on the matter. They do, however, constitute the Court's interpretation of public policy, as formulated by the executive department through its promulgation of rules implementing the Labor Code. However, this public policy has itself been changed by the executive department, through the amendments introduced in Book V of the Omnibus Rules by Department Order No. 9. It is not for us to question this change in policy, it being a well-established principle beyond question that it is not within the province of the courts to pass judgments upon the policy of legislative or executive action.

This statement is as true then as it is now.

In light of the foregoing, **we find no merit in the appeal.**

WHEREFORE, premises considered, we *DENY* the petition for lack of merit. The assailed decision and resolution of the Court of Appeals are *AFFIRMED*. Costs against the petitioner Electromat Manufacturing and Recording Corporation.

SO ORDERED.

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[24] *Pagpalain Haulers, Inc. v. Trajano,* 369 Phil. 617, 628 (1999).

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

SECOND DIVISION

[G.R. No. 175291. July 27, 2011]

THE HEIRS OF NICOLAS S. CABIGAS, NAMELY: LOLITA ZABATE CABIGAS, ANECITA C. CANQUE, DIOSCORO CABIGAS, FIDEL CABIGAS, and RUFINO CABIGAS, *petitioners, vs.* **MELBA L. LIMBACO, LINDA L. LOGARTA, RAMON C. LOGARTA, HENRY D. SEE, FREDDIE S. GO, BENEDICT Y. QUE, AWG DEVELOPMENT CORPORATION, PETROSA DEVELOPMENT CORPORATION, and UNIVERSITY OF CEBU BANILAD, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL FROM THE REGIONAL TRIAL COURTS; 3 MODES OF APPEAL; ELUCIDATED.— The first mode of appeal, the ordinary appeal under Rule 41 of the Rules of Court, is brought to the CA from the RTC, in the exercise of its original jurisdiction, and resolves questions of fact or mixed questions of fact and law. The second mode of appeal, the petition for review under Rule 42 of the Rules of Court, is brought to the CA from the RTC, acting in the exercise of its appellate

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

[**] Designated as Acting Member in lieu of Associate Justice Maria Lourdes P. A. Sereno per Special Order No. 1040 dated July 6, 2011.

jurisdiction, and resolves questions of fact or mixed questions of fact and law. The third mode of appeal, the appeal by *certiorari* under Rule 45 of the Rules of Court, is brought to the Supreme Court and resolves only questions of law. Where a litigant files an appeal that raises only questions of law with the CA, Section 2, Rule 50 of the Rules of Court expressly mandates that the CA should dismiss the appeal outright as the appeal is not reviewable by that court. There is a question of law when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted, and the doubt concerns the correct application of law and jurisprudence on the matter. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts.

2. ID.; ID.; ID.; ID.; ID.; PETITIONERS AVAILED OF THE WRONG MODE OF APPEAL IN CASE AT BAR; SINCE THE APPEAL RAISED A PURE QUESTION OF LAW, IT SHOULD HAVE BEEN PROPERLY LAID WITH THE SUPREME COURT AND NOT WITH THE COURT OF APPEALS.— While the petitioners never filed their appellants' brief, we discern from the petitioners' submissions to the CA, as well as from their petition with this Court, their perceived issues with respect to the RTC's summary judgment, and they are as follows: a) Whether or not the National Airports Corporation acted with good faith when it purchased the properties from Ouano; b) Whether the heirs of Ouano acted with good faith in recovering the properties from the National Airports Corporation; and c) Whether the subsequent buyers of the properties acted with good faith in purchasing the properties from the heirs of Ouano. Given that the question of whether a person acted with good faith or bad faith in purchasing and registering real property is a question of fact, it appears, at first glance, that the petitioners raised factual issues in their appeal and, thus, correctly filed an ordinary appeal with the CA. After reviewing the RTC resolution being assailed, however, we find that the petitioners actually raised only questions of law in their appeal. x x x As astutely observed by the CA, the RTC resolution merely collated from the pleadings the facts that were undisputed, admitted, and stipulated upon by the parties, and thereafter ruled on the legal issues raised by applying the pertinent laws and jurisprudence on the matter.

In other words, the RTC did not resolve any factual issues, only legal ones. When there is no dispute as to the facts, the question of whether or not the conclusion drawn from these facts is correct is a question of law. When the petitioners assailed the summary judgment, they were in fact questioning the conclusions drawn by the RTC from the undisputed facts, and raising a question of law. In light of the foregoing, jurisdiction over the petitioners' appeal properly lay with this Court *via* an appeal by *certiorari*, and the CA was correct in dismissing the appeal for lack of jurisdiction.

3. ID.; ID.; SUMMARY JUDGMENT; PROPER SINCE THERE IS NO GENUINE ISSUE OF FACT AS PETITIONERS DO NOT HAVE ANY LEGALLY ENFORCEABLE RIGHT TO THE PROPERTIES IN QUESTION.— Under the Rules of Court, a summary judgment may be rendered where, on motion of a party and after hearing, the pleadings, supporting affidavits, depositions and admissions on file show that, "except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The Court explained the concept of summary judgment in *Asian Construction and Development Corporation v. Philippine Commercial International Bank*: Summary or accelerated judgment is a procedural technique aimed at weeding out sham claims or defenses at an early stage of litigation thereby avoiding the expense and loss of time involved in a trial. Under the Rules, summary judgment is appropriate when there are no genuine issues of fact which call for the presentation of evidence in a full-blown trial. **Even if on their face the pleadings appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the Rules must ensue as a matter of law.** The determinative factor, therefore, in a motion for summary judgment, is the presence or absence of a genuine issue as to any material fact. The petitioners assert that the RTC erred in rendering a summary judgment since there were factual issues that required the presentation of evidence at a trial. We disagree with the petitioners. At the outset, we note from the respondents' pleadings that several respondents denied that the sale between Ouano and Cobarde ever occurred. It would, therefore, appear that a factual issue existed that required resolution through a

formal trial, and the RTC erred in rendering summary judgment. A closer examination of the parties' submissions, however, makes it apparent that this is not a genuine issue of fact because, as will be discussed below, the petitioners do not have any legally enforceable right to the properties in question, as their predecessors-in-interest are not buyers in good faith.

4. CIVIL LAW; SPECIAL CONTRACTS; SALES; GOOD FAITH OR BAD FAITH OF THE BUYER; A PURCHASER CANNOT CLOSE HIS EYES TO FACTS WHICH SHOULD PUT A REASONABLE MAN UPON HIS GUARD, AND THEN CLAIM THAT HE ACTED IN GOOD FAITH UNDER THE BELIEF THAT THERE WAS NO DEFECT IN THE TITLE OF THE VENDOR.— A purchaser in good faith is one who buys the property of another without notice that some other person has a right to or interest in such property, and pays a full and fair price for the same at the time of such purchase or before he has notice of the claim of another person. **It is a well-settled rule that a purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor.** His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title, will not make him an innocent purchaser for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defect as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation.

5. ID.; ID.; ID.; ID.; AT THE TIME OF THE SALE TO PETITIONERS, THE LAND WAS NOT REGISTERED IN THE SELLER'S NAME, BUT IN ANOTHER'S NAME, WHICH FACT SHOULD HAVE PUT PETITIONERS ON GUARD AND PROMPTED THEM TO CHECK WITH THE REGISTRY OF DEEDS AS TO THE MOST RECENT CERTIFICATES OF TITLE TO DISCOVER IF THERE WERE ANY LIENS, ENCUMBRANCES, OR OTHER ATTACHMENTS COVERING THE LOTS IN QUESTION.— We are dealing with registered land, a fact known to the Cabigas spouses since they received the duplicate owner's certificate

of title from Cobarde when they purchased the land. **At the time of the sale to the Cabigas spouses**, however, **the land was registered not in Cobarde's name, but in Ouano's name**. By itself, this fact should have put the Cabigas spouses on guard and prompted them to check with the Registry of Deeds as to the most recent certificates of title to discover if there were any liens, encumbrances, or other attachments covering the lots in question. As the Court pronounced in *Abad v. Sps. Guimba*: [The law protects to a greater degree a purchaser who buys from the registered owner himself. Corollarily, it] requires a higher degree of prudence from one who buys from a person who is not the registered owner, although the land object of the transaction is registered. While one who buys from the registered owner does not need to look behind the certificate of title, **one who buys from one who is not the registered owner is expected to examine not only the certificate of title but all factual circumstances necessary for [one] to determine if there are any flaws in the title of the transferor**, or in [the] capacity to transfer the land. Instead, the Cabigas spouses relied completely on Cobarde's representation that he owned the properties in question, and did not even bother to perform the most perfunctory of investigations by checking the properties' titles with the Registry of Deeds. **Had the Cabigas spouses only done so, they would easily have learned that Cobarde had no legal right to the properties they were acquiring since the lots had already been registered in the name of the National Airports Corporation in 1952**. Their failure to exercise the plain common sense expected of real estate buyers bound them to the consequences of their own inaction.

6. ID.; ID.; ID.; ID.; SINCE PETITIONERS NEVER ALLEGED THAT THE NATIONAL AIRPORTS CORPORATION ACTED IN BAD FAITH WHEN IT REGISTERED THE LOTS IN ITS NAME, THE PRESUMPTION OF GOOD FAITH PREVAILS.— All the parties to this case trace their ownership to either of the two persons that Ouano sold the properties to — either to Cobarde, who allegedly purchased the land in 1948, or to the National Airports Corporation, which bought the land in 1952. Undoubtedly, the National Airports Corporation was the only party that registered the sale with the Registry of Deeds. For this registration to be binding, we

now have to determine whether the National Airports Corporation acted with good faith when it registered the properties, in accordance with Article 1544 of the Civil Code. x x x Based on this provision, the overriding consideration to determine ownership of an immovable property is the good or bad faith not of the seller, but of the buyer; specifically, we are tasked to determine who first registered the sale with the Registry of Property (Registry of Deeds) in good faith. As accurately observed by the RTC, the petitioners, in their submissions to the lower court, never imputed bad faith on the part of the National Airports Corporation in registering the lots in its name. This oversight proves fatal to their cause, as we explained in *Spouses Chu, Sr. v. Benelda Estate Development Corporation*: In a case for annulment of title, therefore, the complaint must allege that the purchaser was aware of the defect in the title so that the cause of action against him will be sufficient. Failure to do so, as in the case at bar, is fatal for the reason that the court cannot render a valid judgment against the purchaser who is presumed to be in good faith in acquiring the said property. **Failure to prove, much less impute, bad faith on said purchaser who has acquired a title in his favor would make it impossible for the court to render a valid judgment thereon due to the indefeasibility and conclusiveness of his title**. Since the petitioners never alleged that the National Airports Corporation acted with bad faith when it registered the lots in its name, the presumption of good faith prevails. Consequently, the National Airports Corporation, being a registrant in good faith, is recognized as the rightful owner of the lots in question, and the registration of the properties in its name cut off any and all prior liens, interests and encumbrances, including the alleged prior sale to Cobarde, that were not recorded on the titles. Cobarde, thus, had no legal rights over the property that he could have transferred to the Cabigas spouses. Since the Cabigas spouses have no legally recognizable interest in the lots in question, it follows that the petitioners, who are subrogated to the rights of the former by virtue of succession, also have no legally recognizable rights to the properties that could be enforced by law. The petitioners clearly have no cause of action against the respondents, and the RTC correctly dismissed their complaint for annulment of title.

APPEARANCES OF COUNSEL

Virgilio M. Toribio for petitioners.

Sitoy Go and Associates for AWG Dev't. Corp., Petrosa Dev't. Corp. and Univ. of Cebu Banilad, Inc.

Tautho Yap & Associates for Melba Limbaco, *et al.*

Tanco & Partners Law Offices for Henry D. See, *et al.*

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by Lolita Cabigas, Anecita Canque, Dioscoro Cabigas, Fidel Cabigas, and Rufino Cabigas (*petitioners*), heirs of Nicolas S. Cabigas, to reverse and set aside the resolutions of the Court of Appeals (*CA*) in CA-G.R. CV No. 01144 dated May 31, 2006[2] and October 4, 2006,[3] dismissing their ordinary appeal for being the wrong recourse.

THE FACTS

On February 4, 2003, the petitioners filed a complaint for the annulment of titles of various parcels of land registered in the names of Melba Limbaco, Linda Logarta, Ramon Logarta, Eugenio Amores, New Ventures Realty Corporation, Henry See, Freddie Go, Benedict Que, AWG Development Corporation (*AWG*), Petrosa Development Corporation (*Petrosa*), and University of Cebu Banilad, Inc. (*UCB*) with the Regional Trial Court (*RTC*) of Cebu City, docketed as Civil Case No. 28585.

The complaint alleged that petitioner Lolita Cabigas and her late husband, Nicolas Cabigas, purchased two lots (Lot

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[1] Under Rule 45 of the Rules of Court. *Rollo*, pp. 12-35.

[2] Penned by Associate Justice Apolinario Bruselas, Jr., with the concurrence of Associate Justices Arsenio J. Magpale and Vicente L. Yap. *Id.* at 37-49.

[3] Penned by Associate Justice Arsenio J. Magpale, with the concurrence of Associate Justices Marlene Gonzales-Sison and Antonio Villamor. *Id.* at 51-55.

No. 742[4] and Lot No. 953[5]) from Salvador Cobarde on January 15, 1980. Cobarde in turn had purchased these lots from Ines Ouano[6] on February 5, 1948.

Notwithstanding the sale between Ouano and Cobarde, and because the two lots remained registered in her name,[7] **Ouano was able to sell these same lots to the National Airports Corporation on November 25, 1952** for its airport expansion project. The National Airports Corporation promptly had the titles of these properties registered in its name.

When the airport expansion project fell through, respondents Melba Limbaco, Ramon Logarta, and Linda Logarta, the legal heirs of Ouano, succeeded in reclaiming title to the two lots through an action for reconveyance filed with the lower court;[8] the titles over these lots were thereafter registered in their names.[9] They then subdivided the two lots[10] and sold them to New

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[4] With an area of twelve thousand nine hundred eighty-two square meters (12,982 sq. m.).

[5] With an area of five thousand six hundred twenty-six sq. m. (5,626 sq. m.).

[6] Misspelled as Quano in the complaint.

[7] Lot No. 953 was registered in Ouano's name under Transfer Certificate of Title (*TCT*) No. T-2696, while Lot No. 742 was registered under TCT No. T-225.

[8] In G.R. No. 121506, this Court affirmed the existence of the right of respondents Melba Limbaco, Linda C. Logarta and Ramon Logarta, the heirs of Ines Ouano, to repurchase Lot No. 742 and Lot No. 953 from the Mactan Cebu International Airport Authority (previously the National Airports Corporation).

[9] The titles in the name of National Airports Corporation were cancelled and TCT No. 143605 and TCT No. 143604 were issued in the names of respondents Melba Limbaco, Ramon Logarta, and Linda Logarta. *Rollo*, p. 128.

[10] Lot No. 953 was divided into Lot No. 953-A (2,719 sq. m.); Lot No. 953-B (1,406.44 sq. m.); Lot No. 953-C (1,406.24 sq. m.); and Lot No. 953-D (94 sq. m.). On the other hand, Lot No. 742 was subdivided into Lot No. 742-A (1,500 sq. m.); Lot No. 742-B (2,322 sq. m.); Lot No. 742-C (4,303 sq. m.); Lot No. 742-D (4,316 sq. m.); and Lot No. 742-E (541 sq. m.). *Id.* at 66.

Ventures Realty Corporation, Eugenio Amores, Henry See, Freddie Go, Benedict Que, Petrosa, and AWG. AWG, in turn, sold one of the parcels of land to UCB. All the buyers registered the titles over their respective lots in their names.

After the respondents had filed their individual Answers, respondents Henry See, Freddie Go and Benedict Que filed a motion to set the case for hearing on special affirmative defenses on July 8, 2004. On the other hand, respondents AWG, Petrosa, and UCB filed a motion for summary judgment on April 13, 2005, admitting as true the facts stated in the petitioners' complaint, but claiming that the petitioners had no legal right to the properties in question.

THE RTC RESOLUTION

On August 23, 2005, the RTC issued a resolution,[11] granting the motion for summary judgment filed by AWG, Petrosa and UCB, and dismissing the petitioners' complaint. According to the RTC, while the petitioners alleged bad faith and malice on the part of Ouano when she sold the same properties to the National Airports Corporation, they never alleged bad faith on the part of the buyer, the National Airports Corporation. Since good faith is always presumed, the RTC concluded ***that the National Airports Corporation was a buyer in good faith and its registration of the properties in its name effectively transferred ownership over the two lots, free from all the unrecorded prior transactions involving these properties, including the prior sale of the lots to Cobarde***.

As the RTC explained, the unregistered sale of the lots by Ouano to Cobarde was merely an *in personam* transaction, which bound only the parties. On the other hand, the registered sale between Ouano and the National Airports Corporation, a buyer in good faith, was an *in rem* transaction that bound the whole world. ***Since Cobarde's rights to the properties had already been cut off with their registration in the name of the National Airports Corporation, he could not sell any legal interest in***

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[11] *Id.* at 128-132.

these properties to the Cabigas spouses. Hence, under the Torrens system, the petitioners are strangers to the lots and they had no legally recognized interest binding it *in rem* that the courts could protect and enforce against the world.[12]

The petitioners filed a notice of appeal to question the RTC resolution. In response, respondents AWG, Petrosa, and UCB filed a motion to dismiss the appeal, claiming that the petitioners raised only questions of law in their appeal; thus, they should have filed an appeal by *certiorari* with the Supreme Court, and not an ordinary appeal with the appellate court.

THE COURT OF APPEALS RESOLUTIONS

In its May 31, 2006 resolution, the CA ruled that the petitioners should have filed a petition for review on *certiorari* under Rule 45 of the Rules of Court with the Supreme Court instead of an ordinary appeal since they only raised a question of law, *i.e.*, the propriety of the summary judgment. Accordingly, insofar as the respondents who filed the motion for summary judgment are concerned, namely, AWG, Petrosa, and UCB, the CA dismissed the petitioners' appeal.

However, the CA remanded the case to the RTC for further proceedings on the Motion to Set Case for Hearing on Special and Affirmative Defenses filed by respondents Henry See, Freddie Go, and Benedict Que.

In its October 4, 2006 resolution, the CA resolved the petitioners' motion for reconsideration, as well as the Partial Motion for Reconsideration filed by respondents Henry See, Freddie Go, and Benedict Que. The CA observed that it did not have jurisdiction to entertain the appeal since it raised a pure question of law. Since it dismissed the appeal based on a technicality, it did not have the jurisdiction to order that the case be remanded to the RTC.

Furthermore, the trial court had already dismissed the case in its entirety when it held that the petitioners had no enforceable

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[12] *Id.* at 132.

right as against the respondents, since they had no registered legal interest in the properties. There was thus no need to remand the case to the RTC.

Hence, the petitioners seek recourse with this Court *via* the present petition, raising the following grounds:

(1) The Court of Appeals committed grave and serious error in dismissing the appeal and in holding that a summary judgment is appealable only through a petition for review on *certiorari* under Rule 45 to the Supreme Court.

(2) The paramount and overriding considerations of substantial justice and equity justify the reversal and setting aside of the questioned resolutions.

THE RULING

We **AFFIRM** the assailed CA resolutions.

Petitioners availed of the wrong mode of appeal

Section 2, Rule 41 of the Rules of Court provides the three modes of appeal, which are as follows:

Section 2. *Modes of appeal.* —

(a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari.* — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme

Court by petition for review on *certiorari* in accordance with Rule 45.

The first mode of appeal, the ordinary appeal under Rule 41 of the Rules of Court, is brought to the CA from the RTC, in the exercise of its original jurisdiction, and resolves questions of fact or mixed questions of fact and law. The second mode of appeal, the petition for review under Rule 42 of the Rules of Court, is brought to the CA from the RTC, acting in the exercise of its appellate jurisdiction, and resolves questions of fact or mixed questions of fact and law. The third mode of appeal, the appeal by *certiorari* under Rule 45 of the Rules of Court, is brought to the Supreme Court and resolves only questions of law.

Where a litigant files an appeal that raises only questions of law with the CA, Section 2, Rule 50 of the Rules of Court expressly mandates that the CA should dismiss the appeal outright as the appeal is not reviewable by that court.

There is a question of law when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted, and the doubt concerns the correct application of law and jurisprudence on the matter.[13] On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts.

While the petitioners never filed their appellants' brief, we discern from the petitioners' submissions to the CA,[14] as well as from their petition with this Court, their perceived issues with respect to the RTC's summary judgment, and they are as follows:

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[13] *Roman Catholic Archbishop of Manila v. CA*, 327 Phil. 810, 826 (1996), citing *Vda. De Arroyo v. El Beaterio del Santissimo Rosario de Molo*, G.R. No. L-22005, May 3, 1968, 23 SCRA 525.

[14] The petitioners submitted their motion for reconsideration of the CA's May 31, 2006 resolution and their Supplemental Arguments in Support of the Motion for Reconsideration dated June 19, 2006.

a) Whether or not the National Airports Corporation acted with good faith when it purchased the properties from Ouano;

b) Whether the heirs of Ouano acted with good faith in recovering the properties from the National Airports Corporation; and

c) Whether the subsequent buyers of the properties acted with good faith in purchasing the properties from the heirs of Ouano.

Given that the question of whether a person acted with good faith or bad faith in purchasing and registering real property is a question of fact,[15] it appears, at first glance, that the petitioners raised factual issues in their appeal and, thus, correctly filed an ordinary appeal with the CA. After reviewing the RTC resolution being assailed, however, we find that the petitioners actually raised only questions of law in their appeal.

We quote the pertinent portions of the RTC decision:

> The main issue to be resolved is who between [the] plaintiffs and the defendants have a better right to the subject lots.
>
> In selling the land in favor of the National Airports Corporation[,] plaintiffs alleged bad faith and malice on the part of the seller Ine[s] Ouano but have not pleaded bad faith on the part of the buyer. Since good faith is always presumed under Article 427 of the Civil Code, the National Airports Corporation was therefore a buyer in good faith. Being [a] purchaser in good faith and for value, it is axiomatic that the right of [the] National Airports Corporation must be upheld and its titles protected over the claim of the plaintiffs. In the case of *Flordeliza Cabuhat vs. The Honorable Court of Appeals*, G.R. No. 122425, September 28, 2001, the Supreme Court upheld the validity of the title of an innocent purchaser in good faith and for value and at the same time invoked the principle of stability of our Torrens system and indefeasibility of title guaranteeing the integrity of land titles once the claim of ownership is established and recognized.

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[15] See *Bautista v. Silva*, G.R. No. 157434, September 19, 2006, 502 SCRA 334.

> "However, it is well-settled that even if the procurement of a certificate of title was tainted with fraud and misrepresentation, such defective title may be the source of a completely legal and valid title in the hands of an innocent purchaser for value. Thus: where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property the court cannot disregard such rights and order the total cancellation of the certificate. The effect of such an outright cancellation would be to impair public confidence in the certificate of title, for everyone dealing with property registered under [the] Torrens system would have to inquire in every instance whether the title has been regularly or irregularly issued. This is contrary to the evident purpose of the law. Every person dealing with the registered land may safely rely on the correctness of the certificate of title issued therefore and the law will in no way oblige him to go behind the certificate to determine the condition of the property."

The subject lots being registered land under the Torrens [s]ystem the recordation of the sale by the National Airports Corporation, a buyer in good faith gave National Airports Corporation a title free of all unrecorded prior transactions, deeds, liens and encumbrances, and conversely forever erased or cut off the unrecorded interest of Salvador Cobarde. Section 50 of Article 496 of the Land Registration Act (now Sec. 51 of PD 1529) reads: "No deed, mortgage, lease or other voluntary instrument, except a will, purporting to convey or affect registered land shall take effect as a conveyance or bind the land xxx. The act of registration shall be the operative act to convey and affect [the] land." In the case of *National Grains Authority v. IAC*, 157 SCRA 380, the Supreme Court ruled, thus, the possession by plaintiffs and their predecessors-in-interest is irrelevant to this case because possession of registered land can never ripen into ownership. "No title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession." (Sec. 46 of Act 496, now Sec. 47 of PD 1529).

In the eyes of the Torrens system, the unregistered sale of the property by Ine[s] Ouano to Salvador Cobarde did not bind the land or the whole world *in rem*; it bound, *in personam*, only the parties. On the other hand, the registered sale by Ine[s] Ouano to National Airports Corporation, a buyer in good faith, bound the land *in rem*, meaning that the whole world was put on constructive notice that

thenceforth the land belonged to National Airports Corporation free of all prior transactions, deeds and encumbrances, such as the claim of Salvador Cobarde, which were at the very moment National Airports Corporation registered its title free of prior claims — forever erased or cut off by operation of law.

x x x x x x x x x

Salvador Cobarde, whose rights to the property had been erased or cut off by operation of law, had nothing or had no legally recognized interest in the property that he could sell – when he "sold" the property to Nicolas and Lolita Cabigas. Nicolas and Lolita Cabigas having bought nothing could transmit nothing to their successors-in-interest, the plaintiffs herein. Under the Torrens system, herein plaintiffs are strangers to the property; they possess no legally recognized interest binding the property *in rem* that courts could protect and enforce against the world.[16]

As astutely observed by the CA, the RTC resolution merely collated from the pleadings the facts that were undisputed, admitted, and stipulated upon by the parties, and thereafter ruled on the legal issues raised by applying the pertinent laws and jurisprudence on the matter. In other words, the RTC did not resolve any factual issues, only legal ones.

When there is no dispute as to the facts, the question of whether or not the conclusion drawn from these facts is correct is a question of law.[17] When the petitioners assailed the summary judgment, they were in fact questioning the conclusions drawn by the RTC from the undisputed facts, and raising a question of law.

In light of the foregoing, jurisdiction over the petitioners' appeal properly lay with this Court *via* an appeal by *certiorari*, and the CA was correct in dismissing the appeal for lack of jurisdiction.

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[16] *Rollo*, pp. 130-132.

[17] See *Far East Marble (Philippines), Inc. v. Court of Appeals*, G.R. No. 94093, August 10, 1993, 225 SCRA 249.

Rendition of summary judgment was proper

Even if we overlook the procedural lapse and resolve the case on the merits, we still affirm the assailed CA resolutions.

Under the Rules of Court, a summary judgment may be rendered where, on motion of a party and after hearing, the pleadings, supporting affidavits, depositions and admissions on file show that, "except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[18] The Court explained the concept of summary judgment in *Asian Construction and Development Corporation v. Philippine Commercial International Bank*:[19]

> Summary or accelerated judgment is a procedural technique aimed at weeding out sham claims or defenses at an early stage of litigation thereby avoiding the expense and loss of time involved in a trial.
>
> Under the Rules, summary judgment is appropriate when there are no genuine issues of fact which call for the presentation of evidence in a full-blown trial. **Even if on their face the pleadings appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the Rules must ensue as a matter of law.** The determinative factor, therefore, in a motion for summary judgment, is the presence or absence of a genuine issue as to any material fact. [Emphasis supplied.]

The petitioners assert that the RTC erred in rendering a summary judgment since there were factual issues that required the presentation of evidence at a trial.

We disagree with the petitioners.

At the outset, we note from the respondents' pleadings that several respondents[20] denied that the sale between Ouano and

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[18] RULES OF COURT, Section 3, Rule 35.

[19] G.R. No. 153827, April 25, 2006, 488 SCRA 192, 203.

[20] Respondents Melba Limbaco, Linda Logarta, Ramon Logarta, Henry See, Freddie Go, and Benedict Que.

Cobarde ever occurred. It would, therefore, appear that a factual issue existed that required resolution through a formal trial, and the RTC erred in rendering summary judgment.

A closer examination of the parties' submissions, however, makes it apparent that this is not a genuine issue of fact because, as will be discussed below, the petitioners do not have any legally enforceable right to the properties in question, as their predecessors-in-interest are not buyers in good faith.

i. Cabigas spouses are not buyers in good faith

A purchaser in good faith is one who buys the property of another without notice that some other person has a right to or interest in such property, and pays a full and fair price for the same at the time of such purchase or before he has notice of the claim of another person.[21] **It is a well-settled rule that a purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor.** His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title, will not make him an innocent purchaser for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defect as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation.[22]

We are dealing with registered land, a fact known to the Cabigas spouses since they received the duplicate owner's certificate of title from Cobarde when they purchased the land. **At the time of the sale to the Cabigas spouses**, however, **the land was registered not in Cobarde's name, but in Ouano's**

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[21] *Cruz v. Court of Appeals*, 346 Phil. 506 (1997).

[22] Peña, Registration of Land Titles and Deeds, 1994 ed., p. 149, citing *Leung Yee v. Strong Machinery Co.*, 37 Phil. 644; *RFC v. Javillonar*, 107 Phil. 664; *Mañacop v. Cansino*, 111 Phil. 166.

name. By itself, this fact should have put the Cabigas spouses on guard and prompted them to check with the Registry of Deeds as to the most recent certificates of title to discover if there were any liens, encumbrances, or other attachments covering the lots in question. As the Court pronounced in *Abad v. Sps. Guimba*:[23]

> [The law protects to a greater degree a purchaser who buys from the registered owner himself. Corollarily, it] requires a higher degree of prudence from one who buys from a person who is not the registered owner, although the land object of the transaction is registered. While one who buys from the registered owner does not need to look behind the certificate of title, **one who buys from one who is not the registered owner is expected to examine not only the certificate of title but all factual circumstances necessary for [one] to determine if there are any flaws in the title of the transferor**, or in [the] capacity to transfer the land. (emphasis supplied)

Instead, the Cabigas spouses relied completely on Cobarde's representation that he owned the properties in question, and did not even bother to perform the most perfunctory of investigations by checking the properties' titles with the Registry of Deeds. **Had the Cabigas spouses only done so, they would easily have learned that Cobarde had no legal right to the properties they were acquiring since the lots had already been registered in the name of the National Airports Corporation in 1952**. Their failure to exercise the plain common sense expected of real estate buyers bound them to the consequences of their own inaction.

ii. No allegation that the National Airports Corporation registered the lots in bad faith

All the parties to this case trace their ownership to either of the two persons that Ouano sold the properties to — either to Cobarde, who allegedly purchased the land in 1948, or to the National Airports Corporation, which bought the land in 1952.

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[23] 503 Phil. 321, 331-332 (2005), citing *Revilla v. Galindez*, 107 Phil. 480 (1960).

Undoubtedly, the National Airports Corporation was the only party that registered the sale with the Registry of Deeds. For this registration to be binding, we now have to determine whether the National Airports Corporation acted with good faith when it registered the properties, in accordance with Article 1544 of the Civil Code, which provides:

> Article 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.
>
> Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.
>
> Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

Based on this provision, the overriding consideration to determine ownership of an immovable property is the good or bad faith not of the seller, but of the buyer; specifically, we are tasked to determine who first registered the sale with the Registry of Property (Registry of Deeds) in good faith.

As accurately observed by the RTC, the petitioners, in their submissions to the lower court, never imputed bad faith on the part of the National Airports Corporation in registering the lots in its name. This oversight proves fatal to their cause, as we explained in *Spouses Chu, Sr. v. Benelda Estate Development Corporation*:

> In a case for annulment of title, therefore, the complaint must allege that the purchaser was aware of the defect in the title so that the cause of action against him will be sufficient. Failure to do so, as in the case at bar, is fatal for the reason that the court cannot render a valid judgment against the purchaser who is presumed to be in good faith in acquiring the said property. **Failure to prove, much less impute, bad faith on said purchaser who has acquired a title in his favor would make it impossible for the court to**

render a valid judgment thereon due to the indefeasibility and conclusiveness of his title.[24]

Since the petitioners never alleged that the National Airports Corporation acted with bad faith when it registered the lots in its name, the presumption of good faith prevails. Consequently, the National Airports Corporation, being a registrant in good faith, is recognized as the rightful owner of the lots in question, and the registration of the properties in its name cut off any and all prior liens, interests and encumbrances, including the alleged prior sale to Cobarde, that were not recorded on the titles. Cobarde, thus, had no legal rights over the property that he could have transferred to the Cabigas spouses.

Since the Cabigas spouses have no legally recognizable interest in the lots in question, it follows that the petitioners, who are subrogated to the rights of the former by virtue of succession, also have no legally recognizable rights to the properties that could be enforced by law. The petitioners clearly have no cause of action against the respondents, and the RTC correctly dismissed their complaint for annulment of title.

WHEREFORE, premises considered, we *DENY* the petition for lack of merit, and *AFFIRM* the Resolutions, dated May 31, 2006 and October 4, 2006, of the Court of Appeals in CA-G.R. CV No. 01144. No costs.

SO ORDERED.

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

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[24] 405 Phil. 936, 947 (2001).

[*] 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.

SECOND DIVISION

[G.R. No. 175343. July 27, 2011]

LORETO LUGA (Deceased), Substituted by CELERINA LUGA — Deceased (wife) and Children Namely: Purificacion Luga-Biong, Elizabeth Luga-Cabaña, Rosalie Luga-Tanutan, Ledia Luga-Guy Ab, Maritess Luga-Gravino, Nestor Luga and David Luga, *petitioners, vs.* **SPS. ELENA AND ROGELIO ARCIAGA,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; OWNERSHIP; POSSESSION; PETITIONER FAILED TO PROVE THAT HE WAS A *BONA FIDE* OCCUPANT OF THE LAND IN QUESTION THROUGH EVIDENCE REQUIRED TO ACQUIRE TITLE TO LAND THROUGH POSSESSION AND OCCUPATION.— Our perusal of the record shows that, as the party asserting a right superior to that claimed by the Spouses Arciaga, Loreto failed to prove that he was a *bona fide* occupant of the land in litigation. Despite his testimony and that elicited from his witnesses, Canuto Blantucas and Sofronio Obenque, to the effect that he occupied the subject parcel in 1957, Loreto's documentary evidence consisting of receipts issued by the NAFCO and BOL simply showed that he was a tenant on the plantation from 1955 to 1957, remitting a portion of the produce harvested therefrom to said government agencies. When cross-examined by the Spouses Arciaga's counsel, Loreto also admitted that he did not file any application for the land and/or declare the same for taxation purposes because he knew that he was not the owner thereof. Consistent with the foregoing admission, moreover, the x x x answers given by Loreto to the RTC's clarificatory questions effectively contradicted petitioners' assertion that their father acquired the litigated parcel through uninterrupted adverse possession thereof for more than thirty years.

2. ID.; ID.; ID.; ID.; POSSESSION MAY BE EXERCISED IN ONE'S OWN NAME OR IN THAT OF ANOTHER AND IT

IS NOT NECESSARY FOR THE OWNER OR HOLDER OF THE THING TO PERSONALLY EXERCISE HIS POSSESSORY RIGHTS; PETITIONER'S TOLERATED OCCUPANCY OF THE LAND CANNOT BE SAID TO HAVE OUSTED THE POSSESSION CLAIMED BY RESPONDENTS.— In contrast, the Spouses Arciaga were able to demonstrate that Honorio filed an Occupant's Affidavit dated 28 July 1960 in respect to the 2.5 hectare landholding to which the subject parcel pertained and even made the occupants thereof — Loreto and Celerina among them - to sign a private document dated 16 May 1966, acknowledging that he was the *bona fide* possessor by virtue of whose permission and tolerance they were temporarily allowed to build houses of light materials thereon. With Rogelio's acquisition of the rights over two portions of the land claimed by Honorio, Elena subsequently applied for the acquisition of the subject parcel from the BOL and complied with the requirements therefor, including the posting of notices of her application as well as the investigation conducted by a representative of the same agency. Upon the recommendation of BOL Branch Operations Manager Gaudencio Wamelda, the land was sold to Elena with the approval of the Office of the President and eventually registered in her name under Transfer Certificate of Title No. T-139473 of the Davao City Registry. As between the parties' conflicting claims, we find that the CA correctly upheld the Spouses Arciaga's acquisition of the subject parcel from the BOL over Loreto's nebulous claim on the same. For one, the bare assertion of Loreto and his witnesses that he had been in the open, adverse and continuous possession of the property for over thirty years (30) is hardly the well-nigh incontrovertible evidence required for acquisition of disposable lands of the public domain. Because forgery cannot be presumed and must be proved by clear, positive and convincing evidence by the party alleging the same, Loreto's bare denial of his signature on the 16 May 1966 document prepared by Honorio cannot, for another, expediently impugn the probative value thereof. Quite significantly, said document lends credence to the Spouses Arciaga's claim that Loreto's occupancy of the land in litigation was upon their tolerance and that of their predecessor-in-interest. Since possession may be exercised in one's own name or in that of another and it is not necessary for the owner or holder of the thing to personally exercise his possessory rights

Loreto's tolerated occupancy of the land cannot be said to have ousted the possession claimed by the Spouses Arciaga.

3. ID.; ID.; ID.; ID.; TAX RECEIPTS AND TAX DECLARATIONS MAY BECOME A BASIS OF A CLAIM OF OWNERSHIP WHEN COUPLED WITH PROOF OF ACTUAL POSSESSION.— Even if Loreto were, moreover, to be considered the *bona fide* occupant of the land in dispute, it cannot be gainsaid that he effectively forfeited the priority accorded him under Section 3 of Republic Act No. 477, as amended, when he failed to register his claim in writing after the notice relative to Elena's application was posted at the Barangay Hall of Toril, the Davao City Hall and BOL Davao Branch. Called as witness by Loreto during the presentation of the evidence in chief, then *Toril Barangay* Chairman Consing Te categorically admitted on cross-examination that the following notice was duly posted for thirty days at the *Barangay* Hall, 500 meters away from the land in litigation, to wit: NOTICE is hereby given that Mrs. Elena Arciaga with Residence at St. Michael Village, Daliao, Toril, Davao City has applied for patent/title covering Lot No. 1, Pcs-11-000889 of the Y. Furukawa Daliao Plantation. This NOTICE is being posted for a period of 30 days beginning November 16, 1987 pursuant to Board Resolution No. 554, Series of 1979, of the Board of Liquidators. Any person adversely affected by said application should register his/her claim in writing with this Office not later than December 16, 1987, otherwise, said claim shall be considered as waived in favor of the applicant. November 16, 1987. With Loreto's occupation of the subject parcel dependent, for the most part, on his bare assertions and that of his witnesses, petitioners argue that the CA erred in giving credit to the Spouses Arciaga's tax receipts and tax declarations which, by themselves, do not conclusively prove ownership of the land. In civil cases, however, the rule is settled that the burden of proof is upon the plaintiff to establish his case by preponderance of evidence, relying on the strength of his own evidence and not the weakness of that of his opponent. As *prima facie* proofs of ownership or possession of the property for which such taxes have been paid, tax receipts and tax declaration may, moreover, become a basis of a claim of ownership when coupled with proof of actual possession. More than the Occupant's Affidavit of Application executed by Elena, the joint affidavit executed by

her witnesses and the certification issued by the *Toril Barangay* Chairman, the Spouses Arciaga's actual possession of the lot was, additionally proved by the Inspection and Investigation Report filed under oath by BOL Inspector/Investigator Nathaniel Rios. In the absence of proof adduced to rebut the presumption of regularity in the performance of official duty, the same report deserves credence over Loreto's naked assertion of possession of the subject parcel.

4. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; THAT OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED; THE DETERMINATION MADE BY THE BUREAU OF LANDS, THE ADMINISTRATIVE AGENCY TASKED WITH THE DISPOSITION OF LANDS TRANSFERRED TO THE REPUBLIC OF THE PHILIPPINES DESERVES UTMOST RESPECT WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE.— As a determination made by the administrative agency tasked with the disposition of lands transferred to the Republic of the Philippines, the BOL's award and sale of the litigated parcel in favor of Elena deserves utmost respect when supported by substantial evidence. An action for reconveyance of a property is, after all, a legal and equitable remedy available to a landowner whose property has been wrongfully or erroneously registered in another's name, after one year from the date of the decree of registration and so long as the property has not passed to an innocent purchaser for value. The decree of registration is respected as incontrovertible. Where there is a wrongful or erroneous registration in another person's name, the rightful owner or one with a better right can seek reconveyance of the property and cancellation of title. Loreto failed to prove a right than petitioners' over the land. We find that the CA correctly ordered the dismissal of the complaint for reconveyance and damages from which the instant suit originated.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Raul O. Tolentino for respondents.

D E C I S I O N

PEREZ, *J.*:

At bench is a petition for review on *certiorari* filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure*, primarily assailing the Decision dated 25 October 2005 rendered by the then Special Twenty-Third Division of the Court of Appeals in CA-G.R. CV No. 69368,[1] the dispositive portion of which states:

> WHEREFORE, the instant appeal is hereby **GRANTED**. The assailed Decision of the Regional Trial Court, dated October 9, 1995 is hereby **REVERSED** and **SET ASIDE**. The Complaint filed by Plaintiff-Appellee is DISMISSED. Spouses ELENA ARCIAGA and ROGELIO Arciaga are hereby declared the rightful owner[s] of the disputed property. No pronouncement as to costs.
>
> SO ORDERED.[2]

The Facts

The suit concerns a 911 square meter parcel of land situated in the District of Toril, Davao City, presently registered in the name of respondent Elena Arciaga (Elena), married to respondent Rogelio Arciaga (Rogelio), under Transfer Certificate of Title No. T-139473 of the Davao City registry.[3] The land used to form part of the Y. Furukawa Daliao Plantation which, after being turned over to the Philippine government, was initially administered by the National Abaca and Other Fibers Corporation (NAFCO) and, later, by the Board of Liquidators (BOL), pursuant to Republic Act No. 477,[4] as amended. A former tenant

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[1] Records, CA-G.R. CV No. 69368, CA's Decision dated 25 October 2005, pp. 60-71.

[2] *Id.* at 70.

[3] Records, Civil Case No. 22,718-94, Exhibit "18", p. 145.

[4] *An Act to Provide for the Administration and Disposition of Properties, Including the Proceeds and Income Thereof Transferred to the Republic of the Philippines, Under the Philippine Property Act of 1946 and of Republic Act No. Eight, and of the Public Lands and Improvements Thereon Transferred to the National Abaca and Other Fibers Corporation Under*

of NAFCO at the Furukawa Plantation, Co., Inc.,[5] it appears that Loreto Luga (Loreto) became a tenant of the BOL[6] and, in said capacity, occupied the subject parcel since 1957, eventually building a house of light of materials thereon. On 28 July 1960, however, it appears that an Occupant's Affidavit was executed by one Honorio Romero (Honorio), a former employee of NAFCO, over a 2.5 hectare landholding of which the land in litigation formed part.[7]

On 3 December 1970, Honorio executed a Deed of Transfer of Right over a 600 square meter portion of said landholding in favor of Rogelio who paid the sum of ₱10,000.00 as consideration for the improvements thereon. On 23 March 1972, the former further executed a similar deed selling in favor of the latter his interest over an adjacent 340 square meter portion of the same landholding, for the sum of ₱2,000.00.[8] In receipt of Elena's application for patent/title over the subject parcel, the BOL issued and caused the posting of the 16 November 1987 Notice directing person/s affected thereby to make known their adverse claim/s, if any.[9] In support of her application, Elena filed the required Occupant's Affidavit of Application, buttressed by a Joint-Affidavit executed by her witnesses as well as a Certification issued by Barangay Chairman of Toril, attesting to her actual possession of the subject parcel.[10]

With the appraisal and inspection of the land in litigation, the approval of Elena's application was recommended by BOL Officer-in-Charge/Operation's Manager Gaudencio Wamelda to the BOL's

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the Provisions of Executive Order No. 29 Dated October 25, 1946 and Executive Order No. 99 Dated October 22, 1947.

[5] Records, Civil Case No. 22,718-94, Exhibit "F" and submarkings, pp. 80-82.

[6] Exhibits "D" and "E", *id.* at 73-74.

[7] Exhibit "3"; *id.* at 120-121; TSN, 6 February 1995, pp. 41-42.

[8] Records, Civil Case No. 22,718-94, Exhibits "5" and "6", pp. 124-126.

[9] Exhibit "9", *id.* at 129,

[10] Exhibits "7", "8" and "10", *id.* at 127-130.

General Manager.[11] On 8 March 1988, Elena was apprised of the fact that her application had been approved under said Board's Resolution No. 60, Series of 1988, subject to the payment of the total cost of ₱14,235.00 which she paid on 24 March 1988.[12] Upon the execution on 12 May 1988 of the Deed of Absolute Sale over the parcel, the BOL favorably indorsed and requested the issuance of a certificate of title in favor of Elena and forwarded to the Davao City Register of Deeds copies of the approved tracing cloth plan, white print copies thereof as well as the technical descriptions of the subject parcel.[13] On 29 November 1988, Transfer Certificate of Title No. T-139473 was eventually issued in favor of respondent Elena who, forthwith, declared the land in her name for taxation purposes and started paying the real estate taxes due thereon.[14]

On 2 March 1994, Loreto commenced the instant suit with the filing of his complaint for reconveyance of title and damages against Elena and Rogelio which was docketed as Civil Case No. 22,718-94 before Branch 17 of the Regional Trial Court of Davao City (RTC). Claiming that he had been in possession of the subject parcel since 1957, Loreto alleged, among other matters, that he discovered the titling of the same in the name of Elena only in 1993; and, that the latter had fraudulently misled the BOL into believing that she was the one in possession of the land.[15] Served with summons, Elena and Rogelio, on the other hand, filed their 16 April 1994 answer, specifically denying the material allegations of the complaint. Contending that they acquired the disputed parcel from Honorio, they averred that the possession asserted by Loreto had been by virtue of their tolerance and consent as well as that of their said predecessor-in-interest.[16] In his 5 May 1994 reply, Loreto, in turn, insisted that he and

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[11] Exhibits "11", "13" and "14", *id.* at 131; 133-134.

[12] Exhibits "15", "16-A", "17" and "17-B", *id.* at 136, 138-141.

[13] Exhibits "17-B" and "17-C", *id.* at 143-144.

[14] Exhibits "18", "19" to "26", *id.* at 145-154.

[15] *Id.* at 1-5, Complaint dated 1 March 1994.

[16] *Id.* at 11-17, Answer dated 16 April 1994.

his family had stayed on the land long before Honorio and the Spouses Arciaga laid claim thereto.[17]

The issues joined and the mandatory pre-trial conference subsequently terminated,[18] the RTC went on to receive the testimonial and documentary evidence the parties adduced in support of their respective causes. In addition to his own testimony[19] as well as the documents presented in the course thereof,[20] Loreto proffered those elicited from his neighbors Canuto Blantucas and Sofronio Obenque, BOL employee Bruno Arlegui, *Barangay* Toril Pangkat Secretary Fidel Blantucas and the same locality's *Barangay* Chairman, Consing Te.[21] The defense evidence, on the other hand, consisted of the testimonies of Elena and Rogelio[22] as well as those given by their predecessor-in-interest, Honorio and BOL Branch Operation Manager Gaudencio Wamelda.[23] In refutation of said defense witnesses' testimonies as well as the pieces of documentary evidence adduced in connection therewith,[24] Loreto once again took the witness stand on rebuttal[25] and offered the testimonial[26] and/or documentary evidence[27] provided by Luis Denia Farm Manager, Manuel Denia.

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[17] *Id.* at 22-25, Reply dated 5 May 1994.

[18] *Id.* at 36-38, Pre-Trial Order dated 2 September 1994.

[19] TSN, 23 November 1994.

[20] Records, Civil Case No. 22,718-94, Loreto's Formal Offer of Documentary Evidence dated 20 December 1994, pp. 65-82.

[21] TSN, 5 September 1994; TSN, 27 September 1994; TSN, 27 October 1994; TSN, 23 November 1994; TSN, 24 November 1994.

[22] TSN, 7 February 1995; TSN, 1 March 1995; TSN, 2 June 1995.

[23] TSN, 21 December 1994; TSN, 6 February 1995; TSN, 2 June 1995; TSN, 10 March 1995.

[24] Records, Civil Case No. 22,718-94, Spouses Arciaga's Offer of Exhibits dated 13 June 1995, pp. 106-154.

[25] TSN, 10 July 1995.

[26] TSN, 15 August 1995.

[27] Records, Civil Case No. 22,718-94, Loreto's Additional Formal Offer of Evidence dated 24 August 1995, pp. 165-173.

On 9 October 1995, the RTC rendered a decision, finding that the evidence adduced by the parties preponderantly established that Loreto is entitled to the land in litigation since his possession thereof preceded that asserted by the Spouses Arciaga. Brushing aside the latter's claim that former's possession was merely tolerated by them and Honorio,[28] the RTC disposed of the case in the following wise:

> WHEREFORE, finding the evidence of the plaintiff, as well as that of the defendants, sufficient to prove by preponderance of evidence the right for reconveyance of TCT No. T-139473, from defendant Elena Arciaga, obtain[ed] through fraud and misrepresentation, and falsification of document with the Board of Liquidators, Toril, Davao City, into the name of plaintiff, Loreto Luga, within thirty (30) days from receipt of decision, by defendants.
>
> Failure of defendants to execute a deed of reconveyance of the above-title in favor of plaintiff, within the above-period, the Clerk of Court, of this court, will execute the proper deed of reconveyance in favor of plaintiff, of the above-mentioned certificate of title, with cost against defendants.
>
> Plaintiff's prayer for recovery of moral damages, exemplary damages and litigation expenses, cannot be granted for failure of plaintiff to support award of the above damages.
>
> SO ORDERED.[29]

Elevated by Elena and Rogelio on appeal before the CA[30] under docket of CA-G.R. CV No. 69368, the foregoing decision was, however, reversed and set-aside in the herein assailed 25 October 2005 decision rendered by said court's then Special Twenty-Third Division. In upholding the Spouses' Arciaga's claim over that asserted by Loreto, the CA ruled that the evidence on record disclose that: (a) the latter was merely allowed to occupy the land in litigation by the former's predecessor-in-interest, Honorio; (b) Loreto's testimony revealed that he never

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[28] *Id.* at 176-198, RTC Decision dated 9 October 1995.

[29] *Id.* at 198.

[30] *Id.* at 200, RTC's Order dated 6 December 1995.

possessed the parcel in the concept of an owner; (c) unlike the Spouses Arciaga, Loreto never declared the land for taxation purposes in his own name and only attempted to do so only in 1993; and, (d) since Loreto's evidence does not constitute the "well-nigh incontrovertible" evidence required to acquire title to land through possession and occupation, he is not entitled to the reconveyance ordered by the RTC.[31]

Having filed a motion for the reconsideration of the foregoing decision,[32] the Public Attorney's Office (PAO), as Loreto's counsel, moved for substitution of parties in view of its client's death on 6 October 1998.[33] As a consequence, Loreto was substituted in the case by his wife, Celerina Luga (Celerina), and their children, petitioners Purificacion Luga-Biong, Elizabeth Luga-Cabana, Rosalie Luga-Tanutan, Ledia Luga-Guy-ab, Marites Luga-Gravino, Nestor Luga and David Luga (petitioners). Duly opposed by the Spouses Arciaga,[34] the aforesaid motion for reconsideration was denied for lack of merit in the CA's resolution dated 27 October 2006,[35] hence, this petition.[36] Subsequent to Celerina's death on 5 November 2005,[37] Rogelio also died on 6 July 2006, survived by Elena and their children, Rogel, Gerlyn and Giselle, all surnamed Arciaga.[38]

The Issue

Petitioners urge the reversal of the assailed 25 October 2005 decision and 27 October 2006 resolution, upon the affirmative of the following issue:

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[31] Records, CA-G.R. CV No. 69368, CA's Decision dated 25 October 2005, pp. 60-72.

[32] *Id.* at 73-76, Motion for Reconsideration dated 21 November 2005.

[33] *Id.* at 78-80.

[34] *Id.* at 83-85, Comment/Opposition dated 28 November 2005.

[35] *Id.* at 89-90, CA's Decision dated 27 October 2006.

[36] *Rollo*, pp. 10-28, Petition dated 15 December 2006.

[37] *Id.* at 125-127.

[38] *Id.* at 159-161.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN GRANTING THE APPEAL OF THE RESPONDENTS AND IN DISMISSING THE COMPLAINT FILED BY THE PETITIONERS.[39]

The Court's Ruling

We find the petition bereft of merit.

As part of the Y. Furukawa Daliao Plantation which had been turned over to the Republic of the Philippines in accordance with the Philippine Property Act of 1946 and Republic Act No. 8, the disposition of the land in litigation by the BOL is clearly governed Republic Act No. 477. As amended by Republic Act No. 1970,[40] Section 1 of Republic Act No. 477 provides that all lands which have been so transferred to the Republic of the Philippines shall be subdivided into convenient sized lots, except such portions thereof as the President of the Philippines may reserve for the use of the National or Local government, or the use of corporations or entities owned or controlled by the government.[41] As amended by Presidential Decree No. 967,[42]

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[39] *Id.* at 20.

[40] *An Act to Amend Section One of Republic Act No. 477 Providing for the Administration and Disposition of Properties, Including the Proceeds and Income Thereof Transferred to the Republic of the Philippines, Under The Philippine Property Act of 1946 And of Republic Act No. 8 and All Public Lands and Improvements Thereon Transferred to the National Abaca and Other Fibers Corporation Under the Provisions of Executive Order No. 29 Dated October 25, 1946 and of Executive Order No. 99 Dated October 22, 1947.*

[41] Section 1. All lands which have been or may hereafter be transferred to the Republic of the Philippines in accordance with the Philippine Property Act of Nineteen Hundred and forty six (Act of Congress of the United States of July 3, 1946) and Republic Act Number Eight and all the public lands and improvements thereon transferred from the Bureau of Lands to the National Abaca and Other Fibers Corporation under the provisions of Executive Order Numbered 29 dated October 25, 1946, and of Executive Order Numbered 99, dated October 22, 1947, shall be subdivided by the National Abaca and Other Fibers Corporation into convenient-sized lots, except such portions thereof as the President of the Philippines may reserve or transfer title thereto for the use of the National or local governments, or for the use of the corporations

on the other hand, Section 3 of the same law provides that such lands of the public domain, except commercial and industrial lots, shall be sold by the BOL to persons who are qualified to acquire public lands,[43] giving preference first to *bona fide* occupants thereof on or before 12 December 1946 but not later than 31 October 1960 and who shall be limited to the area they have actually and continuously improved and maintained.[44]

Our perusal of the record shows that, as the party asserting a right superior to that claimed by the Spouses Arciaga, Loreto failed to prove that he was a *bona fide* occupant of the land in litigation. Despite his testimony[45] and that elicited from his

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or entities owned or controlled by the Government. Subdivision lots primarily intended for, or devoted to, agricultural purposes shall not exceed an area of five hectares for coconut lands, ten hectares for improved abaca lands, and twelve hectares for unimproved lands; urban homesite or residential lots shall not exceed an area of One Thousand square meters nor less than One Hundred Fifty square meters; Provided, that any provision of law to the contrary notwithstanding, *the Department of General Services shall determine the minimum size of said urban homesite or residential lots and shall allot to the actual occupants thereof at the time of the approval of this Act*.

[42] *Amending Certain Provisions of Republic Act No.477.*

[43] *Board of Liquidators v. Court of Appeals*, 248 Phil. 275, 278-279 (1988).

[44] Sec. 3. All lands so subdivided, except commercial and industrial lots, shall be sold by the Board of Liquidators without the sales application, publication and public auction required in sections twenty-four, twenty-five, and twenty-six of Commonwealth Act Numbered One Hundred Forty-One, as amended, to persons who are qualified to acquire public agricultural lands;

Provided, however, that sales of such lands heretofore made by the National Abaca and Other Fibers Corporation, without sales application, publication and public auction as provided in the above-mentioned sections of the Public Land Law are hereby authorized, ratified and confirmed; *Provided, further*, that preference shall be given first to *bona fide* occupants thereof on or before December twelve, nineteen hundred and forty-six but not later than October thirty-one, nineteen hundred and sixty and who shall be limited to the area they have actually and continuously improved and maintained: *Provided, finally*, that the subdivided lots which may still be unoccupied and/or where the awards thereof were cancelled and nullified shall be disposed of through negotiated sale among qualified persons who may apply for said lots.

[45] TSN, 23 November 1994, pp. 21-30; 35-37.

witnesses, Canuto Blantucas[46] and Sofronio Obenque,[47] to the effect that he occupied the subject parcel in 1957, Loreto's documentary evidence consisting of receipts issued by the NAFCO[48] and BOL[49] simply showed that he was a tenant on the plantation from 1955 to 1957, remitting a portion of the produce harvested therefrom to said government agencies. When cross-examined by the Spouses Arciaga's counsel, Loreto also admitted that he did not file any application for the land and/or declare the same for taxation purposes because he knew that he was not the owner thereof.[50] Consistent with the foregoing admission, moreover, the following answers given by Loreto to the RTC's clarificatory questions effectively contradicted petitioners' assertion that their father acquired the litigated parcel through uninterrupted adverse possession thereof for more than thirty years, *viz.*:

x x x x x x x x x

Q. In other words, even in 1957 when you alleged that you occupied this lot you never intend[ed] that you will be the owner?

A. Before I ha[d] no intention to own this land but only recently I was informed that I have to own this. Only recently I have the intention.

Q. You have that intention only when you learned that it was already titled with other person[s]?

A. Yes.

Q. Did you not transfer your other property to another person since 1957 up to the present?

A. Why should I sell because I know that the land where I constructed my house I am not allowed to sell because that

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[46] TSN, 5 September 1994, pp. 11-14.

[47] TSN, 27 September 1994, pp. 5-7.

[48] Records, Civil Case No. 22,718-94, Exhibit "F" and submarkings, pp. 80-82.

[49] Exhibits "D" and "E", *id.* at 73-74.

[50] TSN, 23 November 1994, pp. 41-43.

> is not my land (*sic)*. I am just occupying the land of the government. I have no right to sell this land.[51]

x x x x x x x x x

In contrast, the Spouses Arciaga were able to demonstrate that Honorio filed an Occupant's Affidavit dated 28 July 1960 in respect to the 2.5 hectare landholding to which the subject parcel pertained[52] and even made the occupants thereof — Loreto and Celerina among them — to sign a private document dated 16 May 1966, acknowledging that he was the *bona fide* possessor by virtue of whose permission and tolerance they were temporarily allowed to build houses of light materials thereon.[53] With Rogelio's acquisition of the rights over two portions of the land claimed by Honorio,[54] Elena subsequently applied for the acquisition of the subject parcel from the BOL and complied with the requirements therefor, including the posting of notices of her application[55] as well as the investigation conducted by a representative of the same agency.[56] Upon the recommendation of BOL Branch Operations Manager Gaudencio Wamelda,[57] the land was sold to Elena with the approval of the Office of the President[58] and eventually registered in her name under Transfer Certificate of Title No. T-139473 of the Davao City Registry.[59]

As between the parties' conflicting claims, we find that the CA correctly upheld the Spouses Arciaga's acquisition of the

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[51] TSN, 23 November 1994, pp. 49-50.

[52] Records, Civil Case No. 22,718-94, Exhibit "3", pp. 120-121; TSN, 21 December 1994, pp. 10-13.

[53] Exhibit "4", *id.* at 122-123.

[54] Exibits "5" and "6", *id.* at 124-126.

[55] Exhibit "9", *id.* at 1299.

[56] Exhibit "13", *id.* at 133.

[57] Exhibit "14", *id.* at 134.

[58] Exhibit "17", *id.* at 139-141.

[59] Exhibit "18", *id.* at 145.

subject parcel from the BOL over Loreto's nebulous claim on the same. For one, the bare assertion of Loreto and his witnesses that he had been in the open, adverse and continuous possession of the property for over thirty years (30) is hardly the well-nigh incontrovertible evidence required for acquisition of disposable lands of the public domain.[60] Because forgery cannot be presumed and must be proved by clear, positive and convincing evidence by the party alleging the same,[61] Loreto's bare denial of his signature on the 16 May 1966 document prepared by Honorio cannot, for another, expediently impugn the probative value thereof. Quite significantly, said document lends credence to the Spouses Arciaga's claim that Loreto's occupancy of the land in litigation was upon their tolerance and that of their predecessor-in-interest. Since possession may be exercised in one's own name or in that of another and it is not necessary for the owner or holder of the thing to personally exercise his possessory rights[62] Loreto's tolerated occupancy of the land cannot be said to have ousted the possession claimed by the Spouses Arciaga.

Even if Loreto were, moreover, to be considered the *bona fide* occupant of the land in dispute, it cannot be gainsaid that he effectively forfeited the priority accorded him under Section 3 of Republic Act No. 477, as amended, when he failed to register his claim in writing after the notice relative to Elena's application was posted at the Barangay Hall of Toril, the Davao City Hall and BOL Davao Branch. Called as witness by Loreto during the presentation of the evidence in chief, then *Toril Barangay* Chairman Consing Te categorically admitted on cross-examination that the following notice was duly posted for thirty days at the Barangay Hall, 500 meters away from the land in litigation,[63] to wit:

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[60] *Republic of the Phils. v. Court of Appeals,* 398 Phil. 911, 923 (2000).

[61] *Aloria v. Clemente*, G.R. No. 165644, 28 February, 483 SCRA 634, 646.

[62] *Santos v. Manalili*, 512 Phil. 324, 331 (2005).

[63] Records, Civil Case No. 22,718-94, Exhibit "9", p. 129; TSN, November 24, 1994, pp. 19-24.

NOTICE is hereby given that Mrs. Elena Arciaga with Residence at St. Michael Village, Daliao, Toril, Davao City has applied for patent/title covering Lot No. 1, Pcs-11-000889 of the Y. Furukawa Daliao Plantation.

This NOTICE is being posted for a period of 30 days beginning November 16, 1987 pursuant to Board Resolution No. 554, Series of 1979, of the Board of Liquidators.

Any person adversely affected by said application should register his/her claim in writing with this Office not later than December 16, 1987, otherwise, said claim shall be considered as waived in favor of the applicant.

November 16, 1987.

With Loreto's occupation of the subject parcel dependent, for the most part, on his bare assertions and that of his witnesses, petitioners argue that the CA erred in giving credit to the Spouses Arciaga's tax receipts and tax declarations which, by themselves, do not conclusively prove ownership of the land. In civil cases, however, the rule is settled that the burden of proof is upon the plaintiff to establish his case by preponderance of evidence, relying on the strength of his own evidence and not the weakness of that of his opponent.[64] As *prima facie* proofs of ownership or possession of the property for which such taxes have been paid, tax receipts and tax declaration may, moreover, become a basis of a claim of ownership when coupled with proof of actual possession.[65] More than the Occupant's Affidavit of Application executed by Elena, the joint affidavit executed by her witnesses and the certification issued by the *Toril Barangay* Chairman,[66] the Spouses Arciaga's actual possession of the lot was, additionally proved by the Inspection and Investigation

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[64] *Heirs of Spouses Dela Cruz and Magdalena Tuazon v. Heirs of Quintos, Sr.*, 434 Phil. 708, 719 (2002) citing *Javier v. CA*, 231 SCRA 498, 504 (1994).

[65] *De la Cruz v. Court of Appeals*, 458 Phil. 929, 941 (2003) citing *Cequena v. Bolante*, 330 SCRA 216 (2000).

[66] Records, Civil Case No. 22,718-94, pp.127-128; 130, Exhibits "7", "8" and "10", pp. 127-128.

Report filed under oath by BOL Inspector/Investigator Nathaniel Rios.[67] In the absence of proof adduced to rebut the presumption of regularity in the performance of official duty,[68] the same report deserves credence over Loreto's naked assertion of possession of the subject parcel.

As a determination made by the administrative agency tasked with the disposition of lands transferred to the Republic of the Philippines, the BOL's award and sale of the litigated parcel in favor of Elena deserves utmost respect when supported by substantial evidence.[69] An action for reconveyance of a property is, after all, a legal and equitable remedy[70] available to a landowner whose property has been wrongfully or erroneously registered in another's name, after one year from the date of the decree of registration and so long as the property has not passed to an innocent purchaser for value.[71] The decree of registration is respected as incontrovertible. Where there is a wrongful or erroneous registration in another person's name, the rightful owner or one with a better right can seek reconveyance of the property and cancellation of title.[72] Loreto failed to prove a right than petitioners' over the land. We find that the CA correctly ordered the dismissal of the complaint for reconveyance and damages from which the instant suit originated.

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit and the CA's assailed Decision dated 25 October 2005 is *AFFIRMED in toto*.

SO ORDERED.

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[67] Exhibit "13", *id.* at 133.

[68] Sec. 3 (m), Rule 131, *Revised Rules on Evidence.*

[69] *Supra* note 62 at 332.

[70] *Republic of the Phils. v. Heirs of Angeles*, 439 Phil. 349, 357 (2002).

[71] *Abejaron v. Nabasa*, 411 Phil. 552, 564 (2001).

[72] *Spouses De Ocampo v. Arlos*, 397 Phil. 799, 811 (2000) citing *Amerol v. Bagumbaran*, 154 SCRA 396, 30 September 1987.

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

FIRST DIVISION

[G.R. No. 175485. July 27, 2011]

CASIMIRO DEVELOPMENT CORPORATION, *petitioner, vs.* **RENATO L. MATEO,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; LAND TITLES; TORRENS SYSTEM OF LAND REGISTRATION; EXPOUNDED.— There is no doubt that the land in question, although once a part of the public domain, has already been placed under the Torrens system of land registration. The Government is required under the Torrens system of registration to issue an official certificate of title to attest to the fact that the person named in the certificate is the owner of the property therein described, subject to such liens and encumbrances as thereon noted or what the law warrants or reserves. The objective is to obviate possible conflicts of title by giving the public the right to rely upon the face of the Torrens certificate and to dispense, as a rule, with the necessity of inquiring further. The Torrens system gives the registered owner complete peace of mind, in order that he will be secured in his ownership as long as he has not voluntarily disposed of any right over the covered land. The Government has adopted the Torrens system

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[*] Associate Justice Teresita J. Leonardo-de Castro is designated as Acting Member of the Second Division as per Special Order No. 1006 dated 10 June 2011.

[**] Associate Justice Diosdado M. Peralta is designated as Acting Member of the Second Division as per Special Order No. 1040 dated 6 July 2011.

due to its being the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. If a person purchases a piece of land on the assurance that the seller's title thereto is valid, he should not run the risk of being told later that his acquisition was ineffectual after all, which will not only be unfair to him as the purchaser, but will also erode public confidence in the system and will force land transactions to be attended by complicated and not necessarily conclusive investigations and proof of ownership. The further consequence will be that land conflicts can be even more abrasive, if not even violent. The Government, recognizing the worthy purposes of the Torrens system, should be the first to accept the validity of titles issued thereunder once the conditions laid down by the law are satisfied. Yet, registration under the Torrens system, not being a mode of acquiring ownership, does not create or vest title. The Torrens certificate of title is merely an evidence of ownership or title in the particular property described therein. In that sense, the issuance of the certificate of title to a particular person does not preclude the possibility that persons not named in the certificate may be co-owners of the real property therein described with the person named therein, or that the registered owner may be holding the property in trust for another person.

2. ID.; ID.; ID.; ID.; A TITLE REGISTERED UNDER THE TORRENS SYSTEM BECOMES INDEFEASIBLE AND INCONTROVERTIBLE AFTER THE LAPSE OF THE PERIOD ALLOWED BY LAW, ALSO RENDERS THE TITLE IMMUNE FROM COLLATERAL ATTACK.— It is essential that title registered under the Torrens system becomes indefeasible and incontrovertible. The land in question has been covered by a Torrens certificate of title (OCT No. 6386 in the name of Laura, and its derivative certificates) before CDC became the registered owner by purchase from China Bank. In all that time, neither the respondent nor his siblings opposed the transactions causing the various transfers. In fact, the respondent admitted in his complaint that the registration of the land in the name of Laura alone had been with the knowledge and upon the agreement of the entire Lara-Mateo family. It is unthinkable, therefore, that the respondent, fully aware of the exclusive registration in her sister Laura's name, allowed more than 20 years to pass before asserting his claim of ownership

for the first time through this case in mid-1994. Making it worse for him is that he did so only after CDC had commenced the ejectment case against his own siblings. Worthy of mention is that Candido, Jr., Leonardo, and Cesar's defense in the ejectment case brought by CDC against them was not predicated on a claim of their ownership of the property, but on their being agricultural lessees or tenants of CDC. Even that defense was ultimately rejected by this Court by observing in G.R. No. 128392. x x x The respondent's attack against the title of CDC is likewise anchored on his assertion that the only purpose for having OCT No. 6386 issued in the sole name of Laura was for Laura to hold the title in trust for their mother. This assertion cannot stand, however, inasmuch as Laura's title had long ago become indefeasible. Moreover, the respondent's suit is exposed as being, in reality, a collateral attack on the title in the name of Laura, and for that reason should not prosper. Registration of land under the Torrens System, aside from perfecting the title and rendering it indefeasible after the lapse of the period allowed by law, also renders the title immune from collateral attack. A collateral attack occurs when, in another action to obtain a different relief and as an incident of the present action, an attack is made against the judgment granting the title. This manner of attack is to be distinguished from a direct attack against a judgment granting the title, through an action whose main objective is to annul, set aside, or enjoin the enforcement of such judgment if not yet implemented, or to seek recovery if the property titled under the judgment had been disposed of.

3. ID.; ID.; ID.; ID.; ONE WHO DEALS WITH PROPERTY REGISTERED UNDER THE TORRENS SYSTEM NEED NOT GO BEYOND THE CERTIFICATE OF TITLE, HE IS CHARGED WITH NOTICE ONLY OF SUCH BURDENS AND CLAIMS AS ARE ANNOTATED ON THE TITLE.— One who deals with property registered under the Torrens system need not go beyond the certificate of title, but only has to rely on the certificate of title. He is charged with notice only of such burdens and claims as are annotated on the title. The pertinent law on the matter of burdens and claims is Section 44 of the *Property Registration Decree*, which provides: Section 44. *Statutory liens affecting title*. — **Every registered owner receiving a certificate of title in**

pursuance of a decree of registration, and every subsequent purchaser of registered land taking a certificate of title for value and in good faith, shall hold the same free from all encumbrances except those noted on said certificate and any of the following encumbrances which may be subsisting, namely: First. Liens, claims or rights arising or existing under the laws and Constitution of the Philippines which are not by law required to appear of record in the Registry of Deeds in order to be valid against subsequent purchasers or encumbrances of record. Second. Unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land by an innocent purchaser for value, without prejudice to the right of the government to collect taxes payable before that period from the delinquent taxpayer alone. Third. Any public highway or private way established or recognized by law, or any government irrigation canal or lateral thereof, if the certificate of title does not state that the boundaries of such highway or irrigation canal or lateral thereof have been determined. Fourth. Any disposition of the property or limitation on the use thereof by virtue of, or pursuant to, Presidential Decree No. 27 or any other law or regulations on agrarian reform. In short, considering that China Bank's TCT No. 99527 was a clean title, that is, *it was free from any lien or encumbrance*, CDC had the right to rely, when it purchased the property, solely upon the face of the certificate of title in the name of China Bank.

4. ID.; SPECIAL CONTRACTS; SALES; THE PRESENCE OF ANYTHING THAT EXCITES OR AROUSES SUSPICION SHOULD PROMPT THE VENDEE TO LOOK BEYOND THE CERTIFICATE AND TO INVESTIGATE THE TITLE OF THE VENDOR ON THE FACE OF SAID CERTIFICATE.— The CA's ascribing of bad faith to CDC based on its knowledge of the adverse possession of the respondent's siblings at the time it acquired the property from China Bank was absolutely unfounded and unwarranted. That possession did not translate to an adverse claim of ownership that should have put CDC on actual notice of a defect or flaw in the China Bank's title, for the respondent's siblings themselves, far from asserting ownership in their own right, even characterized their possession only as that of mere agricultural tenants. Under no law was possession grounded

on tenancy a status that might create a defect or inflict a flaw in the title of the owner. Consequently, due to his own admission in his complaint that the respondent's own possession was not any different from that of his siblings, there was really nothing — factually or legally speaking — that ought to have alerted CDC or, for that matter, China Bank and its predecessors-in-interest, about any defect or flaw in the title. The vendee's notice of a defect or flaw in the title of the vendor, in order for it to amount to bad faith, should encompass facts and circumstances that would impel a reasonably cautious person to make further inquiry into the vendor's title, or facts and circumstances that would induce a reasonably prudent man to inquire into the status of the title of the property in litigation. In other words, the presence of anything that excites or arouses suspicion should then prompt the vendee to look beyond the certificate and to investigate the title of the vendor appearing on the face of said certificate.

5. ID.; ID.; ID.; THE *AS-IS, WHERE-IS* CLAUSE CONTAINED IN A DEED OF SALE DOES NOT AFFECT TITLE OF THE PROPERTY BECAUSE IT RELATED ONLY TO THE CONDITION OF THE PROPERTY UPON ITS PURCHASE AND COULD NOT BE CONSIDERED AS PROOF OR MANIFESTATION OF BAD FAITH ON THE PART OF THE BUYER.— The CA grossly erred in construing the *as-is, where-is* clause contained in the *deed of sale* between CDC (as vendee) and China Bank (as vendor) as proof or manifestation of any bad faith on the part of CDC. On the contrary, the *as-is, where-is* clause did not affect the title of China Bank because it related only to the physical condition of the property upon its purchase by CDC. The clause only placed on CDC the burden of having the occupants removed from the property. In a sale made on an *as-is, where-is* basis, the buyer agrees to take possession of the things sold "in the condition where they are found and from the place where they are located," because the phrase *as-is, where-is* pertains solely "to the physical condition of the thing sold, not to its legal situation" and is "merely descriptive of the state of the thing sold" without altering the seller's responsibility to deliver the property sold to the buyer. What the foregoing circumstances ineluctably indicate is that CDC, having paid the full and fair price of the land, was an innocent purchaser for value, for, according to *Sandoval v. Court of Appeals*; A purchaser in

> good faith is one who buys property of another, without notice that some other person has a right to, or interest in, such property and pays a full and fair price for the same, at the time of such purchase, or before he has notice of the claim or interest of some other persons in the property. He buys the property with the belief that the person from whom he receives the thing was the owner and could convey title to the property. A purchaser cannot close his eyes to facts which should put a reasonable man on his guard and still claim he acted in good faith.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioner.

Benitez Legaspi Barcelo Rafael & Salamera Law Offices for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The focus of this appeal is the faith that should be accorded to the Torrens title that the seller holds at the time of the sale.

In its decision promulgated on August 31, 2006,[1] the Court of Appeals (CA) declared that the respondent and his three brothers were the rightful owners of the land *in litis*, and directed the Office of the Register of Deeds of Las Piñas City to cancel the transfer certificate of title (TCT) registered under the name of petitioner Casimiro Development Corporation (CDC) and to issue in its place another TCT in favor of the respondent and his three brothers. Thereby, the CA reversed the judgment of the Regional Trial Court (RTC) rendered on May 9, 2000 (dismissing the respondent's complaint for quieting of title and reconveyance upon a finding that CDC had been a buyer in good faith of the land *in litis* and that the respondent's suit had already been time-barred).

Aggrieved, CDC brought its petition for review on *certiorari*.

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[1] *Rollo*, pp. 55-76; penned by Associate Justice Arturo G. Tayag, with Associate Justice Remedios A. Salazar-Fernando and Associate Justice Noel G. Tijam, concurring.

Antecedents

The subject of this case is a registered parcel of land (property) with an area of 6,693 square meters, more or less, located in Barrio Pulang Lupa, Las Piñas City, that was originally owned by Isaias Lara,[2] the respondent's maternal grandfather. Upon the death of Isaias Lara in 1930, the property passed on to his children, namely: Miguela, Perfecta and Felicidad, and a grandson, Rosauro (son of Perfecta who had predeceased Isaias in 1920). In 1962, the co-heirs effected the transfer of the full and exclusive ownership to Felicidad (whose married surname was Lara-Mateo) under an agreement denominated as *Pagaayos Na Gawa Sa Labas Ng Hukuman*.

Felicidad Lara-Mateo had five children, namely: Laura, respondent Renato, Cesar, Candido, Jr. and Leonardo. With the agreement of the entire Lara-Mateo family, a *deed of sale* covering the property was executed in favor of Laura, who, in 1967, applied for land registration. After the application was granted, Original Certificate of Title (OCT) No. 6386 was issued in Laura's sole name.

In due course, the property now covered by OCT No. 6386 was used as collateral to secure a succession of loans. The first loan was obtained from Bacoor Rural Bank (Bacoor Bank). To repay the loan to Bacoor Bank and secure the release of the mortgage, Laura borrowed funds from Parmenas Perez (Perez), who, however, required that the title be meanwhile transferred to his name. Thus, OCT No. 6386 was cancelled and Transfer Certificate of Title (TCT) No. 438959 was issued in the name of Perez. Subsequently, Laura recovered the property by repaying the obligation with the proceeds of another loan obtained from Rodolfo Pe (Pe), resulting in the cancellation of TCT No. 438595, and in the issuance of TCT No. S-91595 in Laura's name. She later executed a *deed of sale* in favor of Pe, leading to the issuance of TCT No. S-91738 in the name of Pe, who in turn constituted a mortgage on the property in favor of China Banking Corporation (China Bank) as security for a loan. In the end,

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[2] Spelled in the complaint of the respondent as Isayas.

China Bank foreclosed the mortgage, and consolidated its ownership of the property in 1985 after Pe failed to redeem. Thus, TCT No. (99527) T-11749-A was issued in the name of China Bank.

In 1988, CDC and China Bank negotiated and eventually came to terms on the purchase of the property, with China Bank executing a *deed of conditional sale* for the purpose. On March 4, 1993, CDC and China Bank executed a *deed of absolute sale* over the property. Resultantly, on March 29, 1993, CDC was issued TCT No. T-34640 in its own name.

In the meanwhile, on February 28, 1991, Felicidad died intestate.

On June 6, 1991, CDC brought an action for unlawful detainer in the Metropolitan Trial Court (MeTC) in Las Piñas City against the respondent's siblings, namely: Cesar, Candido, Jr., and Leonardo, and the other occupants of the property. Therein, the defendants maintained that the MeTC did not have jurisdiction over the action because the land was classified as agricultural; that the jurisdiction belonged to the Department of Agrarian Reform Adjudication Board (DARAB); that they had been in continuous and open possession of the land even before World War II and had presumed themselves entitled to a government grant of the land; and that CDC's title was invalid, considering that the land had been registered before its being declared alienable.[3]

On October 19, 1992, the MeTC ruled in favor of CDC, *viz*:

> The Court, after careful consideration of the facts and the laws applicable to this case[,] hereby resolves:
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> 1. On the issue of jurisdiction.
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> The defendants alleged that the land in question is an agricultural land by presenting a Tax Declaration Certificate classifying the land as "FISHPOND." The classification of the land in a tax declaration

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[3] *Mateo v. Court of Appeals*, G.R. No. 128392, April 29, 2005, 457 SCRA 549, 551.

certificate as a "fishpond" merely refers to the use of the land in question for the purpose of real property taxation. This alone would not be sufficient to bring the land in question under the operation of the Comprehensive Agrarian Reform Law.

2. On the issue of open and adverse possession by the defendants.

It should be noted that the subject land is covered by a Transfer Certificate of Title in the name of plaintiffs' predecessor-in-interest China Banking Corporation. Certificates of Title under the Torrens System is indefeasible and imprescriptible. As between two persons claiming possession, one having a [T]orrens title and the other has none, the former has a better right.

3. On the issue of the nullity of the Certificate of Title.

The defense of the defendants that the subject property was a forest land when the same was originally registered in 1967 and hence, the registration is void[,] is not for this Court to decide[,] for lack of jurisdiction. The certificate of title over the property must be respected by this Court until it has been nullified by a competent Court.

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff[,] ordering the defendants

1. [*sic*] and all persons claiming right[s] under it to vacate the subject premises located at Pulang Lupa I, Las Piñas, Metro Manila and surrender the possession of the same to herein plaintiff;

2. to pay the plaintiff reasonable compensation for the use and occupation of the subject premises hereby fixed at (₱100.00) one hundred pesos a month starting November 22, 1990 (the time when the demand letter to vacate was given) until defendants actually vacate the property;

No pronouncement as to costs and attorney's fees.

SO ORDERED.[4]

The decision of the MeTC was assailed in the RTC *via* petition for *certiorari* and prohibition. The RTC resolved against CDC, and held that the MeTC had acted without jurisdiction because

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[4] *Id.,* pp. 551-552.

the land, being a fishpond, was agricultural; hence, the dispute was within the exclusive jurisdiction of the DARAB pursuant to Republic Act No. 6657 (*Comprehensive Agrarian Reform Law of 1988*).[5]

CDC appealed to the CA, which, on January 25, 1996, found in favor of CDC, declaring that the MeTC had jurisdiction. As a result, the CA reinstated the decision of the MeTC.[6]

On appeal (G.R. No. 128392), the Court affirmed the CA's decision in favor of CDC, ruling thusly:

> WHEREFORE, the petition is DENIED and the Court of Appeals' Decision and Resolution in CA- G.R. SP No. 34039, dated January 25, 1996 and February 21, 1997 respectively, are AFFIRMED. No costs.
>
> SO ORDERED.[7]

The decision in G.R. No. 128392 became final.

Nonetheless, on June 29, 1994, the respondent brought an action for quieting of title, reconveyance of four-fifths of the land, and damages against CDC and Laura in the RTC in Las Piñas City entitled *Renato L. Mateo v. Casimiro Development Corporation and Laura Mateo de Castro.* In paragraph 4 of his complaint, he stated that he was "bringing this action to quiet title on behalf of himself and of his three (3) brothers — Cesar, Leonardo, and Candido, Jr., all surnamed MATEO — in his capacity as one of the co-owners of a parcel of land situated at Barrio Pulang Lupa, Municipality of Las Piñas, Metro Manila."

On May 9, 2001, the RTC held in favor of CDC, disposing:

> WHEREFORE, and by strong preponderance of evidence, judgment is hereby rendered in favor of the defendant Casimiro

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[5] *Id.*, pp. 552-553.

[6] *Id.*, pp. 555-558.

[7] *Id.*, pp. 560-561.

Development Corporation and against the plaintiff Renato L. Mateo by (1) Dismissing the complaint, and upholding the validity and indefeasibility of Transfer Certificate of Title No. T-34640 in the name of Casimiro Development Corporation; (2) Ordering the plaintiff Renato Mateo to pay defendant Casimiro Development Corporation the sum of [a] ₱200,000.00 as compensatory damages; [b] ₱200,000.00 as attorney's fees; and [c] to pay the costs.

SO ORDERED.[8]

On appeal (C.A.-G.R. CV No. 71696), the CA promulgated its decision on August 31, 2006, reversing the RTC and declaring CDC to be not a buyer in good faith due to its being charged with notice of the defects and flaws of the title at the time it acquired the property from China Bank, and decreeing:

WHEREFORE, the Decision dated May 9, 2001 of Branch 225, Regional Trial Court, Las Piñas City in Civil Case No. 94-2045 is hereby *REVERSED* and *SET ASIDE* and a new one rendered:

(1) Declaring appellant Renato Mateo and his brothers and co-owners Cesar, Candido, Jr., and Leonardo, all surnamed Mateo as well as his sister, Laura Mateo de Castro as the rightful owners of the parcel of land, subject of this case; and

(2) Ordering the Register of Deeds of Las Piñas City, Metro-Manila to cancel Transfer Certificate of Title No. T-34640 under the name of appellee Casimiro Development Corporation, and that a new one be issued in favor of the appellant and his co-heirs and siblings, mentioned above as co-owners *pro indiviso* of the said parcel.

(3) No pronouncement as to cost.

SO ORDERED.[9]

The CA denied CDC's motion for reconsideration.

Hence, this appeal, in which CDC urges that the CA committed serious errors of law,[10] as follows:

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[8] *Rollo,* p. 89.

[9] *Id.,* p. 75.

[10] *Id.,* pp. 23-24.

(A) xxx in failing to rule that the decree of registration over the Subject Property is incontrovertible and no longer open to review or attack after the lapse of one (1) year from entry of such decree of registration in favor of Laura Mateo de Castro.

(B) xxx in failing to rule that the present action is likewise barred by *res judicata*.

(C) xxx in failing to rule that the instant action for quieting of title and reconveyance under PD No. 1529 cannot prosper because the Subject Property had already been conveyed and transferred to third parties who claimed adverse title for themselves.

(D) xxx in failing to rule that the action of respondent for "quieting of title, reconveyance and damages" is barred by laches.

(E) xxx in ruling that the Subject Property must be reconveyed to respondent because petitioner Casimiro Development Corporation is not a "purchaser in good faith."

CDC argues that it was a buyer in good faith; and that the CA did not rule on matters that fortified its title in the property, namely: (*a*) the incontrovertibility of the title of Laura; (*b*) the action being barred by laches and *res judicata*; and (*c*) the property having been conveyed to third parties who had then claimed adverse title.

The respondent counters that CDC acquired the property from China Bank in bad faith, because it had actual knowledge of the possession of the property by the respondent and his siblings; that CDC did not actually accept delivery of the possession of the property from China Bank; and that CDC ignored the failure of China Bank to warrant its title.

Ruling

We grant the petition.

1.
Indefeasibility of title in the name of Laura

As basis for recovering the possession of the property, the respondent has assailed the title of Laura.

We cannot sustain the respondent.

There is no doubt that the land in question, although once a part of the public domain, has already been placed under the Torrens system of land registration. The Government is required under the Torrens system of registration to issue an official certificate of title to attest to the fact that the person named in the certificate is the owner of the property therein described, subject to such liens and encumbrances as thereon noted or what the law warrants or reserves.[11] The objective is to obviate possible conflicts of title by giving the public the right to rely upon the face of the Torrens certificate and to dispense, as a rule, with the necessity of inquiring further. The Torrens system gives the registered owner complete peace of mind, in order that he will be secured in his ownership as long as he has not voluntarily disposed of any right over the covered land.[12]

The Government has adopted the Torrens system due to its being the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. If a person purchases a piece of land on the assurance that the seller's title thereto is valid, he should not run the risk of being told later that his acquisition was ineffectual after all, which will not only be unfair to him as the purchaser, but will also erode public confidence in the system and will force land transactions to be attended by complicated and not necessarily conclusive investigations and proof of ownership. The further consequence will be that land

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[11] *Republic v. Guerrero*, G.R. No. 133168, March 28, 2006,485 SCRA 424; citing Noblejas, *Land Titles and Deeds*, 1986 ed., p. 32.

[12] *Republic v. Court of Appeals*, G.R. Nos. L-46626-27, December 27, 1979, 94 SCRA 865, 874.

conflicts can be even more abrasive, if not even violent. The Government, recognizing the worthy purposes of the Torrens system, should be the first to accept the validity of titles issued thereunder once the conditions laid down by the law are satisfied.[13]

Yet, registration under the Torrens system, not being a mode of acquiring ownership, does not create or vest title.[14] The Torrens certificate of title is merely an evidence of ownership or title in the particular property described therein.[15] In that sense, the issuance of the certificate of title to a particular person does not preclude the possibility that persons not named in the certificate may be co-owners of the real property therein described with the person named therein, or that the registered owner may be holding the property in trust for another person.[16]

Nonetheless, it is essential that title registered under the Torrens system becomes indefeasible and incontrovertible.[17]

The land in question has been covered by a Torrens certificate of title (OCT No. 6386 in the name of Laura, and its derivative certificates) before CDC became the registered owner by purchase from China Bank. In all that time, neither the respondent nor his siblings opposed the transactions causing the various transfers. In fact, the respondent admitted in his complaint that the

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[13] *Tenio-Obsequio v. Court of Appeals,* G.R. No. 107967, March 1, 1997, 230 SCRA 550.

[14] *Heirs of Teodoro Dela Cruz v. Court of Appeals*, G.R. No. 117384, October 21, 1998, 298 SCRA 172, 180.

[15] *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 129471, April 28, 2000, 331 SCRA 267; *Garcia v. Court of Appeals*, G.R. No. 133140, August 10, 1999, 312 SCRA 180, 190; *Rosario v. Court of Appeals*, G.R. No. 127005, July 19, 1999, 310 SCRA 464; *Republic of the Philippines v. Court of Appeals*, G.R. No. 116111, January 21, 1999, 301 SCRA 366; *Strait Times, Inc. v. Court of Appeals*, G.R. No. 126673, August 28, 1998, 294 SCRA 714, 726.

[16] *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, G.R. No. 149679, May 30, 2003, 403 SCRA 291, 298; citing *Lee Tek Sheng v. Court of Appeals*, G.R. No. 115402, July 15, 1998, 292 SCRA 544, 548.

[17] *Natalia Realty Corporation v. Vallez*, G.R. Nos. 78290-94, May 23, 1989, 173 SCRA 534, 542.

registration of the land in the name of Laura alone had been with the knowledge and upon the agreement of the entire Lara-Mateo family. It is unthinkable, therefore, that the respondent, fully aware of the exclusive registration in her sister Laura's name, allowed more than 20 years to pass before asserting his claim of ownership for the first time through this case in mid-1994. Making it worse for him is that he did so only after CDC had commenced the ejectment case against his own siblings.

Worthy of mention is that Candido, Jr., Leonardo, and Cesar's defense in the ejectment case brought by CDC against them was not predicated on a claim of their ownership of the property, but on their being agricultural lessees or tenants of CDC. Even that defense was ultimately rejected by this Court by observing in G.R. No. 128392 as follows:

> With regard to the first element, the petitioners have tried to prove that they are tenants or agricultural lessees of the respondent corporation, CDC, by showing that the land was originally owned by their grandfather, Isaias Lara, who gave them permission to work the land, and that CDC is merely a successor-in-interest of their grandfather. It must be noted that the petitioners failed to adequately prove their grandfather's ownership of the land. They merely showed six tax declarations. It has been held by this Court that, as against a transfer certificate of title, tax declarations or receipts are not adequate proofs of ownership. Granting *arguendo* that the land was really owned by the petitioners' grandfather, petitioners did not even attempt to show how the land went from the patrimony of their grandfather to that of CDC. Furthermore, petitioners did not prove, but relied on mere allegation, that they indeed had an agreement with their grandfather to use the land.
>
> As for the third element, there is apparently no consent between the parties. Petitioners were unable to show any proof of consent from CDC to work the land. For the sake of argument, if petitioners were able to prove that their grandfather owned the land, they nonetheless failed to show any proof of consent from their grandfather to work the land. Since the third element was not proven, the fourth element cannot be present since there can be no *purpose* to a relationship to which the parties have not consented.[18]

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[18] *Mateo v. Court of Appeals, supra* note 3, p. 560.

The respondent's attack against the title of CDC is likewise anchored on his assertion that the only purpose for having OCT No. 6386 issued in the sole name of Laura was for Laura to hold the title in trust for their mother. This assertion cannot stand, however, inasmuch as Laura's title had long ago become indefeasible.

Moreover, the respondent's suit is exposed as being, in reality, a collateral attack on the title in the name of Laura, and for that reason should not prosper. Registration of land under the Torrens System, aside from perfecting the title and rendering it indefeasible after the lapse of the period allowed by law, also renders the title immune from collateral attack.[19] A collateral attack occurs when, in another action to obtain a different relief and as an incident of the present action, an attack is made against the judgment granting the title. This manner of attack is to be distinguished from a direct attack against a judgment granting the title, through an action whose main objective is to annul, set aside, or enjoin the enforcement of such judgment if not yet implemented, or to seek recovery if the property titled under the judgment had been disposed of.[20]

2.
CDC was an innocent purchaser for value

The CA found that CDC acquired the property in bad faith because CDC had knowledge of defects in the title of China Bank, including the adverse possession of the respondent's siblings and the supposed failure of China Bank to warrant its title by inserting an *as-is, where-is* clause in its *contract of sale* with CDC.

The CA plainly erred in so finding against CDC.

To start with, one who deals with property registered under the Torrens system need not go beyond the certificate of title,

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[19] *Madrid v. Mapoy*, G.R. No. 150887, August 14, 2009, 596 SCRA 14, 26.

[20] *Madrid v. Mapoy*, *supra*.

but only has to rely on the certificate of title.[21] He is charged with notice only of such burdens and claims as are annotated on the title.[22] The pertinent law on the matter of burdens and claims is Section 44 of the *Property Registration Decree*,[23] which provides:

Section 44. *Statutory liens affecting title*. — **Every registered owner receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land taking a certificate of title for value and in good faith, shall hold the same free from all encumbrances** except those noted on said certificate and any of the following encumbrances which may be subsisting, namely:

First. Liens, claims or rights arising or existing under the laws and Constitution of the Philippines which are not by law required to appear of record in the Registry of Deeds in order to be valid against subsequent purchasers or encumbrances of record.

Second. Unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land by an innocent purchaser for value, without prejudice to the right of the government to collect taxes payable before that period from the delinquent taxpayer alone.

Third. Any public highway or private way established or recognized by law, or any government irrigation canal or lateral thereof, if the certificate of title does not state that the boundaries of such highway or irrigation canal or lateral thereof have been determined.

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[21] *Sandoval v. Court of Appeals*, G.R. No. 106657, August 1, 1996, 260 SCRA 283; *Santos v. Court of Appeals*, G.R. No. 90380, September 13, 1990, 189 SCRA 550; *Unchuan v. Court of Appeals*, G.R. No. 78775, May 31, 1988, 161 SCRA 710; *Bailon-Casilao v. Court of Appeals*, G.R. No. 78178, April 15, 1988, 160 SCRA 738; *Director of Lands v. Abad*, 61 Phil. 479, 487(1935); *Quimson v. Suarez*, 45 Phil. 901, 906 (1924).

[22] *Agricultural and Home Extension Development Group v. Court of Appeals*, G.R. No. 92310, September 3, 1992, 213 SCRA 563; *Unchuan v. Court of Appeals, supra*.

[23] Presidential Decree No. 1529 entitled *Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes*.

Fourth. Any disposition of the property or limitation on the use thereof by virtue of, or pursuant to, Presidential Decree No. 27 or any other law or regulations on agrarian reform.

In short, considering that China Bank's TCT No. 99527 was a clean title, that is, *it was free from any lien or encumbrance*, CDC had the right to rely, when it purchased the property, solely upon the face of the certificate of title in the name of China Bank.[24]

The CA's ascribing of bad faith to CDC based on its knowledge of the adverse possession of the respondent's siblings at the time it acquired the property from China Bank was absolutely unfounded and unwarranted. That possession did not translate to an adverse claim of ownership that should have put CDC on actual notice of a defect or flaw in the China Bank's title, for the respondent's siblings themselves, far from asserting ownership in their own right, even characterized their possession only as that of mere agricultural tenants. Under no law was possession grounded on tenancy a status that might create a defect or inflict a flaw in the title of the owner. Consequently, due to his own admission in his complaint that the respondent's own possession was not any different from that of his siblings, there was really nothing — factually or legally speaking — that ought to have alerted CDC or, for that matter, China Bank and its predecessors-in-interest, about any defect or flaw in the title.

The vendee's notice of a defect or flaw in the title of the vendor, in order for it to amount to bad faith, should encompass facts and circumstances that would impel a reasonably cautious person to make further inquiry into the vendor's title,[25] or facts and circumstances that would induce a reasonably prudent man to inquire into the status of the title of the property in litigation.[26]

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[24] *Seno v. Mangubat*, G.R. No.L-44339, December 2, 1987, 156 SCRA 113, 128.

[25] *Santos v. Court of Appeals*, *supra*, note 21; *Gonzales v. Intermediate Appellate Court*, G.R. No. 69622, January 29, 1988, 157 SCRA 587.

[26] *State Investment House, Inc. v. Court of Appeals*, G.R. No. 115548, March 5, 1996, 254 SCRA 368; *Capitol Subdivision v. Province of Negros Occidental*, G.R. No. L-16257, January 31, 1963, 7 SCRA 60, 70, *Mañacop*,

In other words, the presence of anything that excites or arouses suspicion should then prompt the vendee to look beyond the certificate and to investigate the title of the vendor appearing on the face of said certificate.[27]

And, secondly, the CA grossly erred in construing the *as-is, where-is* clause contained in the *deed of sale* between CDC (as vendee) and China Bank (as vendor) as proof or manifestation of any bad faith on the part of CDC. On the contrary, the *as-is, where-is* clause did not affect the title of China Bank because it related only to the physical condition of the property upon its purchase by CDC. The clause only placed on CDC the burden of having the occupants removed from the property. In a sale made on an *as-is, where-is* basis, the buyer agrees to take possession of the things sold "in the condition where they are found and from the place where they are located," because the phrase *as-is, where-is* pertains solely "to the physical condition of the thing sold, not to its legal situation" and is "merely descriptive of the state of the thing sold" without altering the seller's responsibility to deliver the property sold to the buyer.[28]

What the foregoing circumstances ineluctably indicate is that CDC, having paid the full and fair price of the land, was an innocent purchaser for value, for, according to *Sandoval v. Court of Appeals*:[29]

Jr. v. Cansino, G.R. No. L-13971, February 27, 1961, 1 SCRA 572, *Leung Yee v. F.L. Strong Machinery Co. & Williamson*, 37 Phil. 644 (1918), *Philippine National Bank v. Court of Appeals*, G.R. No. 57757, August 31, 1987, 153 SCRA 435, 442; *Gonzales v. Intermediate Appellate Court*, G.R. No. 69622, January 29, 1988, 157 SCRA 587, 595.

[27] *Sandoval v. Court of Appeals*, *supra*, note 21; *Pino v. Court of Appeals*, G.R. No. 94114, June 19, 1991, 198 SCRA 434; *Centeno v. Court of Appeals*, G.R. No. L-40105, November 11, 1985, 139 SCRA 545, 555; *Fule v. Legare*, G.R. No. L-17951, February 28, 1963, 7 SCRA 351; *William H. Anderson and Co., v. Garcia*, 64 Phil. 506 (1937).

[28] *Asset Privatization Trust v. T.J. Enterprises*, G.R. No. 167195, May 8, 2009, 587 SCRA 481, 487-488; *National Development Company v. Madrigal Wan Hai Lines Corporation*, G.R. No. 148332, September 30, 2003, 412 SCRA 375, 387.

[29] *Supra*, note 21, pp. 296-297.

A purchaser in good faith is one who buys property of another, without notice that some other person has a right to, or interest in, such property and pays a full and fair price for the same, at the time of such purchase, or before he has notice of the claim or interest of some other persons in the property. He buys the property with the belief that the person from whom he receives the thing was the owner and could convey title to the property. A purchaser cannot close his eyes to facts which should put a reasonable man on his guard and still claim he acted in good faith.

WHEREFORE, we grant the petition for review on *certiorari*; set aside the decision of the Court of Appeals in CA-G.R. CV No. 71696; dismiss the complaint in Civil Case No. 94-2045; and declare Transfer Certificate of Title No. T-34640 in the name of Casimiro Development Corporation valid and subsisting.

The respondent shall pay the costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 178941. July 27, 2011]

JOSE ANSELMO I. CADIZ, LEONARD S. DE VERA, ROMULO A. RIVERA, DANTE G. ILAYA, PURA ANGELICA Y. SANTIAGO, ROSARIO T. SETIAS-REYES, JOSE VICENTE B. SALAZAR, MANUEL M. MONZON, IMMANUEL L. SODUSTA, CARLOS L. VALDEZ, JR., and LYDIA A. NAVARRO, *petitioners, vs.* **THE HONORABLE PRESIDING JUDGE, BR. 48, RTC-PUERTO PRINCESA and GLENN C. GACOTT,** *respondents.*

SYLLABUS

CIVIL LAW; DAMAGES; THE INTEGRATED BAR OF THE PHILIPPINES (IBP) BOARD MEMBERS CANNOT BE HELD LIABLE IN DAMAGES FOR HONEST ERRORS COMMITTED IN THE PERFORMANCE OF THEIR QUASI-JUDICIAL FUNCTION.— The petitioner IBP Board members are correct in claiming that Atty. Gacott's complaint states no cause of action. The IBP Commissioner and Board of Governors in this case merely exercised delegated powers to investigate the complaint against Atty. Gacott and submit their report and recommendation to the Court. They cannot be charged for honest errors committed in the performance of their quasi-judicial function. And that was what it was in the absence of any allegation of specific factual circumstances indicating that they acted maliciously or upon illicit consideration. If the rule were otherwise, a great number of lower court justices and judges whose acts the appellate courts have annulled on ground of grave abuse of discretion would be open targets for damage suits.

VELASCO*, J., concurring opinion:*

1. CIVIL LAW; DAMAGES; NOT AWARDED WHEN NO CAUSE OF ACTION EXISTS.— I concur with the opinion of my learned colleague, Justice Roberto Abad, that the members of the Board of Governors of the Integrated Bar of the Philippines (IBP) are not liable for damages for recommending the disbarment of Atty. Glenn C. Gacott. No cause of action exists. Even as the case of Atty. Gacott was remanded to the IBP Board for further proceedings, this does not mean that the IBP Board of Governors gravely erred by not conducting an exhaustive hearing, and is, thus, liable for damages. The remanding of the case gives both Atty. Gacott and the IBP Board a better opportunity to construct their respective stands, considering the gravity of the recommended penalty. Disbarment is not a matter to be taken lightly.

2. LEGAL ETHICS; ATTORNEYS; DISCIPLINARY ACTIONS AGAINST LAWYERS; DETERMINATION OF WHETHER OR NOT A HEARING IS NECESSARY IS AT THE DISCRETION OF THE INVESTIGATING

COMMISSIONER.— Even as Atty. Gacott has waived his hearing, I submit that the conduct of a full-blown hearing is not mandatory. Sec. 3 of Rule V of the Rules of Procedure of the Commission on Bar Discipline of the IBP. It is clear from the said provision that the determination of whether or not a hearing is necessary is at the discretion of the Investigating Commissioner. In Atty. Gacott's case, Commissioner Lydia A. Navarro in fact summoned the parties and required them to submit their position papers. She found no necessity for calling a hearing after reviewing the papers, and submitted her report to the IBP Board. No reason has been supplied to question her judgment on the matter of not calling for a clarificatory hearing.

3. ID.; ID.; ID.; FULL-BLOWN HEARING IS NOT A REQUISITE.— To further buttress the argument that a full-blown hearing is not a requisite in disciplinary actions against lawyers, Sec. 8, Rule 139-B of the Rules of Court, on Disbarment and Discipline of Attorneys, states: Investigation. — Upon joinder of issues or upon failure of the respondent to answer, the Investigator shall, with deliberate speed, proceed with the investigation of the case. He shall have the power to issue subpoenas and administer oaths. The respondent shall be given full opportunity to defend himself, to present witnesses on his behalf and be heard by himself and counsel. However, if upon reasonable notice, the respondent fails to appear, the investigation shall proceed *ex parte*. The Investigator shall terminate the investigation within three (3) months from the date of its commencement unless extended for good cause by the Board of Governors upon prior application. Willful failure or refusal to obey a subpoena or any other lawful order issued by the Investigator shall be dealt with as for indirect contempt of court. The corresponding charge shall be filed by the Investigator before the IBP Board of Governors which shall require the alleged contemnor to show cause within ten (10) days from notice. **The IBP Board of Governors may thereafter conduct hearings, if necessary**, in accordance with the procedure set forth in this Rule for hearings before the Investigator. Such hearing shall, as far as practicable, be terminated within fifteen (15) days from its commencement. Thereafter, the IBP Board of Governors shall within like period fifteen (15) days issue a resolution setting forth its findings and recommendations, which shall forthwith be transmitted

to the Supreme Court for final action and if warranted, the imposition of penalty. Even from the Rules of Court, it is clear that it is within the discretion of the IBP Board to determine the necessity of conducting hearings. The conduct of an exhaustive hearing is not mandatory in disciplinary actions against lawyers, and, thus, Atty. Gacott has no cause of action against the IBP Board, when their recommendation was made with no hearing having been held.

APPEARANCES OF COUNSEL

Pacifico A. Agabin for petitioners.

D E C I S I O N

ABAD, *J.*:

Can the members of the Board of Governors of the Integrated Bar of the Philippines be held liable in damages for prematurely recommending disbarment of a lawyer based on the position papers and affidavits of witnesses of the parties?

The Facts and the Case

On February 23, 2003 the Integrated Bar of the Philippines Board of Governors, then composed of petitioners Jose Anselmo I. Cadiz, Leonard S. De Vera, Romulo A. Rivera, Dante G. Ilaya, Pura Angelica Y. Santiago, Rosario T. Setias-Reyes, Jose Vicente B. Salazar, Manuel M. Monzon, Immanuel L. Sodusta, and Carlos L. Valdez, Jr. (the IBP Board), received an administrative complaint[1] filed by Lilia T. Ventura and Concepcion Tabang against respondent Atty. Glenn C. Gacott for gross misconduct, deceit, and gross dishonesty. The IBP Board designated petitioner Lydia A. Navarro (Navarro) as Commissioner to investigate the case.

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[1] Dated February 3, 2003; docketed as Administrative Case (CBD) 03-1054.

Commissioner Navarro summoned the parties to a mandatory conference and required them afterwards to submit their position papers. Based on these, Navarro submitted her Report and Recommendation to the IBP Board for its approval. Commissioner Navarro was herself a member of the IBP Board. After deliberation, the IBP Board adopted Commissioner Navarro's findings but increased the recommended penalty of six months suspension from the practice of law to disbarment. The IBP Board then transmitted their report to this Court.

On September 29, 2004, however, the Court remanded the case to the IBP Board for further proceedings in order to give the parties the chance to fully present their case.[2] The Court said the investigating commissioner should have subpoenaed and examined the witnesses of the parties considering the gravity of the charge against Atty. Gacott. Navarro rendered her report based solely on the position papers and affidavits of the witnesses.

While the IBP Board was complying with the Court's directive, Atty. Gacott filed a complaint for damages against the board's sitting members before the Regional Trial Court (RTC) of Puerto Princesa City, Palawan.[3] Answering the complaint, the IBP Board raised the affirmative defense of failure of the complaint to state a cause of action and filed a motion to dismiss the case on that ground. On March 9, 2006 the trial court denied the motion,[4] prompting the IBP Board to elevate the case to the Court of Appeals (CA) on special civil action for *certiorari*.[5]

On December 29, 2006 the CA denied the petition, pointing out that the RTC did not commit grave abuse of discretion. The IBP Board had other plain and speedy remedy, like proceeding to trial in the case and appealing in the event of failure of the RTC to dismiss the action. The CA denied in its Resolution dated July 12, 2007 the IBP Board's motion for reconsideration, thus causing them to file the present petition.

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[2] Resolution dated September 29, 2004 in Administrative Case 6490.

[3] Docketed as Civil Case 4095.

[4] *Rollo*, pp. 146-149.

[5] Docketed as CA-G.R. SP 94692.

The Issue Presented

The key issue in this case is whether or not the CA erred in failing to rule that the Supreme Court's remand of the disbarment case to the IBP Board for examination of the witnesses, considering the gravity of the charge against Atty. Gacott, cannot serve as basis for the latter's complaint for damages against the members of that board.

Ruling of the Court

Atty. Gacott states in his complaint for damages before the RTC that Supreme Court's remand of his case to the IBP Board is an affirmation of the latter's arbitrary abuse of its investigatory power. The IBP Board recommended his disbarment based on the Commissioner's report rendered to it without the benefit of exhaustive hearing. This made its members personally liable for actual, moral, and corrective damages. Essentially, therefore, Atty. Gacott anchored his complaint for damages on the result of the Court's assessment of the IBP Board's report and recommendation and its remand of the case against him for further proceedings.

The petitioner IBP Board members are correct in claiming that Atty. Gacott's complaint states no cause of action. The IBP Commissioner and Board of Governors in this case merely exercised delegated powers to investigate the complaint against Atty. Gacott and submit their report and recommendation to the Court. They cannot be charged for honest errors committed in the performance of their quasi-judicial function. And that was what it was in the absence of any allegation of specific factual circumstances indicating that they acted maliciously or upon illicit consideration. If the rule were otherwise, a great number of lower court justices and judges whose acts the appellate courts have annulled on ground of grave abuse of discretion would be open targets for damage suits.

Parenthetically, Atty. Gacott submitted the disbarment case against him for resolution based on the position papers that he and the complainants presented, without reservation, to the IBP

along with the affidavits of their witnesses. The IBP Board prepared its report and recommendation to the Court based on these papers and documents.

WHEREFORE, the Court *GRANTS* the petition, *SETS ASIDE* the decision dated December 29, 2006 and resolution dated July 12, 2007 of the Court of Appeals in CA-G.R. SP 94692, and *ORDERS* the complaint for damages filed by respondent Glenn C. Gacott against petitioners Jose Anselmo I. Cadiz, Leonard S. De Vera, Romulo A. Rivera, Dante G. Ilaya, Pura Angelica Y. Santiago, Rosario T. Setias-Reyes, Jose Vicente B. Salazar, Manuel M. Monzon, Immanuel L. Sodusta, Carlos L. Valdez, Jr., and Lydia A. Navarro in Civil Case 4095 of the Regional Trial Court of Puerto Princesa City, Palawan, *DISMISSED* for failure to state a cause of action.

SO ORDERED.

Carpio,[*] *Peralta,* and *Mendoza, JJ.,* concur.

Velasco, Jr., J. (Chairperson), see concurring opinion.

C O N C U R R I N G O P I N I O N

VELASCO, JR., *J.*:

I concur with the opinion of my learned colleague, Justice Roberto Abad, that the members of the Board of Governors of the Integrated Bar of the Philippines (IBP) are not liable for damages for recommending the disbarment of Atty. Glenn C. Gacott. No cause of action exists. Even as the case of Atty. Gacott was remanded to the IBP Board for further proceedings, this does not mean that the IBP Board of Governors gravely erred by not conducting an exhaustive hearing, and is, thus, liable for damages. The remanding of the case gives both Atty. Gacott and the IBP Board a better opportunity to construct

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[*] Designated as additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno, per Special Order 1042 dated July 6, 2011.

their respective stands, considering the gravity of the recommended penalty. Disbarment is not a matter to be taken lightly.

I will, however, argue that an exhaustive hearing is not necessary in disciplinary cases, including those for disbarment. In the case of Atty. Gacott, he submitted the disbarment case against him for resolution even without the benefit of a full-blown hearing, but based on position papers and witnesses' affidavits. This would constitute a waiver of his claim for a full-blown hearing.

Even as Atty. Gacott has waived his hearing, I submit that the conduct of a full-blown hearing is not mandatory. Sec. 3 of Rule V of the Rules of Procedure of the Commission on Bar Discipline of the IBP states:

> SEC. 3. Determination of Necessity of Clarificatory Questioning. Immediately after the submission by the parties of their position papers, the Investigating Commissioner shall determine whether there is a need to conduct clarificatory questioning. **If necessary, a hearing date shall be set wherein the Investigating Commissioner shall ask clarificatory questions to the parties or their witnesses to further elicit facts or [information]**. (Emphasis supplied.)

It is clear from the above provision that the determination of whether or not a hearing is necessary is at the discretion of the Investigating Commissioner. In Atty. Gacott's case, Commissioner Lydia A. Navarro in fact summoned the parties and required them to submit their position papers. She found no necessity for calling a hearing after reviewing the papers, and submitted her report to the IBP Board. No reason has been supplied to question her judgment on the matter of not calling for a clarificatory hearing.

To further buttress the argument that a full-blown hearing is not a requisite in disciplinary actions against lawyers, Sec. 8, Rule 139-B of the Rules of Court, on Disbarment and Discipline of Attorneys, states:

> Investigation. — Upon joinder of issues or upon failure of the respondent to answer, the Investigator shall, with deliberate speed, proceed with the investigation of the case. He shall have the power

to issue subpoenas and administer oaths. The respondent shall be given full opportunity to defend himself, to present witnesses on his behalf and be heard by himself and counsel. However, if upon reasonable notice, the respondent fails to appear, the investigation shall proceed *ex parte*.

The Investigator shall terminate the investigation within three (3) months from the date of its commencement unless extended for good cause by the Board of Governors upon prior application.

Willful failure or refusal to obey a subpoena or any other lawful order issued by the Investigator shall be dealt with as for indirect contempt of court. The corresponding charge shall be filed by the Investigator before the IBP Board of Governors which shall require the alleged contemnor to show cause within ten (10) days from notice. **The IBP Board of Governors may thereafter conduct hearings, if necessary**, in accordance with the procedure set forth in this Rule for hearings before the Investigator. Such hearing shall, as far as practicable, be terminated within fifteen (15) days from its commencement. Thereafter, the IBP Board of Governors shall within like period fifteen (15) days issue a resolution setting forth its findings and recommendations, which shall forthwith be transmitted to the Supreme Court for final action and if warranted, the imposition of penalty. (Emphasis supplied.)

Even from the Rules of Court, it is clear that it is within the discretion of the IBP Board to determine the necessity of conducting hearings. The conduct of an exhaustive hearing is not mandatory in disciplinary actions against lawyers, and, thus, Atty. Gacott has no cause of action against the IBP Board, when their recommendation was made with no hearing having been held.

Atty. Gacott's complaint stated that the IBP Board recommended his disbarment without affording him a full-blown hearing, but as I have shown, such a full-blown hearing is not mandatory. Thus, the IBP Board is not liable for damages for simply following the procedure in its Rules and under Rule 139-B of the Rules of Court.

FIRST DIVISION

[G.R. No. 180390. July 27, 2011]

PRUDENTIAL BANK, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; DOCUMENTARY STAMP TAX; PETITIONER'S SAVINGS ACCOUNT PLUS (SAP) IS A CERTIFICATE OF DEPOSIT BEARING INTEREST AND IS SUBJECT TO DOCUMENTARY STAMP TAX (DST).— DST is imposed on certificates of deposit bearing interest pursuant to Section 180 of the old NIRC, as amended. x x x A certificate of deposit is defined as "a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created." In this case, petitioner claims that its SAP is not a certificate of deposit bearing interest because unlike a time deposit, its SAP is payable on demand and is evidenced by a passbook and not by a certificate of deposit. We do not agree. In *China Banking Corporation v. Commissioner of Internal Revenue,* we held that the Savings Plus Deposit Account, which has the following features: 1. Amount deposited is withdrawable anytime; 2. The same is evidenced by a passbook; 3. The rate of interest offered is the prevailing market rate, provided the depositor would maintain his minimum balance in thirty (30) days at the minimum, and should he withdraw before the period, his deposit would earn the regular savings deposit rate; is subject to DST as it is essentially the same as the Special/Super Savings Deposit Account in *Philippine Banking Corporation v. Commissioner of Internal Revenue,* and the Savings Account-Fixed Savings Deposit in *International Exchange Bank v. Commissioner of Internal Revenue,* which are considered certificates of deposit drawing interests. Similarly, in this case, although the money deposited in a SAP is payable anytime, the withdrawal

of the money before the expiration of 30 days results in the reduction of the interest rate. In the same way, a time deposit withdrawn before its maturity results to a lower interest rate and payment of bank charges or penalties. The fact that the SAP is evidenced by a passbook likewise cannot remove its coverage from Section 180 of the old NIRC, as amended. A document to be considered a certificate of deposit need not be in a specific form. Thus, a passbook issued by a bank qualifies as a certificate of deposit drawing interest because it is considered a written acknowledgement by a bank that it has accepted a deposit of a sum of money from a depositor. In view of the foregoing, we find that the CTA *En Banc* correctly affirmed the ruling of its First Division that petitioner's SAP is a certificate of deposit bearing interest and that the same is subject to DST.

2. ID.; ID.; THE COURT OF TAX APPEALS (CTA) *EN BANC'S* DENIAL OF PETITIONER'S MOTION TO WITHDRAW PETITION IS PROPER FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE IMPROVED VOLUNTARY ASSESSMENT PROGRAM (IVAP).— The CTA *En Banc* denied petitioner's motion to withdraw because it failed to show that it was able to comply with the requirements of IVAP. To avail of the IVAP, a taxpayer must pay the 100% basic tax of the original assessment of the BIR or the CTA Decision, whichever is higher and submit the letter of termination and authority to cancel assessment signed by the respondent. In this case, petitioner failed to submit the letter of termination and authority to cancel assessment as respondent found the payment of ₱5,084,272.50 not in accordance with RMC No. 66-2006. Hence, we find no error on the part of the CTA *En Banc* in denying petitioner's motion to withdraw. Petitioner's payment of ₱5,084,272.50, without the supporting documents, cannot be deemed substantial compliance as tax amnesty must be construed strictly against the taxpayer and liberally in favor of the taxing authority. Nevertheless, the amount of ₱5,084,272.50 paid by petitioner to the BIR must be considered as partial payment of petitioner's tax liability.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

A certificate of deposit need not be in a specific form; thus, a passbook of an interest-earning deposit account issued by a bank is a certificate of deposit drawing interest.[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the Decision[3] dated March 30, 2007 and the Resolution[4] dated October 30, 2007 of the Court of Tax Appeals (CTA) in CTA EB No. 185.

Factual Antecedents

Petitioner Prudential Bank[5] is a banking corporation organized and existing under Philippine law.[6] On July 23, 1999, petitioner received from the respondent Commissioner of Internal Revenue (CIR) a Final Assessment Notice No. ST-DST-95-0042-99 and a Demand Letter for deficiency Documentary Stamp Tax (DST) for the taxable year 1995 on its Repurchase Agreement with the *Bangko Sentral ng Pilipinas* [BSP], Purchase of Treasury Bills from the BSP, and on its Savings Account Plus [SAP] product, in the amount of ₱18,982,734.38, broken down as follows:

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[1] *International Exchange Bank v. Commissioner of Internal Revenue*, G.R. No. 171266, April 4, 2007, 520 SCRA 688, 697.

[2] *Rollo*, pp. 178-345, with Annexes "A" to "L" inclusive.

[3] *Id.* at 222-230; penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez.

[4] *Id.* at 232-235; penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez.

[5] On May 2, 2000, petitioner acquired the entire assets and liabilities of Pilipinas Bank through a merger. (*Id.* at 223-224)

[6] *Id.* at 223.

a.	*Repurchase Agreement — BSP Seller*		
Basic	1,656,000,000.00 x .30 / 200	₱2,484,000.00	
Add:	25% Surcharge	621,000.00	
	Compromise Penalty	25,000.00	₱3,130,000.00
b.	*Purchase of [Treasury] Bills from BSP*		
Basic	5,038,610,000.00 x .30 / 200	₱7,557,915.00	
Add:	25% Surcharge	1,889,478.75	
	Compromise Penalty	25,000.00	₱9,472,393.75
c.	*Savings Account Plus (page 1307 of the docket)*		
Basic	3,389,515,000.00 x .30 / 200	₱5,084,272.50	
Add:	25% Surcharge	1,271,068.13	
	Compromise Penalty	25,000.00	₱6,380,340.63
GRAND TOTAL			₱18,982,734.38[7]

Petitioner protested the assessment on the ground that the documents subject matter of the assessment are not subject to DST.[8] However, respondent denied[9] the protest on December 28, 2001.

Thus, petitioner filed a Petition for Review before the CTA which was raffled to its First Division and docketed as CTA Case No. 6396.[10]

Ruling of the First Division of the Court of Tax Appeals

On February 10, 2006, the First Division of the CTA affirmed the assessment for deficiency DST insofar as the SAP is

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[7] *Id.* at 224.

[8] *Id.* at 225.

[9] *Id.*

[10] *Id.*

concerned, but cancelled and set aside the assessment on petitioner's repurchase agreement and purchase of treasury bills[11] with the BSP. Thus, it disposed of the case as follows:

> WHEREFORE, the instant petition is hereby **PARTIALLY GRANTED.** The subject Decision of the Commissioner of Internal Revenue dated December 28, 2001 assessing petitioner of deficiency documentary stamp taxes is hereby **AFFIRMED** insofar as the Savings Account Plus is concerned. The deficiency assessment on petitioner's repurchase agreements and treasury bills are hereby **CANCELLED** and **SET ASIDE.**
>
> Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the reduced amount of ~~P~~6,355,340.63 plus 20% delinquency interest from August 23, 1999 up to the time such amount is fully paid pursuant to Section 249 (c) of the [old] NIRC, as amended, covered by Assessment Notice No. ST-DST-95-0042-99 as deficiency documentary stamp tax for the taxable year 1995, recomputed as follows:
>
> | | |
> |---|---|
> | **Savings Account Plus** | ~~P~~5,084,272.50 |
> | Add: 25% Surcharge | 1,271,068.13 |
> | **TOTAL** | **~~P~~6,355,340.63** |
>
> SO ORDERED.[12]

Petitioner moved for partial reconsideration but the same was denied by the First Division of the CTA in its Resolution dated May 22, 2006.[13]

Thus, petitioner appealed to the CTA *En Banc.*

Ruling of the Court of Tax Appeals En Banc

On March 30, 2007, the CTA *En Banc* denied the appeal for lack of merit. It affirmed the ruling of its First Division that petitioner's SAP is a certificate of deposit bearing interest subject to DST under Section 180 of the old National Internal

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[11] *Id.*

[12] *Id.* at 223.

[13] *Id.* at 225.

Revenue Code (NIRC), as amended by Republic Act (RA) No. 7660.[14]

Petitioner sought reconsideration but later moved to withdraw the same in view of its availment of the Improved Voluntary Assessment Program (IVAP) pursuant to Revenue Regulation (RR) No. 18-2006[15] in relation to RR No. 15-2006[16] and Revenue Memorandum Order (RMO) No. 23-2006.[17]

On October 30, 2007, the CTA *En Banc* rendered a Resolution[18] denying petitioner's motion to withdraw for non-compliance with the requirements for abatement. It found that the amount paid for purposes of the abatement program was not in accordance with Revenue Memorandum Circular (RMC) No. 66-2006,[19] which provides that the amount to be paid should be based on the original assessment or the court's decision, whichever is higher.[20] It also noted that petitioner failed to comply with RMO No. 23-2006, specifically with the requirement to submit the letter of termination and authority to cancel assessment

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[14] AN ACT RATIONALIZING FURTHER THE STRUCTURE AND ADMINISTRATION OF THE DOCUMENTARY STAMP TAX, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, ALLOCATING FUNDS FOR SPECIFIC PROGRAMS, AND FOR OTHER PURPOSES. December 23, 1993.

[15] Improved Voluntary Assessment Program (IVAP) for Taxable Year 2005 and Prior Years under Certain Conditions.

[16] Implementing a One-Time Administrative Abatement of all Penalties/ Surcharges and Interest on Delinquent Accounts and Assessments (Preliminary or Final, Disputed or Not) as of June 30, 2006.

[17] Prescribing the Guidelines and Procedures on the One-Time Administrative Abatement of all Penalties/Surcharges and Interest on Delinquent Accounts and Assessments (Preliminary or Final, Disputed or Not) as of June 30, 2006 as implemented by Revenue Regulations No. 15-2006.

[18] *Rollo*, pp. 232-235.

[19] Clarification to Revenue Regulations No. 15-2006 Implementing Section 204 (B) of the Tax Code, as amended.

[20] *Rollo*, pp. 233-234.

signed by the respondent.[21] In the same Resolution, the CTA *En Banc* denied petitioner's motion for reconsideration for lack of merit.[22]

Issues

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

I.

WHETHER X X X PETITIONER'S [SAP] WITH A HIGHER INTEREST IS SUBJECT TO DOCUMENTARY STAMP TAX.

II.

WHETHER X X X THE CTA *EN BANC* ERRED IN NOT ALLOWING THE WITHDRAWAL OF THE PETITION AND/OR CANCELLATION OF THE DST ASSESSMENT ON PETITIONER'S [SAP] ON THE GROUND THAT PETITIONER HAD ALREADY PAID AND SUBSTANTIALLY COMPLIED WITH RR NO. 15-2006 AND RMO NO. 23-2006.[23]

Petitioner's Arguments

Petitioner contends that its SAP is not subject to DST because it is not included in the list of documents under Section 180 of the old NIRC, as amended.[24] Petitioner insists that unlike a time deposit, its SAP is evidenced by a passbook and not by a deposit certificate.[25] In addition, its SAP is payable on demand and not on a fixed determinable future.[26] To support its position, petitioner relies on the legislative intent of the law prior to Republic Act (RA)

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[21] *Id.* at 234.

[22] *Id*.

[23] *Id.* at 414.

[24] *Id.* at 414-417.

[25] *Id.* at 419.

[26] *Id*.

No. 9243[27] and the historical background of the taxability of certificates of deposit.[28]

Petitioner further contends that even assuming that its SAP is subject to DST, the CTA *En Banc* nonetheless erred in denying petitioner's withdrawal of its petition considering that it has paid under the IVAP the amount of ₱5,084,272.50, which it claims is 100% of the basic tax of the original assessment of the Bureau of Internal Revenue (BIR).[29] Petitioner insists that the payment it made should be deemed substantial compliance considering the refusal of the respondent to issue the letter of termination and authority to cancel assessment.[30]

Respondent's Arguments

Respondent maintains that petitioner's SAP is subject to DST conformably with the ruling in *International Exchange Bank v. Commissioner of Internal Revenue*.[31] It also contends that the CTA *En Banc* correctly denied the motion to withdraw since petitioner failed to comply with the requirements of the IVAP.[32] Mere payment of the deficiency DST cannot be deemed substantial compliance as tax amnesty, like tax exemption, must be construed strictly against the taxpayer.[33]

Our Ruling

The petition lacks merit.

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[27] AN ACT RATIONALIZING THE PROVISIONS ON THE DOCUMENTARY STAMP TAX OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSE. Approved on February 17, 2004.

[28] *Rollo*, pp. 421-439.

[29] *Id.* at 440-443.

[30] *Id.* at 443.

[31] *Supra* note 1.

[32] *Rollo*, pp. 364-366.

[33] *Id.* at 367.

Petitioner's Savings Account Plus is subject to Documentary Stamp Tax.

DST is imposed on certificates of deposit bearing interest pursuant to Section 180 of the old NIRC, as amended, to wit:

> 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; bills 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 the 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 note 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 the documentary stamp tax provided under this section. (Emphasis supplied.)

A certificate of deposit is defined as "a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created."[34]

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[34] *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 170574, January 30, 2009,

In this case, petitioner claims that its SAP is not a certificate of deposit bearing interest because unlike a time deposit, its SAP is payable on demand and is evidenced by a passbook and not by a certificate of deposit.

We do not agree.

In *China Banking Corporation v. Commissioner of Internal Revenue*,[35] we held that the Savings Plus Deposit Account, which has the following features:

1. Amount deposited is withdrawable anytime;
2. The same is evidenced by a passbook;
3. The rate of interest offered is the prevailing market rate, provided the depositor would maintain his minimum balance in thirty (30) days at the minimum, and should he withdraw before the period, his deposit would earn the regular savings deposit rate;

is subject to DST as it is essentially the same as the Special/ Super Savings Deposit Account in *Philippine Banking Corporation v. Commissioner of Internal Revenue*,[36] and the Savings Account-Fixed Savings Deposit in *International Exchange Bank v. Commissioner of Internal Revenue*,[37] which are considered certificates of deposit drawing interests.[38]

Similarly, in this case, although the money deposited in a SAP is payable anytime, the withdrawal of the money before the expiration of 30 days results in the reduction of the interest rate.[39] In the same way, a time deposit withdrawn before its

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577 SCRA 366, 380, citing *Far East Bank and Trust Company v. Querimit,* 424 Phil. 721, 730 (2002).

[35] G.R. No. 172359, October 2, 2009, 602 SCRA 316, 332.

[36] *Supra* note 34.

[37] *Supra* note 1.

[38] *China Banking Corporation v. Commissioner of Internal Revenue, supra* note 35 at 331-332.

[39] *Rollo,* p. 359.

maturity results to a lower interest rate and payment of bank charges or penalties.[40]

The fact that the SAP is evidenced by a passbook likewise cannot remove its coverage from Section 180 of the old NIRC, as amended. A document to be considered a certificate of deposit need not be in a specific form.[41] Thus, a passbook issued by a bank qualifies as a certificate of deposit drawing interest because it is considered a written acknowledgement by a bank that it has accepted a deposit of a sum of money from a depositor.[42]

In view of the foregoing, we find that the CTA *En Banc* correctly affirmed the ruling of its First Division that petitioner's SAP is a certificate of deposit bearing interest and that the same is subject to DST.

The CTA En Banc's denial of petitioner's motion to withdraw is proper.

The CTA *En Banc* denied petitioner's motion to withdraw because it failed to show that it was able to comply with the requirements of IVAP.

To avail of the IVAP, a taxpayer must pay the 100% basic tax of the original assessment of the BIR or the CTA Decision, whichever is higher[43] and submit the letter of termination and

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[40] *International Exchange Bank v. Commissioner of Internal Revenue, supra* note 1 at 698-699.

[41] *Id.* at 697.

[42] *Id*.

[43] RMC No. 66-2006

Q-17 Can civil tax cases pending in courts, decision for which has not yet become final and executory, be the subject of abatement? If the amount already assessed by the BIR was reduced or increased based on the court's decision, what will be the basis of the abatement?

A-17 Yes. The amount of the original assessment or the court's decision **whichever is higher** shall be the basis for availment of abatement.

authority to cancel assessment signed by the respondent.[44] In this case, petitioner failed to submit the letter of termination and authority to cancel assessment as respondent found the payment of ₱5,084,272.50 not in accordance with RMC No. 66-2006. Hence, we find no error on the part of the CTA *En Banc* in denying petitioner's motion to withdraw.

Petitioner's payment of ₱5,084,272.50, without the supporting documents, cannot be deemed substantial compliance as tax amnesty must be construed strictly against the taxpayer and

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[44] RMO No. 23-2006

SECTION 4. PROCEDURES IN THE AVAILMENT OF THE ABATEMENT PROGRAM —

4.1 Any person/taxpayer, natural or juridical, with existing delinquent account or assessment which has been issued as of June 30, 2006, may avail of this Abatement Program.

4.2 Taxpayer may avail by submitting an application for abatement (Annex "A") for every tax type to the concerned office, as follows:

x x x x x x x x x

4.5 For cases pending in courts, the concerned taxpayer shall fully pay the amount equal to One Hundred Percent (100%) of the basic tax before the same should be withdrawn, following the existing legal procedures.

x x x x x x x x x

4.7 Within fifteen (15) days after payment of the basic tax, the following procedures shall be followed:

4.7.1 Attached proof of payment (Revenue Official Receipt/BIR Form 0605 with machine validation) and the application form to the docket of the case;

4.7.2 Prepare Termination Letter (Annex B) for every tax type for the signature of the Commissioner of Internal Revenue;

4.7.3 Prepare Authority to Cancel Assessment (Form 17.58-ATCA) to cancel assessments for penalties (surcharge, interest and compromise penalty), following the existing rules and procedures in RDAO 6-2001, to be signed only after the Termination Letter has been issued;

4.7.4 Thereafter, the docket of the case, page numbered and with Table of Contents, shall be forwarded to the Office of the Commissioner for the signature of the Termination Letter, through the Deputy Commissioner — Operations Group, Attention : The Assistant Commissioner for Collection;

x x x x x x x x x

liberally in favor of the taxing authority.[45] Nevertheless, the amount of ₱5,084,272.50 paid by petitioner to the BIR must be considered as partial payment of petitioner's tax liability.

WHEREFORE, the petition is hereby *DENIED.* The assailed Decision dated March 30, 2007 and the Resolution dated October 30, 2007 of the Court of Tax Appeals in CTA EB No. 185 are hereby *AFFIRMED* with *MODIFICATION* that petitioner Prudential Bank's payment be considered as partial payment of its tax liability.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 182042. July 27, 2011]

THUNDER SECURITY AND INVESTIGATION AGENCY/ LOURDES M. LASALA, *petitioner, vs.* **NATIONAL FOOD AUTHORITY (REGION I) and NFA REGIONAL BIDS AND AWARDS COMMITTEE (REGION I),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUISITES THAT MUST BE PROVED BEFORE A WRIT OF PRELIMINARY INJUNCTION, BE

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[45] *Commissioner of Internal Revenue v. Marubeni Corp.*, 423 Phil. 862, 874 (2001).

IT MANDATORY OR PROHIBITORY, WILL ISSUE.— The following requisites must be proved before a writ of preliminary injunction, be it mandatory or prohibitory, will issue: (1) **The applicant must have a clear and unmistakable right to be protected, that is a right *in esse***; (2) There is a material and substantial invasion of such right; (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

2. ID.; ID.; ID.; ID.; VITAL REQUISITES THAT THE APPLICANT MUST HAVE A CLEAR AND UNMISTAKEABLE RIGHT TO BE PROTECTED, THAT IS A RIGHT *IN ESSE*, WAS NOT ESTABLISHED; PETITIONER CANNOT LAY CLAIM TO AN ACTUAL, CLEAR AND POSITIVE RIGHT BASED ON AN EXPIRED CONTRACT.— In this case, it is apparent that when the RTC issued its December 1, 2005 Order, petitioner has no more legal rights under the service contract which already expired on September 15, 2003. Therefore, it has not met the first vital requisite that it must have material and substantial rights that have to be protected by the courts. It bears stressing that an injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not *in esse* and which may never arise, or to restrain an act which does not give rise to a cause of action. There must exist an actual right. Verily, petitioner cannot lay claim to an actual, clear and positive right based on an expired service contract.

3. ID.; ID.; ID.; ID.; NO COURT CAN COMPEL A PARTY TO AGREE TO A CONTRACT THROUGH THE INSTRUMENTALITY OF A PRELIMINARY INJUNCTION; A CONTRACT CAN BE RENEWED, REVIVED OR EXTENDED ONLY BY MUTUAL CONSENT OF THE PARTIES.— Well-entrenched in this jurisdiction that no court can compel a party to agree to a contract through the instrumentality of a writ of preliminary injunction. A contract can be renewed, revived or extended only by mutual consent of the parties. By issuing the assailed orders most particularly its December 1, 2005 Order, the RTC in effect extended the life of the parties' expired contract in clear contravention of our earlier pronouncements.

APPEARANCES OF COUNSEL

Rolando A. Villacorta for petitioner.
Office of the Government Corporate Counsel for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is a petition[1] for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse the Decision[2] dated July 18, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 93642, which set aside the Orders[3] dated August 27, 2003 and December 1, 2005 of the Regional Trial Court (RTC) of San Fernando City, La Union, Branch 66 in Civil Case No. 6846.

The facts are as follows:

Sometime in September 2002, petitioner Thunder Security and Investigation Agency, owned and operated by petitioner Lourdes M. Lasala as sole proprietor, entered into a Contract for Security Services[4] with respondent National Food Authority (NFA), Region I. The contract provided that Thunder Security will provide 132 security guards to safeguard the NFA's personnel, offices, facilities and properties in Region I for a period of one year from September 15, 2002 to September 15, 2003.

Subsequently, Republic Act (R.A.) No. 9184[5] was enacted on January 10, 2003, and took effect on January 26, 2003. Said law expressly repealed, among others, Executive Order

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[1] *Rollo*, pp. 8-15.

[2] *Id.* at 18-37. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Marina L. Buzon and Rosmari D. Carandang concurring.

[3] Records, pp. 111-116, 327-330.

[4] *Id.* at 11-16.

[5] Entitled, "AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES."

(E.O.) No. 40, Series of 2001[6] which governed the bidding procedure of service contracts in the Government.

Since petitioner's contract with the NFA was about to expire on September 15, 2003, the NFA caused the publication of an Invitation to Apply for Eligibility and to Bid on May 11 and 18, 2003, intended for all private security agencies.[7] Petitioner paid the bidding fee of ₱ 1,000.00 on May 21, 2003 to signify its intention to participate in the bidding process. However, on June 9, 2003, the NFA, through Assistant Regional Director Victoriano Molina, chairman of respondent NFA-Regional Bids and Awards Committee (NFA-RBAC), notified petitioner to submit the required documents not later than June 19, 2003 in order to qualify for the bidding.[8] On June 26, 2003, the NFA-RBAC informed petitioner that its application to bid had been rejected due to its failure to submit the required documents.[9] Aggrieved, petitioner sent a letter of protest to the NFA on July 10, 2003, contending that until the Implementing Rules and Regulations (IRR) of R.A. No. 9184 can be promulgated, no bidding should take place.[10] Notwithstanding, respondents rejected petitioner's application. Respondents defended their position, citing an instruction coming from then NFA Administrator Arthur C. Yap which directed that in the absence of the said IRR and due to the exigency of the service, respondents' projects

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[6] Entitled, "CONSOLIDATING PROCUREMENT RULES AND PROCEDURES FOR ALL NATIONAL GOVERNMENT AGENCIES, GOVERNMENT-OWNED OR -CONTROLLED CORPORATIONS AND GOVERNMENT FINANCIAL INSTITUTIONS, AND REQUIRING THE USE OF THE GOVERNMENT ELECTRONIC PROCUREMENT SYSTEM," issued on October 8, 2001.

[7] Records, p. 17.

[8] *Id.* at 19. Per notice, petitioner failed to submit clearances coming from the National Labor Relations Commission (NLRC), Social Security System (SSS), Philippine National Police-Security Agency Guard Supervision Division (PNP-SAGSD) or Philippine National Police-Firearms and Explosive Division (PNP-FED) and a Business Permit for the NFA's La Union branch.

[9] *Id.* at 20.

[10] *Id.* at 22.

would be temporarily guided by the provisions of E.O. No. 40, among others, provided the same are consistent with R.A. No. 9184.[11]

Unfazed, petitioner filed before the RTC a Petition[12] for Prohibition and Preliminary Injunction, with a prayer for the issuance of a Temporary Restraining Order (TRO) plus Damages, seeking, among others, to enjoin respondents from awarding the contract to another security agency. On August 8, 2003, the RTC issued a TRO against respondents.[13] Correlatively, in its Order[14] dated August 27, 2003, the RTC granted the writ of preliminary injunction in favor of petitioner and directed respondents to desist from terminating petitioner's services until further orders from the RTC. The RTC held that the composition and the orders of the NFA-RBAC were void because the IRR of R.A. No. 9184 has not yet been promulgated. The RTC also found that no observers from the private sector were present in the bidding process as required by law. The RTC ordered:

> WHEREFORE, premises considered[,] let [a] Writ of Preliminary Injunction [be issued] against respondents National Food Authority Region I and the Regional Bid and Awards Committee (RBAC) enjoining and restraining said respondents and all persons acting in their behalf from awarding the contract for security services in NFA Region I and from terminating the services of petitioner until further orders from the Court, upon payment of an Injunction Bond in the amount of Php50,000.00 in the name of the respondents to answer for any and all damages which the respondents may suffer in the event that the Court should finally decide that petitioner is not entitled to the issuance thereof.
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> Let the Pre-trial Conference of this case be set on September 22, 2003 at 2:00 o'clock in the afternoon.
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> SO ORDERED.[15]

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[11] *Id.* at 23-25.

[12] *Id.* at 30-39.

[13] *Id.* at 89.

[14] *Id.* at 111-116.

[15] *Id.* at 115.

Respondents filed a Motion for Reconsideration[16] on September 23, 2003, contending that per Minutes of the Meeting[17] for public bidding held on July 16, 2003, three independent observers were actually present, namely, Floriano S. Gallano, Jenny Lilan and Antonita S. Hagad. On October 8, 2003, IRR Part A[18] (IRR-A) of R.A. No. 9184 also took effect. Nonetheless, the RTC denied respondents' motion for reconsideration in its Order[19] dated December 1, 2005. Thus, respondents sought recourse from the CA by way of *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended, charging the RTC of grave abuse of discretion in the issuance of the said orders.[20]

On July 18, 2007, the CA granted the petition. It held that the RTC gravely abused its discretion when it issued the writ of preliminary injunction against respondents despite the utter lack of basis and justification for its issuance. The CA highlighted that while IRR-A of R.A. No. 9184 took effect on October 8, 2003,[21] and thus could not have been applied by the RTC in its August 27, 2003 Order, its failure to consider the said IRR-A in resolving respondents' motion for reconsideration amounted to grave abuse of discretion. The CA added that contrary to the trial court's ruling, there were three observers present during the bidding process, as shown by the Minutes of the Meeting for public bidding held on July 16, 2003. The CA further opined that petitioner did not appear to possess a clear legal right to enjoin the awarding of the contract considering that petitioner's right to participate in the bidding was itself dubious as petitioner failed to submit the necessary documents required by respondents.

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

[17] *Id.* at 154-156.

[18] Entitled, "IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184 OTHERWISE KNOWN AS THE GOVERNMENT PROCUREMENT REFORM ACT."

[19] *Supra* note 3.

[20] CA *rollo*, pp. 2-21.

[21] The CA decision erroneously stated that IRR-A of R.A. No. 9184 took effect on October 7, 2003; *supra* note 2 at 33.

However, the CA clarified that its decision was merely focused on the issue of the impropriety of the issuance of the writ of preliminary injunction and not on the issues of the propriety of the award of the contract and damages. Thus, the CA held that the latter issues should still be heard by the RTC.[22] The dispositive portion of the CA decision reads:

> WHEREFORE, in view of the foregoing, the instant **PETITION** is hereby **GRANTED**. The Orders issued by Branch 66 of the Regional Trial Court of San Fernando City, La Union dated August 27, 2003 and December 1, 2005 in Civil Case No. 6846 are hereby **SET ASIDE**.
>
> SO ORDERED.[23]

Petitioner filed a Motion for Reconsideration[24] but the CA denied the same in its Resolution[25] dated March 5, 2008.

Hence, this petition which raised the following issues:

1. Whether the Court of Appeals committed a reversible error when it held that the respondents did not err in applying E.O. 40 in the conduct of the bidding[;]
2. Whether the Court of Appeals committed a reversible error when it held that there was no irregularity attending the questioned bidding[; and]
3. Whether the Court of Appeals committed a reversible error when it reversed the Orders of [the RTC] granting injunctive relief to herein petitioner[.][26]

Petitioner emphasizes that R.A No. 9184, which expressly repealed E.O. No. 40, was already in force at the time the bidding was conducted in this case on July 16, 2003; hence, it was error for the NFA and the NFA-RBAC to conduct the public bidding in accordance with E.O. No. 40. Petitioner also

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[22] *Supra* note 2.

[23] *Id.* at 36.

[24] CA *rollo*, pp. 258-259.

[25] *Rollo*, pp. 39-40.

[26] *Id.* at 65.

abandons its initial stance regarding the need for implementing rules and regulations, and now argues that even without its IRR, R.A. No. 9184 can be understood and enforced. Petitioner adds that there is no provision of law or jurisprudence which requires that there must first be an IRR before a law takes effect, and adds that NFA Administrator Arthur C. Yap and his subordinates cannot suspend the operation of R.A. No. 9184 and order that bidding be conducted in accordance with E.O. No. 40 which was already repealed. Petitioner also insists that there was an irregularity in the bidding process as the observers presented by respondents were allegedly not independent and cannot be relied upon to observe the process diligently. Petitioner further insists that the presence or absence of observers in the bidding process is a question of fact which the CA cannot tackle in a petition for *certiorari* under Rule 65. As such, the CA should have remanded the case to the RTC for the determination of the question of fact.[27]

On the other hand, respondents through the Office of the Government Corporate Counsel (OGCC), counter that petitioner failed to present any evidence before the RTC and the CA to substantiate its claim that the NFA-RBAC was not constituted in accordance with R.A. No. 9184. Having alleged a violation of law, it was incumbent upon petitioner to prove by sufficient evidence that there was indeed such violation. The OGCC points out that unlike petitioner, respondents were able to prove sufficiently that there were actually three observers present during the bidding process, which fact the RTC failed to consider. Moreover, the OGCC argues that respondents' reliance on E.O. No. 40, pending the promulgation of the IRR of R.A. No. 9184, was allowed by Section 77[28] of IRR-A. There was likewise no violation of any clear and unmistakable right of petitioner as to

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[27] *Id.* at 66-72.

[28] Section 77. Transitory Clause

In all procurement activities, if the advertisement or invitation for bids was issued prior to the effectivity of the Act, the provisions of E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be, shall govern.

warrant the issuance of the writ of preliminary injunction. The OGCC points out that the rejection of petitioner's application was actually petitioner's own fault because petitioner failed to submit the necessary documents despite several notices. Finally, the OGCC stresses that the trial court judge issued the writ of preliminary injunction in violation of the law and with grave abuse of discretion because it effectively and indefinitely renewed and extended the contract between the parties contrary to jurisprudence that no court can compel a party to agree to a contract through the instrumentality of a writ of preliminary injunction.[29]

Essentially, the sole issue for our resolution is whether the CA erred in setting aside the RTC orders which granted injunctive relief to petitioner.

The petition is bereft of merit.

Section 3, Rule 58 of the 1997 Rules of Civil Procedure, as amended, provides the grounds for the issuance of a preliminary injunction:

SEC. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or nonperformance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

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In cases where the advertisements or invitations for bids were issued after the effectivity of the Act but before the effectivity of this IRR-A, procuring entities may continue adopting the procurement procedures, rules and regulations provided in E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be.

[29] *Rollo,* pp. 85-90.

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Based on the foregoing provision, we held in *Philippine Ports Authority v. Cipres Stevedoring & Arrastre, Inc.*,[30] to wit:

A preliminary injunction is an order granted at any stage of an action prior to judgment of final order, requiring a party, court, agency, or person to refrain from a particular act or acts. It is a preservative remedy to ensure the protection of a party's substantive rights or interests pending the final judgment in the principal action. A plea for an injunctive writ lies upon the existence of a claimed emergency or extraordinary situation which should be avoided for otherwise, the outcome of a litigation would be useless as far as the party applying for the writ is concerned.

At times referred to as the "Strong Arm of Equity," we have consistently ruled that there is no power the exercise of which is more delicate and which calls for greater circumspection than the issuance of an injunction. It should only be extended in cases of great injury where courts of law cannot afford an adequate or commensurate remedy in damages; "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one, and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation."

For the writ to issue, two requisites must be present, namely, the existence of the right to be protected, and that the facts against which the injunction is to be directed are violative of said right. It is necessary that one must show an unquestionable right over the premises.[31]

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[30] G.R. No. 145742, July 14, 2005, 463 SCRA 358.

[31] *Id.* at 373-374. Citations omitted and emphasis supplied.

Thus, the following requisites must be proved before a writ of preliminary injunction, be it mandatory or prohibitory, will issue:

(1) **The applicant must have a clear and unmistakable right to be protected, that is a right *in esse***;

(2) There is a material and substantial invasion of such right;

(3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and

(4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[32]

In this case, it is apparent that when the RTC issued its December 1, 2005 Order, petitioner has no more legal rights under the service contract which already expired on September 15, 2003. Therefore, it has not met the first vital requisite that it must have material and substantial rights that have to be protected by the courts.[33] It bears stressing that an injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not *in esse* and which may never arise, or to restrain an act which does not give rise to a cause of action. There must exist an actual right.[34] Verily, petitioner cannot lay claim to an actual, clear and positive right based on an expired service contract.

Moreover, well-entrenched in this jurisdiction that no court can compel a party to agree to a contract through the

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[32] *St. James College of Parañaque v. Equitable PCI Bank*, G.R. No. 179441, August 9, 2010, 627 SCRA 328, 344, citing *Biñan Steel Corporation v. Court of Appeals*, G.R. Nos. 142013 & 148430, October 15, 2002, 391 SCRA 90; and *Hutchison Ports Philippines Ltd. v. Subic Bay Metropolitan Authority*, G.R. No. 131367, August 31, 2000, 339 SCRA 434. Emphasis supplied.

[33] *Manila International Airport Authority v. Olongapo Maintenance Services, Inc.*, G.R. Nos. 146184-85, 161117 and 167827, January 31, 2008, 543 SCRA 269, 288-289.

[34] *Go v. Villanueva, Jr.*, G.R. No. 154623, March 13, 2009, 581 SCRA 126, 133-134, citing *Republic v. Villarama, Jr.*, G.R. No. 117733, September 5, 1997, 278 SCRA 736, 749.

instrumentality of a writ of preliminary injunction.[35] A contract can be renewed, revived or extended only by mutual consent of the parties.[36] By issuing the assailed orders most particularly its December 1, 2005 Order, the RTC in effect extended the life of the parties' expired contract in clear contravention of our earlier pronouncements.

In sum, we find that the CA committed no reversible error in rendering the assailed decision which would warrant the modification, much less, the reversal thereof.

WHEREFORE, the instant petition for review on *certiorari* is *DENIED*. The Decision dated July 18, 2007 of the Court of Appeals in CA-G.R. SP No. 93642 is *AFFIRMED*.

With costs against the petitioner.

SO ORDERED.

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

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[35] See *Manila International Airport Authority v. Olongapo Maintenance Services, Inc., supra* note 33 at 289; *Light Rail Transit Authority v. Court of Appeals*, G.R. Nos. 139275-76 and 140949, November 25, 2004, 444 SCRA 125, 139; and *National Food Authority v. Court of Appeals*, G.R. Nos. 115121-25, February 9, 1996, 253 SCRA 470, 479.

[36] *Light Rail Transit Authority v. Court of Appeals*, *id.*

FIRST DIVISION

[G.R. No. 182551. July 27, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROSENDO REBUCAN *y* LAMSIN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; ANY PROOF AGAINST THE ACCUSED MUST SURVIVE THE TEST OF REASON FOR IT IS ONLY WHEN THE CONSCIENCE IS SATISFIED THAT THE PERPETRATOR OF THE CRIME IS THE PERSON ON TRIAL SHOULD THERE BE A JUDGMENT OF CONVICTION.— Basic is the rule that in order to affirm the conviction of an accused person, the prosecution must establish his guilt beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. Ultimately, what the law simply requires is that any proof against the accused must survive the test of reason for it is only when the conscience is satisfied that the perpetrator of the crime is the person on trial should there be a judgment of conviction. A finding of guilt must rest on the strength of the prosecution's own evidence, not on the weakness or even absence of evidence for the defense.

2. ID.; ID.; CREDIBILITY OF WITNESSES; BEST DETERMINED BY TRIAL COURTS.— In the case at bar, the RTC gave more weight to the testimony of Carmela Tagpis in establishing the presence of treachery in the manner with which the accused-appellant carried out the violent killings of Felipe and Ranil. In this regard, we reiterate the established doctrine articulated in *People v. De Guzman* that: In the resolution of the factual issues, the court relies heavily on the trial court for its evaluation of the witnesses and their credibility. Having the opportunity to observe them on the stand, the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line

may not be discernible from a mere reading of the impersonal record by the reviewing court. x x x. Moreover, we have oftentimes ruled that the Court will not interfere with the judgment of the trial court in determining the credibility of witnesses unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.

3. ID.; ID.; ID.; CREDIBILITY OF CHILD WITNESS, UPHELD.— Although the accused-appellant painted a contrasting picture on the matter, *i.e.*, that the attack was preceded by a fight between him and Felipe, the Court is less inclined to be persuaded by the accused-appellant's version of the events in question. Indeed, the Court has ruled that the testimony of children of sound mind is "more correct and truthful than that of older persons" and that "children of sound mind are likely to be more observant of incidents which take place within their view than older persons, and their testimonies are likely more correct in detail than that of older persons." In the instant case, Carmela was cross-examined by the defense counsel but she remained steadfast and consistent in her statements. Thus, the Court fails to see any reason to distrust the testimony of Carmela.

4. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; EXPOUNDED.— In the instant case, the evidence of the prosecution established the fact that the killings of Felipe and Ranil were attended by treachery, thus qualifying the same to murder. According to Article 248 of the Revised Penal Code, as amended, any person who shall kill another shall be guilty of murder if the same was committed with the attendant circumstance of treachery, among other things, and that the situation does not fall within the provisions of Article 246. There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The essence of treachery is a deliberate and sudden attack, offering an unarmed and unsuspecting victim no chance to resist or to escape. There is treachery even if the attack is frontal if it is sudden and unexpected, with the victims having no opportunity to repel it or defend themselves, for what is decisive in treachery is that the execution of the

attack made it impossible for the victims to defend themselves or to retaliate.

5. ID.; ID.; ID.; ID.; THE ABRUPTNESS OF THE UNEXPECTED ASSAULT RENDERED THE VICTIM, WHO WAS CARRYING HIS GRANDSON, DEFENSELESS AND DEPRIVED HIM OF ANY OPPORTUNITY TO REPEL THE ATTACK; THE KILLING OF THE CHILD IS ALSO CHARACTERIZED BY TREACHERY EVEN IF THE MANNER OF THE ASSAULT IS NOT SHOWN FOR THE WEAKNESS OF THE CHILD DUE TO HIS TENDER YEARS RESULTS IN THE ABSENCE OF ANY DANGER TO THE ACCUSED.— As can be gleaned from the above testimony, Carmela firmly and categorically pointed to the accused-appellant as the person who entered the house of Felipe. She clearly stated that the attack was not preceded by any fight or altercation between the accused-appellant and Felipe. Without any provocation, the accused-appellant suddenly delivered fatal hacking blows to Felipe. The abruptness of the unexpected assault rendered Felipe defenseless and deprived him of any opportunity to repel the attack and retaliate. As Felipe was carrying his grandson Ranil, the child unfortunately suffered the same fatal end as that of his grandfather. In the killing of Ranil, the trial court likewise correctly appreciated the existence of treachery. The said circumstance may be properly considered, even when the victim of the attack was not the one whom the defendant intended to kill, if it appears from the evidence that neither of the two persons could in any manner put up defense against the attack or become aware of it. Furthermore, the killing of a child is characterized by treachery even if the manner of assault is not shown. For the weakness of the victim due to his tender years results in the absence of any danger to the accused.

6. ID.; ID.; ACCUSED-APPELLANT SHOULD BE HELD LIABLE FOR TWO (2) SEPARATE COUNTS OF MURDER, NOT THE COMPLEX CRIME OF DOUBLE MURDER.— With regard to the conflicting rulings of the RTC and the Court of Appeals *vis-à-vis* the nature of crimes committed, we agree with the appellate court that the accused-appellant should be held liable for two (2) separate counts of murder, not the complex crime of double murder. Article 48 of the Revised Penal Code provides that "[w]hen a single act constitutes two

or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." There are, thus, two kinds of complex crimes. The first is known as compound crime, or when a single act constitutes two or more grave or less grave felonies. The second is known as complex crime proper, or when an offense is a necessary means for committing the other. The Court finds that there is a paucity of evidence to prove that the instant case falls under any of the two classes of complex crimes. The evidence of the prosecution failed to clearly and indubitably establish the fact that Felipe and Ranil were killed by a single fatal hacking blow from the accused-appellant. The eyewitness testimony of Carmela did not contain any detail as to this material fact. To a greater degree, it was neither proven that the murder of Felipe was committed as a necessary means for committing and/or facilitating the murder of Ranil and *vice versa*. As the factual milieu of the case at bar excludes the application of Article 48 of the Revised Penal Code, the accused-appellant should be made liable for two separate and distinct acts of murder. In the past, when two crimes have been improperly designated as a complex crime, this Court has affirmed the conviction of the accused for the component crimes separately instead of the complex crime.

7. ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; NOT ESTABLISHED; THE PROSECUTION FAILED TO ADDUCE ANY EVIDENCE THAT TENDED TO ESTABLISH THE EXACT MOMENT WHEN ACCUSED-APPELLANT DEVISED A PLAN TO KILL THE VICTIM, THAT THE LATTER CLUNG TO HIS DETERMINATION TO CARRY OUT THE PLAN AND THAT SUFFICIENT TIME HAD ELAPSED BEFORE HE CARRIED OUT HIS PLAN.— The Court finds erroneous, however, the trial court's and the Court of Appeals' appreciation of the aggravating circumstance of evident premeditation. For evident premeditation to aggravate a crime, there must be proof, as clear as the evidence of the crime itself, of the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that he clung to his determination; and (3) sufficient lapse of time, between determination and execution, to allow himself to reflect upon

the consequences of his act. It is not enough that evident premeditation is suspected or surmised, but criminal intent must be evidenced by notorious outward acts evidencing determination to commit the crime. In order to be considered an aggravation of the offense, the circumstance must not merely be "premeditation"; it must be "evident premeditation." In the case at bar, the evidence of the prosecution failed to establish any of the elements of evident premeditation since the testimonies they presented pertained to the period of the actual commission of the crime and the events that occurred thereafter. The prosecution failed to adduce any evidence that tended to establish the exact moment when the accused-appellant devised a plan to kill Felipe, that the latter clung to his determination to carry out the plan and that a sufficient time had lapsed before he carried out his plan.

8. ID.; ID.; ABUSE OF SUPERIOR STRENGTH; THE CIRCUMSTANCE IS ABSORBED BY TREACHERY.— Likewise, the trial court erred in appreciating the aggravating circumstances of abuse of superior strength, dwelling, minority and intoxication. When the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter. On the other hand, dwelling, minority and intoxication cannot be appreciated as aggravating circumstances in the instant case considering that the same were not alleged and/or specified in the information that was filed on January 23, 2003. Under the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, a generic aggravating circumstance will not be appreciated by the Court unless alleged in the information. This requirement is laid down in Sections 8 and 9 of Rule 110.

9. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; PROPERLY APPRECIATED IN CASE AT BAR.— In the determination of the penalty to be imposed on the accused-appellant, we uphold the trial court's ruling that the mitigating circumstance of voluntary surrender should be appreciated. For voluntary surrender to mitigate criminal liability, the following elements must concur: (1) the offender has not been actually arrested; (2) the offender surrenders himself to a person in authority or to the latter's agent; and (3) the surrender is voluntary. To be sufficient, the surrender

must be spontaneous and made in a manner clearly indicating the intent of the accused to surrender unconditionally, either because they acknowledge their guilt or wish to save the authorities the trouble and the expense that will necessarily be incurred in searching for and capturing them. The accused-appellant has duly established in this case that, after the attack on Felipe and Ranil, he surrendered unconditionally to the *barangay* chairperson and to the police on his own volition and before he was actually arrested. The prosecution also admitted this circumstance of voluntary surrender during trial.

10. ID.; ID.; ACT WAS COMMITTED IN THE IMMEDIATE VINDICATION OF A GRAVE OFFENSE; NOT APPLICABLE WHEN THE ACCUSED HAD SUFFICIENT TIME TO RECOVER HIS EQUANIMITY; A PERIOD OF FOUR DAYS WAS SUFFICIENT TIME WITHIN WHICH ACCUSED-APPELLANT IN CASE AT BAR COULD HAVE REGAINED HIS COMPOSURE AND SELF-CONTROL.— As regards the mitigating circumstance of immediate vindication of a grave offense, the same cannot likewise be appreciated in the instant case. Article 13, paragraph 5 of the Revised Penal Code requires that the act be "committed in the immediate vindication of a grave offense to the one committing the felony (*delito*), his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees." The established rule is that there can be no immediate vindication of a grave offense when the accused had sufficient time to recover his equanimity. In the case at bar, the accused-appellant points to the alleged attempt of Felipe and Timboy Lagera on the virtue of his wife as the grave offense for which he sought immediate vindication. He testified that he learned of the same from his stepson, Raymond, on November 2, 2002. Four days thereafter, on November 6, 2002, the accused-appellant carried out the attack that led to the deaths of Felipe and Ranil. To our mind, a period of four days was sufficient enough a time within which the accused-appellant could have regained his composure and self-control. Thus, the said mitigating circumstance cannot be credited in favor of the accused-appellant.

11. ID.; ALTERNATIVE CIRCUMSTANCES; INTOXICATION; ACCUSED-APPELLANT IS NOT ENTITLED TO THE MITIGATING CIRCUMSTANCE OF INTOXICATION

SINCE HIS OWN TESTIMONY FAILED TO SUBSTANTIATE HIS CLAIM OF DRUNKENNESS DURING THE INCIDENT IN QUESTION.— The third paragraph of Article 15 of the Revised Penal Code provides that the intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance. The Court finds that the accused-appellant is not entitled to the mitigating circumstance of intoxication since his own testimony failed to substantiate his claim of drunkenness during the incident in question. During his cross-examination, the accused-appellant himself positively stated that he was only a bit tipsy but not drunk when he proceeded to the house of Felipe. He cannot, therefore, be allowed to make a contrary assertion on appeal and pray for the mitigation of the crimes he committed on the basis thereof.

12. ID.; PENALTIES; *RECLUSION PERPETUA* FOR EACH COUNT OF MURDER IS THE PROPER IMPOSABLE PENALTY IN CASE AT BAR.— Article 248 of the Revised Penal Code, as amended, prescribes the penalty of *reclusion perpetua* to death for the crime of murder. In this case, apart from the qualifying circumstance of treachery, the prosecution failed to prove the existence of any other aggravating circumstance in both the murders of Felipe and Ranil. On the other hand, as the presence of the lone mitigating circumstance of voluntary surrender was properly established in both instances, Article 63, paragraph 3 of the Revised Penal Code mandates that the proper penalty to be imposed on the accused-appellant is *reclusion perpetua* for each of the two counts of murder.

13. ID.; CIVIL LIABILITY; DAMAGES THAT MAY BE IMPOSED WHEN DEATH OCCURS DUE TO A CRIME.— Anent the award of damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. The RTC awarded in favor of the heirs of Felipe and Ranil the amounts of ₱75,000.00 as civil indemnity and ₱75,000.00 as

moral damages for each set of heirs. The Court of Appeals, on the other hand, reduced the aforesaid amounts to ₱50,000.00 and further awarded the amount of ₱25,000.00 as exemplary damages to the heirs of the victim. Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Similarly, moral damages may be awarded by the court for the mental anguish suffered by the heirs of the victim by reason of the latter's death. The purpose for making such an award is not to enrich the heirs of the victim but to compensate them for injuries to their feelings. The award of exemplary damages, on the other hand, is provided under Articles 2229-2230 of the Civil Code. x x x In *People v. Dalisay*, the Court clarified that "[b]eing corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award." Thus, we affirm the Court of Appeals' award of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. The award of exemplary damages is, however, increased to ₱30,000.00 in accordance with the prevailing jurisprudence. As held in *People v. Combate*, when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, the proper amounts that should be awarded are ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages. In lieu of actual or compensatory damages, the Court further orders the award of ₱25,000.00 temperate damages to the heirs of the two victims in this case. The award of ₱25,000.00 for temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary loss, although the exact amount was not proven.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Assailed before this Court is the Decision[1] dated August 21, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 00282, which modified the Decision[2] dated November 3, 2003 of the Regional Trial Court (RTC) of Carigara, Leyte, Branch 13, in Criminal Case No. 4232. In the Decision of the Court of Appeals, the accused-appellant Rosendo Rebucan *y* Lamsin was adjudged guilty beyond reasonable doubt of two (2) separate counts of murder and was sentenced to suffer the penalty of *reclusion perpetua* for each count.

On January 23, 2003, the accused-appellant was charged with the crime of double murder in an Information, the accusatory portion of which reads:

> That on or about the 6th day of November, 2002, in the Municipality of Carigara, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and wound FELIPE LAGERA *Y* OBERO, 65 years old and RANIL TAGPIS *Y* LAGERA, 1 year old, with the use of a long bolo (*sundang*) which the accused had provided himself for the purpose, thereby inflicting upon Felipe Lagera:
>
> Hypovolemic shock, massive blood loss and multiple hacking wounds upon Ranil Tagpis:
>
> Hypovolemic shock, massive blood loss and hacking wound, head[,] which wounds caused the death of Felipe Lagera *y* Obera and Ranil Tagpis *y* Lagera, immediately thereafter.[3]

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[1] *Rollo*, pp. 4-28; penned by Associate Justice Francisco P. Acosta with Associate Justices Agustin S. Dizon and Stephen C. Cruz, concurring.

[2] CA *rollo*, pp. 69-83; penned by Presiding Judge Crisostomo L. Garrido.

[3] Records, p. 1.

When arraigned on February 10, 2003, the accused-appellant pleaded not guilty to the charge.[4] Trial, thereafter, ensued.

The prosecution presented as witnesses: (1) Dr. Ma. Bella V. Profetana, Municipal Health Officer of Carigara, Leyte; (2) Carmela Tagpis, the 5-year-old granddaughter of the victim Felipe Lagera and sister of the victim Ranil Tagpis, Jr.;[5] (3) Adoracion Lagera, the wife of Felipe Lagera; and (4) Alma Tagpis, the daughter of Felipe Lagera and mother of Ranil Tagpis, Jr.

Dr. Profetana testified that she conducted a post-mortem examination on the body of the victim Felipe Lagera on November 6, 2002. She stated that Felipe sustained three hacking wounds, the first of which was located at his right arm and was about 23x2x4 centimeters. The said wound was fatal and could have been caused by a sharp instrument such as a bolo. The second wound was located at Felipe's "nose maxillary area,"[6] measuring 13 centimeters, with an inverted C shape. The second wound was not fatal and could have been caused by a sharp-edged instrument like a bolo. The third wound was located at Felipe's left arm and was measured as 9x1x1.5 centimeters. The said wound was fatal and could have likewise been caused by a sharp-edged instrument. Dr. Profetana concluded that the causes of death of Felipe were hypovolemic shock, massive blood loss and multiple hacking wounds. She also conducted a post-mortem examination on the body of Ranil Tagpis, Jr. on the aforementioned date. The results revealed that Ranil sustained a hacking wound at the "fronto-temporal area"[7] with a skull fracture. In the case of Ranil, the cause of death was "hypovolemic shock secondary to massive blood loss secondary to [the] hacking

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[4] *Id.* at 17.

[5] Also referred to as Ramil Tagpis, Jr. and Ranel Tagpis, Jr. in other parts of the records.

[6] TSN, February 18, 2003, p. 5.

[7] *Id.* at 8.

wound to the head."[8] The instrument that was most likely used was sharp-edged like a bolo.[9]

Carmela Tagpis testified as an eyewitness to the incident in question. She pointed to the accused-appellant as the "Bata Endong"[10] (Uncle Endong) who hacked her grandfather and brother. She stated that Ranil was hit in the forehead, while Felipe was hit on the face, the left shoulder and the right shoulder. After Felipe was hacked by the accused-appellant, the former was still able to walk outside of his house, to the direction of the coconut tree and thereafter fell to the ground. Carmela said that she saw that a long bolo was used in the killing of Felipe and Ranil. She related that Felipe also owned a bolo but he was not able to use the same when he was attacked. She was then inside the house with Felipe and her two younger brothers, Jericho and Bitoy (Ranil). She was sitting about four meters away when the hacking incident occurred indoors.[11]

On cross-examination, Carmela stated that at the time of the incident, she was playing with a toy camera inside the house and she was situated beside a chicken cage, near a bench. Felipe was also there near the bench and he was carrying Ranil in his right arm. When asked whether the accused-appellant came inside the house in a sudden manner, Carmela answered in the affirmative. She insisted that Ranil was indeed carried by Felipe when the accused-appellant entered the house. She said that no fight or altercation occurred between Felipe and the accused-appellant. After Felipe was hacked, he immediately ran outside of the house. Carmela and Jericho then ran to the back of the house.[12]

Adoracion Lagera testified that at 4:00 p.m. on November 6, 2002, she was at the house of a certain Justiniano Rance. After

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[8] *Id.*

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

[10] TSN, February 24, 2003, p. 3.

[11] *Id.* at 3-5.

[12] *Id.* at 6-9.

arriving there, she was fetched by a little boy who told her to go home because Felipe had been hacked. She ran towards the direction of her house. When she got there, she saw the lifeless body of Felipe sprawled on the ground. She then went inside the house and found her daughter, Alma Tagpis, cuddling the body of Ranil whose head was wounded. She told Alma to look for a motor vehicle to bring the child to the hospital. She also found out that the other two children, Carmela and Jericho, hid when they saw Felipe being hacked. When she asked them who went to their house, Carmela told her that it was the accused-appellant who entered their house and hacked the victims.[13]

Alma Tagpis testified that at about 4:00 p.m. on November 6, 2002, she was in Brgy. Sogod, having their *palay* (unhusked rice grain) milled. Shortly thereafter, she went home and proceeded to the house of her father, Felipe, where she left her children. She then met a person looking for her mother who was about to tell the latter that Felipe was hacked. When she rushed to Felipe's house, she saw him lying in the grassy place, wounded and motionless. She asked Felipe who hacked him, but he was not able to answer anymore. She went inside the house and saw blood on the floor and the feet of her son Ranil. Thinking that the killer was still inside, she went to the back of the house and pulled a slot of board on the wall so she could get inside. Upon seeing the body of Ranil, she took him and ran towards the road. She was able to bring Ranil to the hospital, but the doctor already pronounced him dead. Her other two children, Carmela and Jericho, soon arrived at the hospital with the police. When she asked them who killed Felipe, Carmela answered that it was the accused-appellant.[14]

Thereafter, the prosecution formally offered the following documentary evidence, to wit: (1) Exhibit A — the Post-mortem Examination Report on Felipe;[15] (2) Exhibit B — the sketch of

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[13] TSN, March 4, 2003, pp. 3-5.

[14] TSN, March 21, 2003, pp. 3-6.

[15] Records, Folder of Exhibits, p. 1.

the human anatomy indicating the wounds sustained by Felipe;[16] (3) Exhibit C — the Certificate of Death of Felipe;[17] (4) Exhibit D — the Post-mortem Examination Report on Ranil;[18] (5) Exhibit E — the sketch of the human anatomy indicating the wounds sustained by Ranil;[19] and (6) Exhibit F — the Certificate of Death of Ranil.[20]

The defense, on the other hand, presented the following witnesses, namely: (1) Raymond Rance, the stepson of the accused-appellant; (2) Renerio Arminal,[21] the *barangay* chairperson of Brgy. Canlampay, Carigara, Leyte; (3) Arnulfo Alberca, a member of the Philippine National Police (PNP) stationed at Carigara, Leyte; and (4) the accused-appellant Rosendo Rebucan *y* Lamsin.

Raymond Rance testified that his mother's name is Marites Rance. The accused-appellant is not his biological father but the former helped in providing for his basic needs. He narrated that on the night of July 18, 2002, he saw Felipe Lagera inside their house. Felipe placed himself on top of Raymond's mother, who was lying down. Raymond and his younger sister, Enda, were then sleeping beside their mother and they were awakened. His mother kept pushing Felipe away and she eventually succeeded in driving him out. In the evening of July 20, 2002, at about 11:00 p.m., Raymond recounted that he saw Felipe's son, Artemio *alias* Timboy, inside their house. Timboy was able to go upstairs and kept trying to place himself on top of Raymond's mother. The latter got mad and pushed Timboy away. She even pushed him down the stairs. The accused-appellant was working in Manila when the aforesaid incidents happened. Raymond said

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[16] *Id.* at 2.

[17] *Id.* at 3.

[18] *Id.* at 4.

[19] *Id.* at 5.

[20] *Id.* at 6.

[21] Also referred to as Reinerio Arminal, Penerio Arminal and Renerio Arcenal in other parts of the records.

that his mother thereafter left for Manila. Subsequently, he saw the accused-appellant at the house of a certain Bernie, several days after the accused-appellant arrived in Leyte. He told the accused-appellant about the incidents involving Felipe and Timboy. On November 6, 2002, Raymond and the accused were already living in the same house. On the said date, the accused-appellant left their house after they had lunch and he told Raymond that he was going to call the latter's mother. Raymond testified that the accused-appellant is a good man and was supportive of his family. He also stated that the accused-appellant seldom drank liquor and even if he did get drunk, he did not cause any trouble.[22]

Renerio Arminal testified that on November 6, 2002, the accused-appellant surrendered to him. The latter came to him alone and told him that he (the accused-appellant) fought with Felipe Lagera. Arminal then ordered the human rights action officer, Ricky Irlandez, and the chief *tanod*, Pedro Oledan, to bring the accused-appellant to the police station. Afterwards, the police officers came to his place and he accompanied them to the house of Felipe.[23]

Arnulfo Alberca was likewise called upon to the witness stand to prove that the voluntary surrender of the accused-appellant was entered into the records of the police blotter. He was asked to read in open court the Police Blotter Entry No. 5885 dated November 6, 2002, which recorded the fact of voluntary surrender of the accused-appellant. His testimony was no longer presented, however, since the prosecution already admitted the contents of the blotter.[24]

The accused-appellant testified that he arrived in Carigara, Leyte from Manila on August 15, 2002. He went to the house of his elder brother, Hilario, to look for his children. There, he learned that his wife went to Manila and his brother was taking

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[22] TSN, April 9, 2003, pp. 4-15.

[23] TSN, June 24, 2003, pp. 3-4.

[24] TSN, July 21, 2003, p. 3.

care of his two children and his stepson, Raymond. On November 2, 2002, he saw Raymond at the place of his friend, Bernie Donaldo. He asked Raymond why the latter's mother went to Manila and he was told that, while he was still in Manila, Felipe and Timboy Lagera went to their house and tried to place themselves on top of his wife. He then said that he harbored ill feelings towards the said men but he was able to control the same for the sake of his children. On November 6, 2002, at about 2:00 p.m., he went to the house of *barangay* chairperson Arminal to place a call to his wife who was in Manila. He was carrying a bolo at that time since he was using the same to cut cassava stems in his farm. When he talked to his wife, she confirmed that she was sexually molested by Felipe and Timboy. Thereafter, as the accused-appellant proceeded to go home, it rained heavily so he first sought shelter at the place of his friend, Enok. The latter was drinking gin and he was offered a drink. After staying there and drinking for half an hour, the accused-appellant decided to go home. Afterwards, he remembered that he had to buy kerosene so he went to the store of Felipe Lagera.[25]

The accused-appellant further testified that when he reached the house of Felipe, the latter was feeding chickens. When Felipe asked him what was his business in going there, he confronted Felipe about the alleged sexual abuse of his wife. Felipe allegedly claimed that the accused-appellant had a bad purpose for being there and that the latter wanted to start a fight. Accused-appellant denied the accusation and responded that Felipe should not get angry, as it was he (Felipe) who committed a wrong against him and his wife. Felipe allegedly got mad and hurled the cover of a chicken cage at him, but he was able to parry it with his hand. The accused-appellant then drew his long bolo and hacked Felipe on the left side of the abdomen, as the latter was already turning and about to run to the house. He also went inside the house since Felipe might get hold of a weapon. When they were both inside and he was about to deliver a second hacking blow, Felipe held up and

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[25] TSN, July 31, 2003, pp. 2-11.

used the child Ranil as a shield. As the second hacking blow was delivered suddenly, he was not able to withdraw the same anymore such that the blow landed on Ranil. When he saw that he hit the child, he got angry and delivered a third hacking blow on Felipe, which landed on the right side of the latter's neck. Thereafter, Felipe ran outside. He followed Felipe and hacked him again, which blow hit the victim's upper left arm. At that time, Felipe was already on the yard of his house and was about to run towards the road. He then left and surrendered to the *barangay* chairperson.[26]

During his cross-examination, the accused-appellant said that he was a bit tipsy when he proceeded to Felipe's house, but he was not drunk. When Felipe ran inside the house after the first hacking blow, the accused-appellant stated that he had no intention to back out because he was thinking that the victim might get a gun and use the same against him. The accused-appellant also asserted that when he was about to deliver the second hacking blow, Felipe simultaneously took Ranil who was sitting on a sack and used him to shield the blow. There was a long bolo nearby but Felipe was not able to take hold of the same because the accused-appellant was chasing him. He admitted that he had a plan to kill Felipe but claimed that when he arrived at the latter's house on the day of the attack, he had no intention to kill him.[27]

The defense also presented the following documentary evidence: (1) Exhibit 1 — the Police Blotter Entry No. 5885 dated November 6, 2002;[28] and (2) Exhibit 2 — the Civil Marriage Contract of Rosendo Rebucan and Marites Rance.[29]

On November 3, 2003, the RTC rendered a decision, convicting the accused-appellant of the crime of double murder. The trial court elucidated thus:

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[26] *Id.* at 11-16.

[27] TSN, August 1, 2003, pp. 27-32.

[28] Records, Folder of Exhibits, pp. 7-8.

[29] *Id.* at 9.

[In view of] the vivid portrayal of Raymond on how [the wife of the accused] was sexually abused by the father and son Lagera, the accused hatched a decision to avenge his wife's sexual molestation. Days had passed, but this decision to kill Felipe did not wither, instead it became stronger, that on the 6th of November 2002, he armed himself with a sharp long bolo known as "*sundang*" and went to Brgy. Canlampay, Carigara, Leyte where the victim live[d]. Fueled by hatred and the spirit of London gin after consuming one bottle with his compadre "Enok," he decided to execute his evil deeds by going to the house of Felipe Lagera, in the guise of buying kerosene and once inside the house hacked and wounded the victim, Felipe Lagera who was then holding in his arm his grandson, one and half years 1 ½ old, Ramil Tagpis, Jr.

The manner by which the accused adopted in killing the victim, Felipe Lagera, and Ramil Tagpis, Jr. was a premeditated decision and executed with treachery.

x x x x x x x x x

There is credence to the testimony of the minor eyewitness Carmela Tagpis that the victim, Felipe was holding in his arms her younger brother, Ramil Tagpis, Jr. inside his house, when the accused entered, and without any warning or provocation coming from the victim, the accused immediately delivered several hacking blows on the victim giving no regard to the innocent child in the arms of Lagera. With this precarious situation, the victim who was unarmed has no opportunity to put up his defense against the unlawful aggression of the accused, moreso, to retaliate. Moreover, what defense could an innocent 1 ½ years old Ramil Tagpis, Jr. put up against the armed and superior strength of the accused, but to leave his fate to God.

The circumstance that the attack was sudden and unexpected and the victims, unarmed, were caught totally unprepared to defend themselves qualifies the crime committed as murder. x x x.

After the incident, the accused Rosendo Rebucan immediately went to the house of Brgy. Chairman, Renerio Arcenal at sitio Palali, Brgy. Canlampay, Carigara, Leyte, to surrender, because he killed Felipe Lagera and Ramil Tagpis, Jr. The Brgy. Chairman instructed his Brgy. Human Rights Action Officer, Ricky Irlandez and his Chief Tanod, Pedro Oledan to bring Rosendo to the Police Authorities of Carigara, Leyte. This fact of voluntary surrender was corroborated

by Police Officer Arnulfo Alberca, who presented to Court the police blotter, under entry No. 5885, dated November 6, 2002, of the PNP, Carigara, Leyte.

Clearly, the act of the accused in surrendering to the authorities showed his intent to submit himself unconditionally to them, to save the authorities from trouble and expenses that they would incur for his capture. For this reason, he has complied with the requisites of voluntary surrender as a mitigating circumstance[.] x x x.

From the circumstances obtaining, the mitigating circumstances of admission and voluntary surrender credited to the accused are not sufficient to offset the aggravating circumstances of: a) **evident premeditation**; b) **treachery (alevosia)**; c) **dwelling** — the crime was committed at the house of the victim; d) **intoxication** — the accused fueled himself with the spirit of London gin prior to the commission of the crime; e) **abuse of superior strength**; and f) **minority**, in so far as the child victim, Ramil Tagpis, Jr. is concerned, pursuant to Article 63 of the Revised Penal Code as amended. x x x.

x x x x x x x x x

In the mind of the Court, the prosecution has substantially established the quantum of evidence to prove the guilt of the accused beyond reasonable doubt.[30]

The RTC, thus, decreed:

WHEREFORE, premises considered, pursuant to Sec. 6, Art. 248 of the Revised Penal Code, as amended and further amended by R.A. 7659 (The Death Penalty Law), the Court found accused ROSENDO REBUCAN *y* LAMSIN, GUILTY beyond reasonable doubt of the crime of **DOUBLE MURDER** charged under the information and sentenced to suffer the maximum penalty of **DEATH**, and to pay civil indemnity to the heirs of Felipe Lagera and Ramil Tagpis, Jr. in the amount of Seventy-Five Thousand (**₱75,000.00**) Pesos for each victim and moral damages in the amount of Seventy-Five Thousand (**₱75,000.00**) Pesos to each; and

Pay the Cost.[31] (Emphases ours.)

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[30] CA *rollo*, pp. 80-83.

[31] *Id.* at 83.

The case was originally elevated to this Court on automatic review and the same was docketed as G.R. No. 161706.[32] The parties, thereafter, submitted their respective appeal briefs.[33] In our Resolution[34] dated July 19, 2005, we ordered the transfer of the case to the Court of Appeals for appropriate disposition, pursuant to our ruling in *People v. Mateo*.[35] Before the appellate court, the case was docketed as CA-G.R. CR-H.C. No. 00282.

The Court of Appeals promulgated the assailed decision on August 21, 2007, modifying the judgment of the RTC. The appellate court adopted the position of the Office of the Solicitor General (OSG) that the felonious acts of the accused-appellant resulted in two separate crimes of murder as the evidence of the prosecution failed to prove the existence of a complex crime of double murder. The Court of Appeals subscribed to the findings of the RTC that the killing of Felipe Lagera was attended by the aggravating circumstances of treachery and evident premeditation. With respect to the ensuant mitigating circumstances, the Court of Appeals credited the circumstance of voluntary surrender in favor of the accused-appellant, but rejected the appreciation of intoxication, immediate vindication of a grave offense and voluntary confession. As for the death of Ranil, the appellate court also ruled that the same was attended by the aggravating circumstance of treachery and the mitigating circumstance of voluntary surrender. Thus, the Court of Appeals disposed of the case as follows:

> WHEREFORE, **IN VIEW OF THE FOREGOING**, the Decision appealed from is hereby **MODIFIED**. As modified, accused-appellant is hereby adjudged guilty beyond reasonable doubt for two (2) counts of murder for the deaths of Felipe Lagera and Ramil Tagpis, Jr., and is hereby sentenced to suffer the penalty of *reclusion perpetua* for **each** count of murder he has committed.

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[32] *Id.* at 35.

[33] *Id.* at 50-68 and 116-156.

[34] *Rollo*, p. 3.

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

The award of civil indemnity is reduced to ₱50,000.00 for each victim; the award of moral damages is likewise reduced to ₱50,000.00 for each victim. Further, exemplary damages in the amount of ₱25,000.00 is awarded to the heirs of each victim.[36]

The accused-appellant filed a Notice of Appeal[37] of the above decision. In a Resolution[38] dated February 6, 2008, the Court of Appeals ordered that the records of the case be forwarded to this Court.

On June 18, 2008, we resolved to accept the appeal and required the parties to file their respective supplemental briefs, if they so desire, within thirty days from notice.[39] Thereafter, both parties manifested that they were adopting the briefs they filed before the Court of Appeals and will no longer file their respective supplemental briefs.[40]

The accused-appellant sets forth the following assignment of errors:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF MURDER.

II

THE COURT *A QUO* GRAVELY ERRED IN FAILING TO APPRECIATE THE MITIGATING CIRCUMSTANCE OF IMMEDIATE VINDICATION OF A GRAVE OFFENSE IN FAVOR OF THE ACCUSED-APPELLANT.

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[36] *Rollo*, pp. 27-28.

[37] *Id.* at 29.

[38] *Id.* at 32-33; penned by Associate Justice Francisco P. Acosta with Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier, concurring.

[39] *Id.* at 35.

[40] *Id.* at 36-37 and 39-42.

III

THE COURT *A QUO* GRAVELY ERRED IN FAILING TO APPRECIATE INTOXICATION AS A MITIGATING CIRCUMSTANCE IN FAVOR OF THE ACCUSED-APPELLANT.

IV

THE COURT *A QUO* GRAVELY ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCES OF DWELLING, ABUSE OF SUPERIOR STRENGTH AND MINORITY.[41]

The accused-appellant admits to the killing of Felipe but denies that the crime was committed with treachery and evident premeditation. He argues that there is doubt as to the presence of treachery given that there was no eyewitness who categorically stated that the accused-appellant attacked the victims suddenly, thereby depriving them of the means to defend themselves. He brushed aside the testimony of Carmela Tagpis, insisting that she was not in a position to say that there was no altercation between him and Felipe, which could have put the latter on guard. The prosecution allegedly failed to prove that the accused-appellant intentionally waited for the time when Felipe would be defenseless before initiating the attack. The fact that he voluntarily surrendered to the *barangay* chairperson and the police and admitted the killings supposedly showed that it was not intentional and he did not consciously adopt the method of attack upon the two victims. The accused-appellant similarly rejects the finding of the RTC that there was evident premeditation on his part since the prosecution failed to prove that he deliberately planned the killing of Felipe.

The accused-appellant maintains that at the time of the incident, he was still unable to control his anger as he just recently discovered that his wife was sexually abused by Felipe and the latter's son, Timboy. He also avers that he was a bit intoxicated when the crime took place so that he was not in total control of himself. He claims that he is not a habitual drinker and that he merely consumed the alcohol prior to the incident in order to

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[41] *Id.* at 52-53.

appease his friend. He likewise argues that the aggravating circumstance of dwelling should not have been appreciated inasmuch as the same was not alleged in the information. Moreover, the aggravating circumstance of abuse of superior strength cannot be appreciated since he did not deliberately harm or attack Ranil Tagpis, Jr. and the death of the latter was accidental. The accused-appellant prays that he should only be found guilty of the crime of homicide with the mitigating circumstances of voluntary surrender, immediate vindication of a grave offense and intoxication.

The appeal lacks merit.

Basic is the rule that in order to affirm the conviction of an accused person, the prosecution must establish his guilt beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.[42] Ultimately, what the law simply requires is that any proof against the accused must survive the test of reason for it is only when the conscience is satisfied that the perpetrator of the crime is the person on trial should there be a judgment of conviction.[43] A finding of guilt must rest on the strength of the prosecution's own evidence, not on the weakness or even absence of evidence for the defense.[44]

In the instant case, the evidence of the prosecution established the fact that the killings of Felipe and Ranil were attended by treachery, thus qualifying the same to murder.

According to Article 248[45] of the Revised Penal Code, as amended, any person who shall kill another shall be guilty of

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[42] Rules of Court, Rule 133, Section 2.

[43] *People v. De La Cruz*, 358 Phil. 513, 519 (1998).

[44] *People v. Reyes and Llaguno*, 349 Phil. 39, 58 (1998).

[45] The entire provision states:

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

murder if the same was committed with the attendant circumstance of treachery, among other things, and that the situation does not fall within the provisions of Article 246.[46] There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[47] The essence of treachery is a deliberate and sudden attack, offering an unarmed and unsuspecting victim no chance to resist or to escape. There is treachery even if the attack is frontal if it is sudden and unexpected, with the victims having no opportunity to repel it or defend themselves, for what is decisive in treachery is that the execution of the attack made it impossible for the victims to defend themselves or to retaliate.[48]

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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 of or assault upon a railroad, fall of an airship, or 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 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. (As amended by Republic Act No. 7659.)

[46] Art. 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death. (As amended by Republic Act No. 7659.)

[47] Revised Penal Code, Article 14, par. 16, as amended.

[48] *People v. Badriago*, G.R. No. 183566, May 8, 2009, 587 SCRA 820, 833.

In the case at bar, the RTC gave more weight to the testimony of Carmela Tagpis in establishing the presence of treachery in the manner with which the accused-appellant carried out the violent killings of Felipe and Ranil. In this regard, we reiterate the established doctrine articulated in *People v. De Guzman*[49] that:

> In the resolution of the factual issues, the court relies heavily on the trial court for its evaluation of the witnesses and their credibility. Having the opportunity to observe them on the stand, the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. x x x.[50]

Moreover, we have oftentimes ruled that the Court will not interfere with the judgment of the trial court in determining the credibility of witnesses unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.[51]

Carmela testified as follows:

PROS. TORREVILLAS:

Q: Do you have a brother named Ranil Tagpis, Jr.?
A: Yes sir.

Q: Where is he now?
A: He is dead.

Q: Do you know the circumstance of his death?
A: Yes sir.

Q: Why did he die?
A: Because he was hacked by Bata Endong.

Q: Do you know also your grandfather Felipe Lagera, Jr.?
A: Yes sir.

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[49] G.R. No. 76742, August 7, 1990, 188 SCRA 407.

[50] *Id.* at 410-411.

[51] *People v. Gutierrez*, 393 Phil. 863, 874 (2000).

Q: Where is he now?
A: He is dead also.

Q: Why did he die?
A: Because he was hacked by Bata Endong.

Q: Is the person your Bata Endong here in the court room who hacked your brother and your grandfather?
A: Yes sir.

COURT INTERPRETER:

Witness pointing to a person when asked of his name identified himself as Rosendo Rebucan.

x x x x x x x x x

Q: What instrument did the accused use in killing your [brother and] your grandfather?
A: Long bolo, sundang.

Q: Were you able to see that long bolo?
A: Yes sir.

x x x x x x x x x

Q: Was your grandfather armed that time?
A: He has his own bolo but he placed it on the holder of the long bolo.

Q: Was that long bolo used by your grandfather?
A: No sir.

x x x x x x x x x

Q: How far were you to the incident, when this hacking incident happened?
A: (witness indicating a distance of about 4 meters).

x x x x x x x x x

COURT:

Cross.

ATTY. DICO:

Q: You stated awhile ago that your brother Jericho, Bitoy [Ranil] and you and your papo Felipe were at the house of your papo Felipe?
A: Yes sir.

Q: You mean to say that there were no other persons present in that house other than you four (4)?
A: Yes sir.

x x x x x x x x x

Q: So, you were playing that toy camera inside the room of your papo Felipe?
A: No sir, I was playing then at the side of the chicken cage.

Q: Is that chicken cage was inside or outside the house of your papo Felipe's house?
A: Inside the house of my grandfather.

x x x x x x x x x

Q: Was your brother Ranil carried by your grandfather Felipe?
A: Yes sir.
He was carried by his right arm.

Q: So, you mean to say that your uncle Endo went inside, it was so sudden?
A: Yes sir.

Q: Because it was sudden, you were not able to do anything, what did you do?
A: I then cried at that time.

x x x x x x x x x

Q: But you are sure that when your uncle Endo entered as you said that your brother Ramil was carried by your papo Felipe?

A: Yes sir.

Q: Did your uncle Endo and your papo Felipe fight or was there an altercation?

A: No sir.[52]

As can be gleaned from the above testimony, Carmela firmly and categorically pointed to the accused-appellant as the person who entered the house of Felipe. She clearly stated that the attack was not preceded by any fight or altercation between the

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[52] TSN, February 24, 2003, pp. 3-9.

accused-appellant and Felipe. Without any provocation, the accused-appellant suddenly delivered fatal hacking blows to Felipe. The abruptness of the unexpected assault rendered Felipe defenseless and deprived him of any opportunity to repel the attack and retaliate. As Felipe was carrying his grandson Ranil, the child unfortunately suffered the same fatal end as that of his grandfather. In the killing of Ranil, the trial court likewise correctly appreciated the existence of treachery. The said circumstance may be properly considered, even when the victim of the attack was not the one whom the defendant intended to kill, if it appears from the evidence that neither of the two persons could in any manner put up defense against the attack or become aware of it.[53] Furthermore, the killing of a child is characterized by treachery even if the manner of assault is not shown. For the weakness of the victim due to his tender years results in the absence of any danger to the accused.[54]

Although the accused-appellant painted a contrasting picture on the matter, *i.e.*, that the attack was preceded by a fight between him and Felipe, the Court is less inclined to be persuaded by the accused-appellant's version of the events in question. Indeed, the Court has ruled that the testimony of children of sound mind is "more correct and truthful than that of older persons" and that "children of sound mind are likely to be more observant of incidents which take place within their view than older persons, and their testimonies are likely more correct in detail than that of older persons."[55] In the instant case, Carmela was cross-examined by the defense counsel but she remained steadfast and consistent in her statements. Thus, the Court fails to see any reason to distrust the testimony of Carmela.

Incidentally, the testimony of the accused-appellant not only contradicts that of Carmela, but some portions thereof do not

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[53] *People v. Iligan and Basao*, 369 Phil. 1005, 1038 (1999).

[54] *People v. Cabarrubias*, G.R. Nos. 94709-10, June 15, 1993, 223 SCRA 363, 369.

[55] *People v. Bisda*, 454 Phil. 194, 224 (2003).

also conform to the documentary evidence admitted by the trial court. The testimony of Dr. Profetana and the sketch of the human anatomy of Felipe, which was marked as Exhibit B for the prosecution, stated that Felipe sustained three hacking wounds that were found on his right arm, at his "nose maxillary area"[56] and on his left arm. On the other hand, the accused-appellant testified that he delivered four hacking blows on Felipe, the three of which landed on the left side of the victim's abdomen, the right side of his neck and on his upper left arm. When confronted on the said apparently conflicting statements, the accused-appellant did not offer any explanation.[57]

Therefore, on the strength of the evidence of the prosecution, we sustain the ruling of the RTC and the Court of Appeals that the circumstance of treachery qualified the killings of Felipe and Ranil to murder.

The Court finds erroneous, however, the trial court's and the Court of Appeals' appreciation of the aggravating circumstance of evident premeditation. For evident premeditation to aggravate a crime, there must be proof, as clear as the evidence of the crime itself, of the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that he clung to his determination; and (3) sufficient lapse of time, between determination and execution, to allow himself to reflect upon the consequences of his act.[58] It is not enough that evident premeditation is suspected or surmised, but criminal intent must be evidenced by notorious outward acts evidencing determination to commit the crime. In order to be considered an aggravation of the offense, the circumstance must not merely be "premeditation"; it must be "evident premeditation."[59] In the case at bar, the evidence of the prosecution failed to establish any of the elements of evident premeditation

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[56] TSN, February 18, 2003, p. 5.

[57] TSN, August 1, 2003, p. 29.

[58] *People v. Cual*, 384 Phil. 361, 380 (2000).

[59] *People v. Torejas*, 150 Phil. 179, 195-196 (1972).

since the testimonies they presented pertained to the period of the actual commission of the crime and the events that occurred thereafter. The prosecution failed to adduce any evidence that tended to establish the exact moment when the accused-appellant devised a plan to kill Felipe, that the latter clung to his determination to carry out the plan and that a sufficient time had lapsed before he carried out his plan.

Likewise, the trial court erred in appreciating the aggravating circumstances of abuse of superior strength, dwelling, minority and intoxication. When the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter.[60] On the other hand, dwelling, minority and intoxication cannot be appreciated as aggravating circumstances in the instant case considering that the same were not alleged and/or specified in the information that was filed on January 23, 2003. Under the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, a generic aggravating circumstance will not be appreciated by the Court unless alleged in the information. This requirement is laid down in Sections 8 and 9 of Rule 110, to wit:

> SEC. 8. *Designation of the offense*. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.
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> SEC. 9. *Cause of the accusation*. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

With regard to the conflicting rulings of the RTC and the Court of Appeals *vis-à-vis* the nature of crimes committed, we

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[60] *People v. Caballero*, 448 Phil. 514, 536 (2003).

agree with the appellate court that the accused-appellant should be held liable for two (2) separate counts of murder, not the complex crime of double murder.

Article 48 of the Revised Penal Code provides that "[w]hen a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." There are, thus, two kinds of complex crimes. The first is known as compound crime, or when a single act constitutes two or more grave or less grave felonies. The second is known as complex crime proper, or when an offense is a necessary means for committing the other.[61]

The Court finds that there is a paucity of evidence to prove that the instant case falls under any of the two classes of complex crimes. The evidence of the prosecution failed to clearly and indubitably establish the fact that Felipe and Ranil were killed by a single fatal hacking blow from the accused-appellant. The eyewitness testimony of Carmela did not contain any detail as to this material fact. To a greater degree, it was neither proven that the murder of Felipe was committed as a necessary means for committing and/or facilitating the murder of Ranil and *vice versa*. As the factual milieu of the case at bar excludes the application of Article 48 of the Revised Penal Code, the accused-appellant should be made liable for two separate and distinct acts of murder. In the past, when two crimes have been improperly designated as a complex crime, this Court has affirmed the conviction of the accused for the component crimes separately instead of the complex crime.[62]

In the determination of the penalty to be imposed on the accused-appellant, we uphold the trial court's ruling that the

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[61] *People v. Gaffud, Jr.*, G.R. No. 168050, September 19, 2008, 566 SCRA 76, 88.

[62] See *People v. Pantoja*, 134 Phil. 453, 455-456 (1968); *People v. Tilos*, 141 Phil. 428, 431 (1969); *People v. Bermas*, 369 Phil. 191, 237-238 (1999); *People v. Latupan*, 412 Phil. 477, 487-488 (2001).

mitigating circumstance of voluntary surrender should be appreciated. For voluntary surrender to mitigate criminal liability, the following elements must concur: (1) the offender has not been actually arrested; (2) the offender surrenders himself to a person in authority or to the latter's agent; and (3) the surrender is voluntary.[63] To be sufficient, the surrender must be spontaneous and made in a manner clearly indicating the intent of the accused to surrender unconditionally, either because they acknowledge their guilt or wish to save the authorities the trouble and the expense that will necessarily be incurred in searching for and capturing them.[64] The accused-appellant has duly established in this case that, after the attack on Felipe and Ranil, he surrendered unconditionally to the *barangay* chairperson and to the police on his own volition and before he was actually arrested. The prosecution also admitted this circumstance of voluntary surrender during trial.

We reject, however, the accused-appellant's contention that the trial court erred in failing to appreciate the mitigating circumstances of intoxication and immediate vindication of a grave offense.

The third paragraph of Article 15 of the Revised Penal Code provides that the intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance. The Court finds that the accused-appellant is not entitled to the mitigating circumstance of intoxication since his own testimony failed to substantiate his claim of drunkenness during the incident in question. During his cross-examination, the accused-appellant himself positively stated that he was only a bit tipsy but not drunk when he proceeded to the house of Felipe.[65] He cannot,

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[63] *Ladiana v. People*, 441 Phil. 733, 756-757 (2002).

[64] *Id*.

[65] TSN, August 1, 2003, p. 27.

therefore, be allowed to make a contrary assertion on appeal and pray for the mitigation of the crimes he committed on the basis thereof.

As regards the mitigating circumstance of immediate vindication of a grave offense, the same cannot likewise be appreciated in the instant case. Article 13, paragraph 5 of the Revised Penal Code requires that the act be "committed in the immediate vindication of a grave offense to the one committing the felony (*delito*), his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees." The established rule is that there can be no immediate vindication of a grave offense when the accused had sufficient time to recover his equanimity.[66] In the case at bar, the accused-appellant points to the alleged attempt of Felipe and Timboy Lagera on the virtue of his wife as the grave offense for which he sought immediate vindication. He testified that he learned of the same from his stepson, Raymond, on November 2, 2002. Four days thereafter, on November 6, 2002, the accused-appellant carried out the attack that led to the deaths of Felipe and Ranil. To our mind, a period of four days was sufficient enough a time within which the accused-appellant could have regained his composure and self-control. Thus, the said mitigating circumstance cannot be credited in favor of the accused-appellant.

Article 248 of the Revised Penal Code, as amended, prescribes the penalty of *reclusion perpetua* to death for the crime of murder. In this case, apart from the qualifying circumstance of treachery, the prosecution failed to prove the existence of any other aggravating circumstance in both the murders of Felipe and Ranil. On the other hand, as the presence of the lone mitigating circumstance of voluntary surrender was properly established in both instances, Article 63, paragraph 3 of the Revised Penal Code[67] mandates that the proper penalty to be

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[66] *People v. Palabrica*, 409 Phil. 618, 630 (2001).

[67] Art. 63. *Rules for the application of indivisible penalties*. — In all cases in which the law prescribes a single indivisible penalty, it shall be

imposed on the accused-appellant is *reclusion perpetua* for each of the two counts of murder.

Anent the award of damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[68]

The RTC awarded in favor of the heirs of Felipe and Ranil the amounts of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages for each set of heirs. The Court of Appeals, on the other hand, reduced the aforesaid amounts to ₱50,000.00 and further awarded the amount of ₱25,000.00 as exemplary damages to the heirs of the victim.

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[69] Similarly, moral damages may be awarded by the court for the mental anguish suffered by the heirs of the victim by reason of the latter's death. The purpose for making such an award is not to enrich the heirs of the victim but to compensate them for injuries to their feelings.[70] The award of exemplary damages, on the other hand, is provided under Articles 2229-2230 of the Civil Code, *viz*:

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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:

x x x x x x x x x

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

[68] *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 699.

[69] *People v. Lusabio, Jr.*, G.R. No. 186119, October 27, 2009, 604 SCRA 565, 592.

[70] *People v. Flores*, 466 Phil. 683, 696 (2004).

Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

In *People v. Dalisay*,[71] the Court clarified that "[b]eing corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award."[72]

Thus, we affirm the Court of Appeals' award of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. The award of exemplary damages is, however, increased to ₱30,000.00 in accordance with the prevailing jurisprudence. As held in *People v. Combate*,[73] when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, the proper amounts that should be awarded are ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages.

In lieu of actual or compensatory damages, the Court further orders the award of ₱25,000.00 temperate damages to the heirs of the two victims in this case. The award of ₱25,000.00 for temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate

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[71] G.R. No. 188106, November 25, 2009, 605 SCRA 807.

[72] *Id.* at 820.

[73] G.R. No. 189301, December 15, 2010. See also *People v. Sabella*, G.R. No. 183092, May 30, 2011.

damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary loss, although the exact amount was not proven.[74]

WHEREFORE, the Court hereby *AFFIRMS* with *MODIFICATION* the Decision dated August 21, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 00282. The accused-appellant Rosendo Rebucan *y* Lamsin is found *GUILTY* of two (2) counts of murder for the deaths of Felipe Lagera and Ranil Tagpis, Jr. and is hereby sentenced to suffer the penalty of *reclusion perpetua* for each count. The accused-appellant is further ordered to indemnify the respective heirs of the victims Felipe Lagera and Ranil Tagpis, Jr. the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages and ₱25,000.00 as temperate damages for each victim, plus legal interest on all damages awarded at the rate of 6% from the date of the finality of this decision. No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, del Castillo, and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 186417. July 27, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FELIPE MIRANDILLA, JR.,** *defendant-appellant.*

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[74] *People v. Lusabio, Jr., supra* note 69 at 593.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FOR TESTIMONIAL EVIDENCE TO BE BELIEVED, IT MUST NOT ONLY COME FROM A CREDIBLE WITNESS BUT MUST BE CREDIBLE IN ITSELF, TESTED BY HUMAN EXPERIENCE, OBSERVATION, COMMON KNOWLEDGE AND ACCEPTED CONDUCT THAT HAS EVOLVED THROUGH THE YEARS.— Jurisprudence is consistent that for testimonial evidence to be believed, it must not only come from a credible witness but must be credible in itself – tested by human experience, observation, common knowledge and accepted conduct that has evolved through the years. *Daggers v. Van Dyck*, illuminates: Evidence to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself — such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance. *First*, the trial judge, who had the opportunity of observing AAA's manner and demeanour on the witness stand, was convinced of her credibility: "AAA appeared to be a simple and truthful woman, whose testimony was consistent, steady and firm, free from any material and serious contradictions." The court continued: The record nowhere yields any evidence of ill motive on the part of AAA to influence her in fabricating criminal charges against Felipe Mirandilla, Jr. The absence of ill motive enhances the standing of AAA as a witness. x x x. When AAA testified in court, she was sobbing. While she was facing Felipe Mirandilla, Jr., to positively identify him in open court, she was crying. Felipe Mirandilla Jr.'s response was to smile. AAA was a picture of a woman who was gravely harmed, craving for justice. x x x. *Second*, the trial court found AAA's testimony to be credible in itself. AAA's ordeal was entered into the police blotter immediately after her escape, negating opportunity for concoction. While in Mirandilla's company, none of her parents, brothers, sisters, relatives, classmates, or anyone who knew her, visited, saw, or talked to her. None of them knew her whereabouts. AAA's testimony was corroborated by Dr. Sarah

Vasquez, Legazpi City's Health Officer, who discovered the presence not only of hymenal lacerations but also gonorrhoea, a sexually transmitted disease. More importantly, AAA remained consistent in the midst of gruelling cross examination. The defense lawyer tried to impeach her testimony, but failed to do so.

2. ID.; ID.; "SWEETHEART THEORY"; NOT PROVEN.— Accused's bare invocation of sweetheart theory cannot alone, stand. To be credible, it must be corroborated by documentary, testimonial, or other evidence. Usually, these are letters, notes, photos, mementos, or credible testimonies of those who know the lovers. The sweetheart theory as a defense, however, necessarily admits carnal knowledge, the first element of rape. Effectively, it leaves the prosecution the burden to prove only force or intimidation, the coupling element of rape. Love, is not a license for lust. This admission makes the sweetheart theory more difficult to defend, for it is not only an affirmative defense that needs convincing proof; after the prosecution has successfully established a *prima facie* case, the burden of evidence is shifted to the accused, who has to adduce evidence that the intercourse was consensual.

3. ID.; ID.; ID.; ASSESSMENT BY THE TRIAL COURT OF A WITNESS' CREDIBILITY WHEN AFFIRMED BY THE APPELLATE COURT IS CONCLUSIVE AND BINDING.— The Court of Appeals confirmed AAA's credibility in affirming the RTC decision. We emphasize that a trial court's assessment of a witness' credibility, when affirmed by the CA, is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight or influence. This is so because of the judicial experience that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed firsthand their deportment and manner of testifying under gruelling examination. Thus, in *Estioca v. People,* we held: In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following principles: (1) the reviewing court will not disturb the findings of the lower courts, unless there is a showing that it overlooked or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even

finality, as it had the opportunity to examine their demeanour when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.

4. ID.; ID.; WHERE THE CONTRADICTIONS CANNOT BE RECONCILED, THE COURT HAS TO REJECT THE TESTIMONIES AND APPLY THE MAXIM, *FALSUS IN UNO, FALSUS IN OMNIBUS*.— Taken individually and as a whole, the defense witnesses' testimonies contradicted each other and flip-flopped on material facts, constraining this Court to infer that they concocted stories in a desperate attempt to exonerate the accused. As a rule, self-contradictions and contradictory statement of witnesses should be reconciled, it being true that such is possible since a witness is not expected to give error-free testimony considering the lapse of time and the treachery of human memory. But, this principle, learned from lessons of human experience, applies only to minor or trivial matters — innocent lapses that do not affect witness' credibility. They do not apply to self-contradictions on material facts. Where these contradictions cannot be reconciled, the Court has to reject the testimonies, and apply the maxim, *falsus in uno, falsus in omnibus.* Thus, To completely disregard all the testimony of a witness based on the maxim *falsus in uno, falsus in omnibus,* testimony must have been false as to a material point, and the witness must have a conscious and deliberate intention to falsify a material point. In other words, its requirements, which must concur, are the following: (1) that the false testimony is as to one or more material points; and (2) that there should be a conscious and deliberate intention to falsity.

5. ID.; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN CRIMINAL CASE OPENS THE ENTIRE CASE FOR REVIEW ON ANY QUESTION, INCLUDING ONE NOT RAISED BY THE PARTIES.— An appeal in criminal case opens the entire case for review on any question, including one not raised by the parties. This was our pronouncement in the 1902 landmark case of *U.S. v. Abijan,* which is now embodied in Section 11, Rule 124 of the Rules of Court: SEC. 11. *Scope of Judgment.* — The Court of Appeals may reverse, affirm, or modify the judgment **and increase or reduce the penalty imposed by the trial court**, remand the case to

the Regional Trial Court for new trial or retrial, or dismiss the case. The reason behind this rule is that when an accused appeals from the sentence of the trial court, he waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render such judgment as law and justice dictate, whether favorable or unfavorable to the appellant.

6. CRIMINAL LAW; SPECIAL COMPLEX CRIMES; KIDNAPPING AND SERIOUS ILLEGAL DETENTION WITH RAPE; COMMITTED IN CASE AT BAR.— For the crime of kidnapping with rape, as in this case, the offender should not have taken the victim with lewd designs, otherwise, it would be complex crime of forcible abduction with rape. In *People v. Garcia,* we explained that if the taking was by forcible abduction and the woman was raped several times, the crimes committed is one complex crime of forcible abduction with rape, inasmuch as the forcible abduction was only necessary for the first rape; and each of the other counts of rape constitutes distinct and separate count of rape. It having been established that Mirandilla's act was kidnapping and serious illegal detention (not forcible abduction) and on the occasion thereof, he raped AAA several times, We hold that Mirandilla is guilty beyond reasonable doubt of the special complex crime of **kidnapping and serious illegal detention with rape**, warranting the penalty of death. However, in view of R.A. No. 9346 entitled, *An Act Prohibiting the Imposition of Death Penalty in the Philippines,* the penalty of death is hereby reduced to *reclusion perpetua,* without eligibility for parole. We, therefore, modify the CA Decision. We hold that the separate informations of rape cannot be considered as separate and distinct crimes in view of the above discussion.

7. ID.; CIVIL LIABILITY; UPON THE FINDING OF FACT OF RAPE, THE AWARD OF CIVIL DAMAGES *EX DELICTO* IS MANDATORY.— This Court has consistently held that upon the finding of the fact of rape, the award of civil damages *ex delicto* is mandatory. As we elucidated in *People v. Prades,* the award authorized by the criminal law as civil indemnity *ex delicto* for the offended party, aside from other proven actual damages, is itself equivalent to actual or compensatory damages in civil law. Thus, we held that the civil liability *ex delicto* provided by the Revised Penal Code, that is, restitution,

reparation, and indemnification, all correspond to actual or compensatory damages in the Civil Code.

8. ID.; ID.; EVEN IF THE DEATH PENALTY IS NOT IMPOSED DUE TO R.A. NO. 9346, THE CIVIL INDEMNITY *EX DELICTO* OF ₱75,000.00 STILL APPLIES BECAUSE THE INDEMNITY IS NOT DEPENDENT ON THE ACTUAL IMPOSITION OF DEATH, BUT ON THE FACT THAT THE QUALIFYING CIRCUMSTANCES WARRANTING THE PENALTY OF DEATH ATTENDED THE COMMISSION OF THE OFFENSE.— In the 1998 landmark case of *People v. Victor*, the Court enunciated that if, in the crime of rape, **the death penalty is imposed**, the indemnity *ex delicto* for the victim **shall be in the increased amount of NOT less than ₱75,000.00**. To reiterate the words of the Court: "this is not only a reaction to the apathetic societal perception of the penal law and the financial fluctuation over time, **but also an expression of the displeasure of the Court over the incidence of heinous crimes...**" xxx After the enactment R.A. 9346, prohibiting the imposition of death penalty, questions arose as to the continued applicability of the *Victor* ruling. Thus, in *People v. Quiachon*, the Court pronounced that even if the penalty of death is not to be imposed because of R.A. No. 9346, the civil indemnity *ex delicto* of ₱75,000.00 still applies because this indemnity is not dependent on the actual imposition of death, but on the fact that qualifying circumstances warranting the penalty of death attended the commission of the offense. As explained in *People v. Salome*, while R.A. No. 9346 prohibits the imposition of the death penalty, the fact remains that the penalty provided for by the law **for a heinous offense is still death, and the offense is still heinous**.

9. ID.; ID.; THE VICTIM IS ALSO ENTITLED TO MORAL AND EXEMPLARY DAMAGES.— AAA is entitled to moral damages pursuant to Art. 2219 of the Civil Code, **without** the necessity of additional pleadings or proof other than the fact of rape. This move of dispensing evidence to prove moral damage in rape cases, traces its origin in *People v. Prades*, where we held that: The Court has also resolved that in crimes of rape, such as that under consideration, **moral damages may additionally be awarded to the victim in the criminal proceeding, in such amount as the Court deems just, without the need for pleading or proof of the basis thereof as has heretofore been the practice**. Indeed, the conventional

requirement of *allegata et probata* in civil procedure and for essentially civil cases should be dispensed with in criminal prosecutions for rape with the civil aspect included therein, since no appropriate pleadings are filed wherein such allegations can be made. Corollarily, the fact that complainant has suffered the trauma of mental, physical and psychological sufferings which constitute the bases for moral damages **are too obvious to still require the recital thereof at the trial by the victim**, since the Court itself even assumes and acknowledges such agony on her part as a gauge of her credibility. What exists by necessary implication as being ineludibly present in the case need not go through superfluity of still being proven through a testimonial charade. AAA is also entitled to exemplary damages of ₱30,000.00, pursuant to the present jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

For Review before this Court is the Decision of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00271,[1] dated 29 February 2008, finding accused Felipe Mirandilla, Jr., (Mirandilla) guilty beyond reasonable doubt of special complex crime of kidnapping with rape; four counts of rape; and, one count of rape through sexual assault.

Mirandilla is now asking this Court to acquit him. He contends that he could not have kidnapped and raped the victim, AAA,[2]

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[1] Penned by Associate Justice Agustin S. Dizon, and Justices Amelita G. Tolentino and Lucenito N. Tagle, concurring. CA *rollo*, pp. 169-201.

[2] Consistent with *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, the real name of the rape victim is withheld and, instead, fictitious initials are used. Also, the victim's personal circumstances and any other information tending to establish or compromise the identity, as well as those of the victim's immediate family or household members, are not disclosed.

whom he claims to be his live-in partner. The records, however, reveal with moral certainty his guilt. Accordingly, We modify the CA Decision and find him guilty of the special complex crime of kidnapping and illegal detention with rape.

THE FACTS

AAA narrated her 39-day ordeal in the hands of Mirandilla.

It was 2 December 2000, eve of the *fiesta* in *Barangay* San Francisco, Legazpi City. At the plaza, AAA was dancing with her elder sister, BBB.[3]

AAA went out of the dancing hall to buy candies in a nearby store. While making her way back through the crowd, a man grabbed her hand, his arm wrapped her shoulders, with a knife's point thrust at her right side. She will come to know the man's name at the police station, after her escape, to be Felipe Mirandilla, Jr.[4] He told her not to move or ask for help. Another man joined and went beside her, while two others stayed at her back, one of whom had a gun. They slipped through the unsuspecting crowd, walked farther as the deafening music faded into soft sounds. After a four-hour walk through the grassy fields, they reached the Mayon International Hotel, where they boarded a waiting tricycle. Upon passing the Albay Cathedral, the others alighted, leaving AAA alone with Mirandilla who after receiving a gun from a companion, drove the tricycle farther away and into the darkness. Minutes later, they reached the *Gallera de Legazpi* in Rawis.[5]

Mirandilla dragged AAA out of the tricycle and pushed her inside a concrete house. At gunpoint he ordered her to remove her pants.[6] When she defied him, he slapped her and hit her arms with a gun, forced his hands inside her pants, into her panty, and reaching her vagina, slipped his three fingers and

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[3] TSN, 16 November 2001, pp. 5-6.

[4] TSN, 23 July 2001, p. 9 and TSN, 19 July 2002, p. 25.

[5] TSN, 16 November 2001, pp. 12-13.

[6] *Id.* at 20.

rotated them inside. The pain weakened her. He forcibly pulled her pants down and lifting her legs, pushed and pulled his penis inside.[7] "*Sayang ka*," she heard him whisper at her,[8] as she succumbed to pain and exhaustion.

When AAA woke up the following morning, she found herself alone. She cried for help, shouting until her throat dried. But no one heard her. No rescue came.

At around midnight, Mirandilla arrived together with his gang. Pointing a gun at AAA, he ordered her to open her mouth; she sheepishly obeyed. He forced his penis inside her mouth, pulling through her hair with his left hand and slapping her with his right. After satisfying his lust, he dragged her into the tricycle and drove to Bogtong, Legazpi. At the road's side, Mirandilla pushed her against a reclining tree, gagged her mouth with cloth, punched her arm, thigh, and lap, and pulled up her over-sized shirt. Her underwear was gone. Then she felt Mirandilla's penis inside her vagina. A little while, a companion warned Mirandilla to move out. And they drove away.[9]

They reached a nipa hut and AAA was thrown inside. Her mouth was again covered with cloth. Mirandilla, with a gun aimed at her point blank, grabbed her shirt, forced her legs open, and again inserted his penis into her vagina.[10]

The following evening, Mirandilla and his gang brought AAA to Guinobatan, where she suffered the same fate. They repeatedly detained her at daytime, moved her back and forth from one place to another on the following nights, first to Bonga, then back to Guinobatan, where she was locked up in a cell-type house and was raped repeatedly on the grassy field right outside her cell, then to Camalig, where they caged her in a small house in the middle of a rice field. She was allegedly raped 27 times.[11]

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[7] *Id.* at 24.

[8] *Id.* at 25.

[9] TSN, 19 April 2002, p. 8.

[10] *Id.* at. 15-17.

[11] TSN, 19 July 2002, p. 22; CA Decision, CA *rollo,* p. 7.

One afternoon, in Guinobatan, AAA succeeded in opening the door of her cell. Seeing that Mirandilla and his companions were busy playing cards, she rushed outside and ran, crossed a river, got drenched, and continued running. She rested for awhile, hiding behind a rock; she walked through the fields and stayed out of people's sight for two nights. Finally, she found a road and followed its path, leading her to the house of Evelyn Guevarra who brought her to the police station. It was 11 January 2001. AAA was in foul smell, starving and sleepless. Evelyn Guevarra gave her a bath and the police gave her food. When the police presented to her pictures of suspected criminals, she recognized the man's face — she was certain it was him. He was Felipe Mirandilla, Jr., the police told her.[12]

The following morning, accompanied by the police, AAA submitted herself to Dr. Sarah Vasquez, Legazpi City's Health Officer for medical examination. The doctor discovered hymenal lacerations in different positions of her hymen, indicative of sexual intercourse.[13] Foul smelling pus also oozed from her vagina — AAA had contracted gonorrhoea.[14]

Mirandilla denied the charges against him. This is his version.

Mirandilla first met AAA on 3 October 2000. By stroke of fate, they bumped into each other at the Albay Park where AAA, wearing a school uniform, approached him. They had a short chat. They were neighbors in *Barangay* San Francisco until Mirandilla left his wife and daughter there for good.[15]

Two days later, Mirandilla and AAA met again at the park. He started courting her,[16] and, after five days, as AAA celebrated her 18th birthday, they became lovers. Mirandilla was then 33 years old.

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[12] *Id.* at 25-26.

[13] TSN, 28 August 2003, p. 11.

[14] *Id.* at 12.

[15] TSN, 21 January 2004, p. 6.

[16] *Id*.

Immediately, Mirandilla and AAA had sex nightly in their friends' houses and in cheap motels. On 24 October 2000, after Mirandilla went to his mother's house in Kilikao, they met again at the park, at their usual meeting place, in front of the park's comfort room, near Arlene Moret, a cigarette vendor who also served as the CR's guard.[17] They decided to elope and live as a couple. They found an abandoned house in Rawis, at the back of *Gallera de Legazpi*. Emilio Mendoza who owned the house, rented it to them for ₱1,500.00.[18] They lived there from 28 October until 11 December 2000.[19] From 12 December 2000 until 11 January 2001,[20] Mirandilla and AAA stayed in Rogelio Marcellana's house, at the resettlement Site in Banquerohan, Legazpi City.

Mirandilla and AAA's nightly sexual intimacy continued, with abstentions only during AAA's menstrual periods, the last of which she had on 7 December 2000.[21] In late December, however, Mirandilla, who just arrived home after visiting his mother in Kilikao, saw AAA soaked in blood, moaning in excruciating stomach pain.[22] AAA had abortion — an inference he drew upon seeing the cover of pills lying beside AAA. Mirandilla claimed that AAA bled for days until she left him in January 2001 after quarrelling for days.[23]

Mirandilla, however, had a second version of this crucial event. He claimed that AAA missed her menstruation in December 2000[24] and that he would not have known she had an abortion had she not confessed it to him.[25]

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[17] *Id.* at 13.

[18] *Id.* at 15 and TSN, 26 January 2004, p. 7.

[19] *Id.*

[20] TSN, 17 March 2004, pp. 4 and 6.

[21] TSN, 26 January 2004, p. 35.

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

[23] *Id.* at 33.

[24] *Id.* at 29.

[25] *Id.* at 32.

THE RTC RULING

Mirandilla was charged before the Regional Trial Court (RTC) of Legazpi City, Branch 5, with kidnapping with rape (Crim. Case No. 9278), four counts of rape (Crim. Case Nos. 9274 to 9277), and rape through sexual assault (Crim. Case No. 9279).

The RTC, in its decision dated 1 July 2004, convicted Mirandilla of kidnapping, four counts of rape, and one count of rape through sexual assault with this finding:

> This Court has arrived at the factual conclusion that Felipe Mirandilla, Jr., in the company of three others [conferrers], kidnapped AAA in *Barangay* xxx, City of xxx, on or on about midnight of December 2, 2000 or early morning of December 3, 2000, held her in detention for thirty-nine days in separate cells situated in the City of xxx; xxx; and xxx. Felipe Mirandilla, Jr., carnally abused her while holding a gun and/or a knife for twenty seven times, employing force and intimidation. The twenty seven sexual intercourses were eventually perpetrated between the City of xxx and the towns of xxx and xxx. At least once, Felipe Mirandilla, Jr., put his penis inside the mouth of AAA against her will while employing intimidation, threats, and force.[26]

THE COURT OF APPEALS RULING

On review, the CA affirmed with modification the RTC ruling, convicting Mirandilla. It found him guilty of the special complex crime of kidnapping with rape (instead of kidnapping as the RTC ruled), four counts of rape, and one count of rape by sexual assault.[27] It rejected Mirandilla's defense that he and AAA were live-in partners and that their sexual encounters were consensual.[28] It noted that Mirandilla failed to adduce any evidence or any credible witness to sustain his defense.[29]

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[26] RTC Decision, penned by Judge Pedro Soriao, CA *rollo*, p. 56.

[27] CA Decision, CA *rollo*, p. 30.

[28] *Id*.

[29] *Id*.

Hence, this appeal.

Mirandilla repeats his allegations that the prosecution's lone witness, AAA, was not a credible witness and that he and AAA were live-in partners whose intimacy they expressed in consensual sex.

OUR RULING

We find Mirandilla guilty of the special complex crime of kidnapping and illegal detention with rape.

Mirandilla admitted in open court to have had sexual intercourse with AAA, which happened almost nightly during their cohabitation. He contended that they were live-in partners, entangled in a whirlwind romance, which intimacy they expressed in countless passionate sex, which headed ironically to separation mainly because of AAA's intentional abortion of their first child to be — a betrayal in its gravest form which he found hard to forgive.

In stark contrast to Mirandilla's tale of a love affair, is AAA's claim of her horrific ordeal and her flight to freedom after 39 days in captivity during which Mirandilla raped her 27 times.

First Issue:

Credibility of Prosecution Witness

Jurisprudence is consistent that for testimonial evidence to be believed, it must not only come from a credible witness but must be credible in itself — tested by human experience, observation, common knowledge and accepted conduct that has evolved through the years.[30]

Daggers v. Van Dyck,[31] illuminates:

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[30] *People v. Hernani*, G.R. No. 122113, 27 November 2000, 346 SCRA 73, 84.

[31] See concurring opinion of Associate Justice Conchita Carpio Morales in *Lejano v. People*, G.R. No. 176389, 14 December 2010 citing 37 N.J. Eq. 130, 132.

Evidence to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself —such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.[32]

First, the trial judge, who had the opportunity of observing AAA's manner and demeanour on the witness stand, was convinced of her credibility: "AAA appeared to be a simple and truthful woman, whose testimony was consistent, steady and firm, free from any material and serious contradictions."[33] The court continued:

The record nowhere yields any evidence of ill motive on the part of AAA to influence her in fabricating criminal charges against Felipe Mirandilla, Jr. The absence of ill motive enhances the standing of AAA as a witness. x x x.

When AAA testified in court, she was sobbing. While she was facing Felipe Mirandilla, Jr., to positively identify him in open court, she was crying. Felipe Mirandilla Jr.'s response was to smile. AAA was a picture of a woman who was gravely harmed, craving for justice. x x x.[34]

Second, the trial court found AAA's testimony to be credible in itself. AAA's ordeal was entered into the police blotter immediately after her escape,[35] negating opportunity for concoction.[36] While in Mirandilla's company, none of her parents, brothers, sisters, relatives, classmates, or anyone who knew her, visited, saw, or talked to her. None of them knew her whereabouts.[37] AAA's

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[32] *Id*.

[33] RTC Decision, CA *rollo*, p. 55.

[34] *Id*.

[35] *Id*.

[36] *Id*.

[37] *Id*.

testimony was corroborated by Dr. Sarah Vasquez, Legazpi City's Health Officer, who discovered the presence not only of hymenal lacerations but also gonorrhoea, a sexually transmitted disease.

More importantly, AAA remained consistent in the midst of gruelling cross examination. The defense lawyer tried to impeach her testimony, but failed to do so.

The Court of Appeals confirmed AAA's credibility in affirming the RTC decision.

We emphasize that a trial court's assessment of a witness' credibility, when affirmed by the CA, is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight or influence.[38] This is so because of the judicial experience that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed firsthand their deportment and manner of testifying under gruelling examination.[39] Thus, in *Estioca v. People*,[40] we held:

> In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following principles: (1) the reviewing court will not disturb the findings of the lower courts, unless there is a showing that it overlooked or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanour when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.[41]

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[38] *Soriano v. People*, G.R. No. 148123, 30 June 2008, 556 SCRA 595, 611.

[39] *People v. Vallador*, 327 Phil. 303, 311 (1996).

[40] G.R. No. 173876, 27 June 2008, 556 SCRA 300.

[41] *Id.* at 312.

Second Issue

"Sweetheart Theory" not Proven

Accused's bare invocation of sweetheart theory cannot alone, stand. To be credible, it must be corroborated by documentary, testimonial, or other evidence.[42] Usually, these are letters, notes, photos, mementos, or credible testimonies of those who know the lovers.[43]

The sweetheart theory as a defense, however, necessarily admits carnal knowledge, the first element of rape. Effectively, it leaves the prosecution the burden to prove only force or intimidation, the coupling element of rape. Love, is not a license for lust.[44]

This admission makes the sweetheart theory more difficult to defend, for it is not only an affirmative defense that needs convincing proof;[45] after the prosecution has successfully established a *prima facie* case,[46] the burden of evidence is shifted to the accused,[47] who has to adduce evidence that the intercourse was consensual.[48]

A *prima facie* case arises when the party having the burden of proof has produced evidence sufficient to support a finding and adjudication for him of the issue in litigation.[49]

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[42] *People v. Nogpo,* G.R. No. 184791, 16 April 2009, 585 SCRA 725, 743.

[43] *People v. Jimenez,* G.R. No. 128364, 4 February 1999, 302 SCRA 607, 617.

[44] *People v. Novio,* G.R. No. 139332, 20 June 2003, 404 SCRA 462, 474.

[45] *People v. Ayuda,* G.R. No. 128882, 2 October 2003, 412 SCRA 538.

[46] C.J.S. 32-A, § 1016, p. 626.

[47] *People v. Nogpo, supra* note 42 at 742.

[48] *Id*.

[49] C.J.S. 32-A, § 1016, p. 626.

Burden of evidence is "that logical necessity which rests on a party at any particular time during the trial to create a *prima facie* case in his favour **or to overthrow one when created against him**."[50](Emphasis supplied)

Mirandilla with his version of facts as narrated above attempted to meet the prosecution's *prima facie* case. To corroborate it, he presented his mother, Alicia Mirandilla; his relatives, Rogelio Marcellana and Emilio Mendoza; and, his friend Arlene Moret.

Arlene Moret, the cigarette vendor who also served as the CR's guard, testified that on 30 October 2000, AAA and Mirandilla arrived together at the park.[51] They approached her and chatted with her. On cross examination, she claimed otherwise: Mirandilla arrived alone two hours earlier, chatting with her first, before AAA finally came.[52] She also claimed meeting the couple for the first time on 30 October 2000, only to contradict herself on cross examination with the version that she met them previously, three times at least, in the previous month.[53] On the other hand, Mirandilla claimed first meeting AAA on 3 October 2000 at the park.[54]

The accused's mother, Alicia Mirandilla, testified meeting her son only once, and living in Kilikao only after his imprisonment.[55] This contradicted Mirandilla's claim that he visited his mother several times in Kilikao, from October 2000 until January 2001.[56]

Even Mirandilla contradicted himself. His claim that he saw AAA soaked in blood, agonizing in pain, with the abortifacient

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[50] FRANCISCO, *BASIC EVIDENCE*, 1999 (2nd ed.), p. 354.

[51] TSN, 24 November 2003, p. 7.

[52] *Id.* at 17.

[53] *Id.* at 18.

[54] TSN, 21 January 2004, p. 5.

[55] TSN, 25 March 2004, pp. 9-11.

[56] TSN, 21 January 2004, p. 13; 26 January 2004, pp. 16 and 31.

pills' cover lying nearby, cannot be reconciled with his other claim that he came to know AAA's abortion only through the latter's admission.[57]

Taken individually and as a whole, the defense witnesses' testimonies contradicted each other and flip-flopped on material facts, constraining this Court to infer that they concocted stories in a desperate attempt to exonerate the accused.

As a rule, self-contradictions and contradictory statement of witnesses should be reconciled,[58] it being true that such is possible since a witness is not expected to give error-free testimony considering the lapse of time and the treachery of human memory.[59] But, this principle, learned from lessons of human experience, applies only to minor or trivial matters — innocent lapses that do not affect witness' credibility.[60] They do not apply to self-contradictions on material facts.[61] Where these contradictions cannot be reconciled, the Court has to reject the testimonies,[62] and apply the maxim, *falsus in uno, falsus in omnibus.* Thus,

> To completely disregard all the testimony of a witness based on the maxim *falsus in uno, falsus in omnibus,* testimony must have been false as to a material point, and the witness must have a conscious and deliberate intention to falsify a material point. In other words, its requirements, which must concur, are the following: (1) that the false testimony is as to one or more material points; and (2) that there should be a conscious and deliberate intention to falsity.[63]

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[57] TSN, 26 January 2004, pp. 28-32.

[58] AGPALO, *HAND BOOK ON EVIDENCE,* pp. 454-455 (2003).

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] *Id.* at 461, citing *People v. Pacpac,* 248 SCRA 77 (1995), *People v. Dasig,* 93 Phil. 618 (1953).

Crimes and Punishment

An appeal in criminal case opens the entire case for review on any question, including one not raised by the parties.[64] This was our pronouncement in the 1902 landmark case of *U.S. v. Abijan*,[65] which is now embodied in Section 11, Rule 124 of the Rules of Court:

> SEC 11. *Scope of Judgment.* — The Court of Appeals may reverse, affirm, or modify the judgment **and increase or reduce the penalty imposed by the trial court**, remand the case to the Regional Trial Court for new trial or retrial, or dismiss the case. (Emphasis supplied)

The reason behind this rule is that when an accused appeals from the sentence of the trial court, he waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render such judgment as law and justice dictate, whether favorable or unfavorable to the appellant.[66]

To reiterate, the six informations charged Mirandilla with kidnapping and serious illegal detention with rape (Crim. Case No. 9278), four counts of rape (Crim. Case Nos. 9274-75-76-77), and one count of rape through sexual assault (Crim. Case No. 9279).

The accusatory portion of the information in Criminal Case No. 9278 alleged that Mirandilla kidnapped AAA and seriously and illegally detained her for more than three days during which time he had carnal knowledge of her, against her will.[67]

The Court agrees with the CA in finding Mirandilla guilty of the special complex crime of kidnapping with rape, instead of

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[64] *People v. Madsali*, G.R. No. 179570, 4 February 2010, 611 SCRA 596, 613-614 citing *Edgar Esqueda v. People*, G.R. No. 170222, 18 June 2009, 589 SCRA 489.

[65] 1 Phil. 83 (1902).

[66] *Lontoc v. People*, 74 Phil. 513, 519 (1943).

[67] RTC Decision, CA *rollo*, p. 94.

simple kidnapping as the RTC ruled. It was the RTC, no less, which found that Mirandilla kidnapped AAA, held her in detention for 39 days and carnally abused her while holding a gun and/or a knife.[68]

Rape under Article 266-A of the Revised Penal Code states that:

> Art. 266-A. Rape, *When and How Committed.* — Rape is committed —
>
> 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a. Through force, threat or intimidation; xxx.
>
> 2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

AAA was able to prove each element of rape committed under Article 266-A, par. 1(a) of the Revised Penal Code, that (1) Mirandilla had carnal knowledge of her; (2) through force, threat, or intimidation. She was also able to prove each element of rape by sexual assault under Article 266-A, par. 2 of the Revised Penal Code: (1) Mirandilla inserted his penis into her mouth; (2) through force, threat, or intimidation.

Likewise, kidnapping and serious illegal detention is provided for under Article 267 of the Revised Penal Code:

> **Article 267.** *Kidnapping and serious illegal detention.* — Any private individual who shall kidnap or detain another, or in any manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death;
>
> 1. If the kidnapping or detention shall have lasted more than three days. xxx

An imminent Spanish commentator explained:

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[68] *Id.* at 99.

la detención, la prición, la privación de la libertad de una persona, en cualquier forma y por cualquier medio ó por cualquier tiempo en virtud de la cual resulte interrumpido el libre ejercicio de su actividad."[69]

Emphatically, the last paragraph of Article 267 of the Revised Penal Code, as amended by R.A. No. 7659,[70] states that when the victim is killed or dies as a consequence of the detention or is **raped**, or is subjected to torture or dehumanizing acts, **the maximum penalty shall be imposed**. This provision gives rise to a **special complex crime**. As the Court explained in *People v. Larrañaga*,[71] this arises where the law provides a single penalty for two or more component offenses.[72]

Notably, however, no matter how many rapes had been committed in the special complex crime of kidnapping with rape, the resultant crime is only one kidnapping with rape.[73] This is because these composite acts are regarded as a single indivisible offense as in fact R.A. No. 7659 punishes these acts with only one single penalty. In a way, R.A. 7659 depreciated the seriousness of rape because no matter how many times the victim was raped, like in the present case, there is only one crime committed — the special complex crime of kidnapping with rape.

However, for the crime of kidnapping with rape, as in this case, the offender should not have taken the victim with lewd designs, otherwise, it would be complex crime of forcible abduction

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[69] *People v. Baldogo*, G.R. Nos. 128106-07, 24 January 2004, 396 SCRA 31, 57, citing, GROIZARD, EL CODIGO PENAL DE 1870, Tomo V. pp. 639-640, cited in *People v. Marasigan, et al.*, 55 O.G. 8297 (1959).

[70] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES

[71] 466 Phil. 324 (2004).

[72] *Id*.

[73] BOADO, NOTES AND CASES ON THE REVISED PENAL CODE, pp. 529-530 (2001).

with rape. In *People v. Garcia,*[74] we explained that if the taking was by forcible abduction and the woman was raped several times, the crimes committed is one complex crime of forcible abduction with rape, inasmuch as the forcible abduction was only necessary for the first rape; and each of the other counts of rape constitutes distinct and separate count of rape.[75]

It having been established that Mirandilla's act was kidnapping and serious illegal detention (not forcible abduction) and on the occasion thereof, he raped AAA several times, We hold that Mirandilla is guilty beyond reasonable doubt of the special complex crime of **kidnapping and serious illegal detention with rape**, warranting the penalty of death. However, in view of R.A. No. 9346 entitled, *An Act Prohibiting the Imposition of Death Penalty in the Philippines,*[76] the penalty of death is hereby reduced to *reclusion perpetua*,[77] without eligibility for parole.[78]

We, therefore, modify the CA Decision. We hold that the separate informations of rape cannot be considered as separate and distinct crimes in view of the above discussion.

As to the award of damages, we have the following rulings.

This Court has consistently held that upon the finding of the fact of rape, the award of civil damages *ex delicto* is mandatory.[79] As we elucidated in *People v. Prades*,[80] the award authorized by the criminal law as civil indemnity *ex delicto* for the offended party, aside from other proven actual damages, is itself equivalent to actual or compensatory damages in civil law.[81] Thus, we

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[74] G.R. No. 141125, 28 February 2002, 378 SCRA 266.

[75] *Id.* at 278.

[76] Approved on 24 June 2006.

[77] Sec. 2, R.A. No. 9346.

[78] Sec. 3, R.A. No. 9346.

[79] *People v. Tagud, Sr.*, G.R. No. 140733, 30 January 2002. 375 SCRA 291, 309-310; *People v. Nogpo, supra* note 42 at 749.

[80] G.R. No. 127569, 30 July 1998, 293 SCRA 411.

[81] *Id.* at 429 citing *People v. Victor*, G.R. No. 127903, July 8, 1998.

held that the civil liability *ex delicto* provided by the Revised Penal Code, that is, restitution, reparation, and indemnification,[82] all correspond to actual or compensatory damages in the Civil Code.[83]

In the 1998 landmark case of *People v. Victor*,[84] the Court enunciated that if, in the crime of rape, **the death penalty is imposed,** the indemnity *ex delicto* for the victim **shall be in the increased amount of NOT[85] less than ₱75,000.00.** To reiterate the words of the Court: "this is not only a reaction to the apathetic societal perception of the penal law and the financial fluctuation over time, **but also an expression of the displeasure of the Court over the incidence of heinous crimes...**"[86] xxx (Emphasis supplied)

After the enactment R.A. 9346,[87] prohibiting the imposition of death penalty, questions arose as to the continued applicability of the *Victor*[88] ruling. Thus, in *People v. Quiachon*,[89] the Court pronounced that even if the penalty of death is not to be imposed because of R.A. No. 9346, the civil indemnity *ex delicto* of ₱75,000.00 still applies because this indemnity is **not dependent on the actual imposition of death, but on the fact that qualifying circumstances warranting the penalty of death attended the commission of the offense.**[90] As explained in *People v. Salome*,[91] while R.A. No. 9346 prohibits the imposition

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[82] REVISED PENAL CODE, Articles 104-107.

[83] CIVIL CODE, Articles 2194-2215.

[84] G.R. No. 127903, 9 July 1998, 292 SCRA 186.

[85] *Id.* at 200-201.

[86] *Id.* at 201.

[87] An Act Prohibiting the Imposition of Death Penalty, approved on June 24, 2006.

[88] *Supra* note 84.

[89] G.R. No. 170236, 31 August 2006, 500 SCRA 704.

[90] *Id.* at 719.

[91] G.R. No. 169077, 31 August 2006, 500 SCRA 659.

of the death penalty, the fact remains that the penalty provided for by the law **for a heinous offense is still death, and the offense is still heinous.**[92] (Emphasis supplied)

In addition, AAA is entitled to moral damages pursuant to Art. 2219 of the Civil Code,[93] **without** the necessity of additional pleadings or proof other than the fact of rape. This move of dispensing evidence to prove moral damage in rape cases, traces its origin in *People v. Prades*,[94] where we held that:

> The Court has also resolved that in crimes of rape, such as that under consideration, **moral damages may additionally be awarded to the victim in the criminal proceeding, in such amount as the Court deems just, without the need for pleading or proof of the basis thereof as has heretofore been the practice.** Indeed, the conventional requirement of *allegata et probata* in civil procedure and for essentially civil cases should be dispensed with in criminal prosecutions for rape with the civil aspect included therein, since no appropriate pleadings are filed wherein such allegations can be made. (Emphasis supplied)
>
> Corollarily, the fact that complainant has suffered the trauma of mental, physical and psychological sufferings which constitute the bases for moral damages **are too obvious to still require the recital thereof at the trial by the victim,** since the Court itself even assumes and acknowledges such agony on her part as a gauge of her credibility. What exists by necessary implication as being ineludibly present in the case need not go through superfluity of still being proven through a testimonial charade. (Emphasis supplied)[95]

AAA is also entitled to exemplary damages of ₱30,000.00, pursuant to the present jurisprudence.

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[92] *Id.* at 676.

[93] CIVIL CODE, Art. 2219. Moral damages may be recovered in the following and analogous cases: xxx

(3) Seduction, abduction, rape, or other lascivious acts; x x x.

[94] *Supra* note 79.

[95] *Id.* at 430-431.

WHEREFORE, the appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 00271 is hereby *AFFIRMED with MODIFICATION*. Accused Felipe Mirandilla, Jr., is found guilty beyond reasonable doubt of the special complex crime of kidnapping and serious illegal detention with rape under the last paragraph of Article 267 of the Revised Penal Code, as amended, by R.A. No. 7659, and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and to pay the offended party AAA, the amounts of ₱75,000.00 as civil indemnity *ex delicto*, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 146206. August 1, 2011]

SAN MIGUEL FOODS, INCORPORATED, *petitioner, vs.* **SAN MIGUEL CORPORATION SUPERVISORS and EXEMPT UNION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR ORGANIZATIONS; APPROPRIATE BARGAINING UNIT; DEFINITION.— An appropriate bargaining unit is defined as a group of employees of a given employer, comprised of all or less than all of the entire body of employees, which the collective interest of all the employees, consistent with equity to the employer, indicate to be best suited to serve the reciprocal

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[*] Per Special Order No. 1006 dated 10 June 2011.

[**] Per Special Order No. 1040 dated 6 July 2011.

rights and duties of the parties under the collective bargaining provisions of the law.

2. ID.; ID.; ID.; FORMATION OF A SINGLE BARGAINING UNIT; FACTORS TO CONSIDER.— In *National Association of Free Trade Unions v. Mainit Lumber Development Company Workers Union – United Lumber and General Workers of the Phils.*, the Court, taking into account the "community or mutuality of interests" test, ordered the formation of a single bargaining unit consisting of the Sawmill Division in Butuan City and the Logging Division in Zapanta Valley, Kitcharao, Agusan [Del] Norte of the Mainit Lumber Development Company. It held that while the existence of a bargaining history is a factor that may be reckoned with in determining the appropriate bargaining unit, the same is not decisive or conclusive. Other factors must be considered. The test of grouping is community or mutuality of interest. This is so because the basic test of an asserted bargaining unit's acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights. Certainly, there is a mutuality of interest among the employees of the Sawmill Division and the Logging Division. Their functions mesh with one another. One group needs the other in the same way that the company needs them both. There may be differences as to the nature of their individual assignments, but the distinctions are not enough to warrant the formation of a separate bargaining unit.

3. ID.; TERMINATION OF EMPLOYMENT; CONFIDENTIAL EMPLOYEES; DEFINITION, ELUCIDATED.— Confidential employees are defined as those who (1) assist or act in a confidential capacity, in regard (2) to persons who formulate, determine, and effectuate management policies in the field of labor relations. The two criteria are cumulative, and both must be met if an employee is to be considered a confidential employee — that is, the confidential relationship must exist between the employee and his supervisor, and the supervisor must handle the prescribed responsibilities relating to labor relations. The exclusion from bargaining units of employees who, in the normal course of their duties, become aware of management policies relating to labor relations is a principal objective sought to be accomplished by the "confidential employee rule."

4. ID.; ID.; ID.; THAT CONFIDENTIAL EMPLOYEES ARE EXCLUDED FROM COLLECTIVE BARGAINING AGREEMENT DOES NOT APPLY TO PAYROLL MASTER.— A confidential employee is one entrusted with confidence on delicate, or with the custody, handling or care and protection of the employer's property. Confidential employees, such as accounting personnel, should be excluded from the bargaining unit, as their access to confidential information may become the source of undue advantage. However, such fact does not apply to the position of Payroll Master and the whole gamut of employees who, as perceived by petitioner, has access to salary and compensation data. The CA correctly held that the position of *Payroll Master* does not involve dealing with confidential labor relations information in the course of the performance of his functions. Since the nature of his work does not pertain to company rules and regulations and confidential labor relations, it follows that he cannot be excluded from the subject bargaining unit.

5. ID.; LABOR ORGANIZATIONS; PROHIBITION TO JOIN THE SAME EXTENDED TO CONFIDENTIAL EMPLOYEES.— [A]lthough Article 245 of the Labor Code limits the ineligibility to join, form and assist any labor organization to managerial employees, jurisprudence has extended this prohibition to confidential employees or those who by reason of their positions or nature of work are required to assist or act in a fiduciary manner to managerial employees and, hence, are likewise privy to sensitive and highly confidential records. Confidential employees are thus excluded from the rank-and-file bargaining unit. The rationale for their separate category and disqualification to join any labor organization is similar to the inhibition for managerial employees, because if allowed to be affiliated with a union, the latter might not be assured of their loyalty in view of evident conflict of interests and the union can also become company-denominated with the presence of managerial employees in the union membership. Having access to confidential information, confidential employees may also become the source of undue advantage. Said employees may act as a spy or spies of either party to a collective bargaining agreement.

6. ID.; ID.; ID.; HUMAN RESOURCE ASSISTANT AND PERSONNEL ASSISTANT ARE CONFIDENTIAL EMPLOYEES EXCLUDED FROM THE BARGAINING

UNIT.— [T]he CA correctly ruled that the positions of Human Resource Assistant and Personnel Assistant belong to the category of confidential employees and, hence, are excluded from the bargaining unit, considering their respective positions and job descriptions. As Human Resource Assistant, the scope of one's work necessarily involves labor relations, recruitment and selection of employees, access to employees' personal files and compensation package, and human resource management. As regards a Personnel Assistant, one's work includes the recording of minutes for management during collective bargaining negotiations, assistance to management during grievance meetings and administrative investigations, and securing legal advice for labor issues from the petitioner's team of lawyers, and implementation of company programs. Therefore, in the discharge of their functions, both gain access to vital labor relations information which outrightly disqualifies them from union membership.

7. ID.; LABOR RELATIONS; CERTIFICATION ELECTION; PROCEEDINGS THEREFORE ARE *QUASI*-JUDICIAL IN NATURE, THE SOLE CONCERN OF THE WORKERS WHERE EMPLOYER HAS NO PERSONALITY EXCEPT WHEN FILING A PETITION TO REQUEST THE WORKERS TO BARGAIN COLLECTIVELY.— The proceedings for certification election are *quasi*-judicial in nature and, therefore, decisions rendered in such proceedings can attain finality. Applying the doctrine of *res judicata*, the issue in the present case pertaining to the coverage of the employees who would constitute the bargaining unit is now a foregone conclusion. It bears stressing that a certification election is the sole concern of the workers; hence, an employer lacks the personality to dispute the same. The general rule is that an employer has no standing to question the process of certification election, since this is the sole concern of the workers. Law and policy demand that employers take a strict, hands-off stance in certification elections. The bargaining representative of employees should be chosen free from any extraneous influence of management. A labor bargaining representative, to be effective, must owe its loyalty to the employees alone and to no other. The only exception is where the employer itself has to file the petition pursuant to Article 258 of the Labor Code because of a request to bargain collectively.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo Ongsiako for petitioner.

D E C I S I O N

PERALTA, *J.*:

The issues in the present case, relating to the inclusion of employees in supervisor levels 3 and 4 and the exempt employees in the proposed bargaining unit, thereby allowing their participation in the certification election; the application of the "community or mutuality of interests" test; and the determination of the employees who belong to the category of confidential employees, are not novel.

In G.R. No. 110399, entitled *San Miguel Corporation Supervisors and Exempt Union v. Laguesma,*[1] the Court held that even if they handle confidential data regarding technical and internal business operations, supervisory employees 3 and 4 and the exempt employees of petitioner San Miguel Foods, Inc. (SMFI) are not to be considered confidential employees, because the same do not pertain to labor relations, particularly, negotiation and settlement of grievances. Consequently, they were allowed to form an appropriate bargaining unit for the purpose of collective bargaining. The Court also declared that the employees belonging to the three different plants of San Miguel Corporation Magnolia Poultry Products Plants in Cabuyao, San Fernando, and Otis, having "community or mutuality of interests," constitute a single bargaining unit. They perform work of the same nature, receive the same wages and compensation, and most importantly, share a common stake in concerted activities. It was immaterial that the three plants have different locations as they did not impede the operations of a single bargaining representative.[2]

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[1] 343 Phil. 143 (1997).

[2] *Id.* at 151, 153-154.

Pursuant to the Court's decision in G.R. No. 110399, the Department of Labor and Employment — National Capital Region (DOLE-NCR) conducted pre-election conferences.[3] However, there was a discrepancy in the list of eligible voters, *i.e.*, petitioner submitted a list of 23 employees for the San Fernando plant and 33 for the Cabuyao plant, while respondent listed 60 and 82, respectively.[4]

On August 31, 1998, Med-Arbiter Agatha Ann L. Daquigan issued an Order[5] directing Election Officer Cynthia Tolentino to proceed with the conduct of certification election in accordance with Section 2, Rule XII of Department Order No. 9.

On September 30, 1998, a certification election was conducted and it yielded the following results,[6] thus:

	Cabuyao Plant	San Fernando Plant	Total
Yes	23	23	46
No	0	0	0
Spoiled	2	0	2
Segregated	41	35	76
Total Votes Cast	66	58	124

On the date of the election, September 30, 1998, petitioner filed the Omnibus Objections and Challenge to Voters,[7] questioning the eligibility to vote by some of its employees on the grounds that some employees do not belong to the bargaining unit which respondent seeks to represent or that there is no existence of employer-employee relationship with petitioner. Specifically, it argued that certain employees should not be allowed to vote

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[3] Per petitioner's Reply to Comment dated January 6, 2004, its Otis Plant is no longer operational.

[4] *See* CA Decision dated April 28, 2000, p. 5; *rollo*, p. 15.

[5] *Rollo*, pp. 127-130.

[6] *Supra* note 4.

[7] *Rollo*, pp. 131-133.

as they are: (1) confidential employees; (2) employees assigned to the live chicken operations, which are not covered by the bargaining unit; (3) employees whose job grade is level 4, but are performing managerial work and scheduled to be promoted; (4) employees who belong to the Barrio Ugong plant; (5) non-SMFI employees; and (6) employees who are members of other unions.

On October 21, 1998, the Med-Arbiter issued an Order directing respondent to submit proof showing that the employees in the submitted list are covered by the original petition for certification election and belong to the bargaining unit it seeks to represent and, likewise, directing petitioner to substantiate the allegations contained in its Omnibus Objections and Challenge to Voters.[8]

In compliance thereto, respondent averred that (1) the bargaining unit contemplated in the original petition is the Poultry Division of San Miguel Corporation, now known as San Miguel Foods, Inc.; (2) it covered the operations in Calamba, Laguna, Cavite, and Batangas and its home base is either in Cabuyao, Laguna or San Fernando, Pampanga; and (3) it submitted individual and separate declarations of the employees whose votes were challenged in the election.[9]

Adding the results to the number of votes canvassed during the September 30, 1998 certification election, the final tally showed that: number of eligible voters – 149; number of valid votes cast – 121; number of spoiled ballots - 3; total number of votes cast – 124, with 118 (*i.e.*, 46 + 72 = 118) "Yes" votes and 3 "No" votes.[10]

The Med-Arbiter issued the Resolution[11] dated February 17, 1999 directing the parties to appear before the Election Officer

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[8] *See* Resolution dated July 30, 1999 of then Acting DOLE Undersecretary Rosalinda Dimapilis-Baldoz, *id.* at 84.

[9] *Id.*

[10] *Id*.

[11] *Rollo,* pp. 142-150.

of the Labor Relations Division on March 9, 1999, 10:00 a.m., for the opening of the segregated ballots. Thereafter, on April 12, 1999, the segregated ballots were opened, showing that out of the 76 segregated votes, 72 were cast for "Yes" and 3 for "No," with one "spoiled" ballot.[12]

Based on the results, the Med-Arbiter issued the Order[13] dated April 13, 1999, stating that since the "Yes" vote received 97% of the valid votes cast, respondent is certified to be the exclusive bargaining agent of the supervisors and exempt employees of petitioner's Magnolia Poultry Products Plants in Cabuyao, San Fernando, and Otis.

On appeal, the then Acting DOLE Undersecretary, in the Resolution[14] dated July 30, 1999, in OS-A-2-70-91 (NCR-OD-M-9010-017), affirmed the Order dated April 13, 1999, with modification that George C. Matias, Alma Maria M. Lozano, Joannabel T. Delos Reyes, and Marilyn G. Pajaron be excluded from the bargaining unit which respondent seeks to represent. She opined that the challenged voters should be excluded from the bargaining unit, because Matias and Lozano are members of Magnolia Poultry Processing Plants Monthly Employees Union, while Delos Reyes and Pajaron are employees of San Miguel Corporation, which is a separate and distinct entity from petitioner.

Petitioner's Partial Motion for Reconsideration[15] dated August 14, 1999 was denied by the then Acting DOLE Undersecretary in the Order[16] dated August 27, 1999.

In the Decision[17] dated April 28, 2000, in CA-G.R. SP No. 55510, entitled *San Miguel Foods, Inc. v. The Honorable*

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[12] *Supra* note 8.

[13] *Rollo,* pp. 88-89.

[14] Per then Acting DOLE Undersecretary Rosalinda Dimapilis-Baldoz, *id.* at 83-86.

[15] CA *rollo,* pp. 130-141.

[16] *Rollo,* p. 87.

[17] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Corona Ibay-Somera and Elvi John S. Asuncion, concurring; *id.* at 11-26.

Office of the Secretary of Labor, Bureau of Labor Relations, and San Miguel Corporation Supervisors and Exempt Union, the Court of Appeals (CA) affirmed with modification the Resolution dated July 30, 1999 of the DOLE Undersecretary, stating that those holding the positions of Human Resource Assistant and Personnel Assistant are excluded from the bargaining unit.

Petitioner's Motion for Partial Reconsideration[18] dated May 23, 2000 was denied by the CA in the Resolution[19] dated November 28, 2000.

Hence, petitioner filed this present petition raising the following issues:

I.

WHETHER THE COURT OF APPEALS DEPARTED FROM JURISPRUDENCE WHEN IT EXPANDED THE SCOPE OF THE BARGAINING UNIT DEFINED BY THIS COURT'S RULING IN G.R. NO. 110399.

II.

WHETHER THE COURT OF APPEALS DEPARTED FROM JURISPRUDENCE — SPECIFICALLY, THIS COURT'S DEFINITION OF A "CONFIDENTIAL EMPLOYEE" — WHEN IT RULED FOR THE INCLUSION OF THE "PAYROLL MASTER" POSITION IN THE BARGAINING UNIT.

III.

WHETHER THIS PETITION IS A "REHASH" OR A "RESURRECTION" OF THE ISSUES RAISED IN G.R. NO. 110399, AS ARGUED BY PRIVATE RESPONDENT.

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[18] CA *rollo*, pp. 437-449.

[19] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Elvi John S. Asuncion and Eliezer R. Delos Santos, concurring, *rollo*, pp. 28-29.

Petitioner contends that with the Court's ruling in G.R. No. 110399[20] identifying the specific employees who can participate in the certification election, *i.e.*, the supervisors (levels 1 to 4) and exempt employees of San Miguel Poultry Products Plants in Cabuyao, San Fernando, and Otis, the CA erred in expanding the scope of the bargaining unit so as to include employees who do not belong to or who are not based in its Cabuyao or San Fernando plants. It also alleges that the employees of the Cabuyao, San Fernando, and Otis plants of petitioner's predecessor, San Miguel Corporation, as stated in G.R. No. 110399, were engaged in "dressed" chicken processing, *i.e.*, handling and packaging of chicken meat, while the new bargaining unit, as defined by the CA in the present case, includes employees engaged in "live" chicken operations, *i.e.*, those who breed chicks and grow chickens.

Respondent counters that petitioner's proposed exclusion of certain employees from the bargaining unit was a rehashed issue which was already settled in G.R. No. 110399. It maintains that the issue of union membership coverage should no longer be raised as a certification election already took place on September 30, 1998, wherein respondent won with 97% votes.

Petitioner's contentions are erroneous. In G.R. No. 110399, the Court explained that the employees of San Miguel Corporation Magnolia Poultry Products Plants of Cabuyao, San Fernando, and Otis constitute a single bargaining unit, which is not contrary to the one-company, one-union policy. An appropriate bargaining unit is defined as a group of employees of a given employer, comprised of all or less than all of the entire body of employees, which the collective interest of all the employees, consistent with equity to the employer, indicate to be best suited to serve the reciprocal rights and duties of the parties under the collective bargaining provisions of the law.[21]

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[20] *San Miguel Corporation Supervisors and Exempt Employees Union v. Laguesma, supra* note 1.

[21] *Id.* at 153, citing *University of the Philippines v. Calleja-Ferrer,* 211 SCRA 464 (1992), which cited *Rothenberg on Labor Relations,* p. 482.

In *National Association of Free Trade Unions v. Mainit Lumber Development Company Workers Union — United Lumber and General Workers of the Phils.*,[22] the Court, taking into account the "community or mutuality of interests" test, ordered the formation of a single bargaining unit consisting of the Sawmill Division in Butuan City and the Logging Division in Zapanta Valley, Kitcharao, Agusan [Del] Norte of the Mainit Lumber Development Company. It held that while the existence of a bargaining history is a factor that may be reckoned with in determining the appropriate bargaining unit, the same is not decisive or conclusive. Other factors must be considered. The test of grouping is community or mutuality of interest. This is so because the basic test of an asserted bargaining unit's acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights.[23] Certainly, there is a mutuality of interest among the employees of the Sawmill Division and the Logging Division. Their functions mesh with one another. One group needs the other in the same way that the company needs them both. There may be differences as to the nature of their individual assignments, but the distinctions are not enough to warrant the formation of a separate bargaining unit.[24]

Thus, applying the ruling to the present case, the Court affirms the finding of the CA that there should be only one bargaining unit for the employees in Cabuyao, San Fernando, and Otis[25] of Magnolia Poultry Products Plant involved in "dressed" chicken processing and Magnolia Poultry Farms engaged in "live" chicken operations. Certain factors, such as specific line of work, working conditions, location of work, mode of compensation, and other relevant conditions do not affect or impede their commonality of interest. Although they seem separate and distinct from each

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[22] G.R. No. 79526, December 21, 1990, 192 SCRA 598.

[23] *Id.* at 602, citing *Democratic Labor Association v. Cebu Stevedoring Company, Inc., et al.*, 103 Phil. 1103 (1958).

[24] *Id*.

[25] *See* note 3.

other, the specific tasks of each division are actually interrelated and there exists mutuality of interests which warrants the formation of a single bargaining unit.

Petitioner asserts that the CA erred in not excluding the position of *Payroll Master* in the definition of a confidential employee and, thus, prays that the said position and all other positions with access to salary and compensation data be excluded from the bargaining unit.

This argument must fail. Confidential employees are defined as those who (1) assist or act in a confidential capacity, in regard (2) to persons who formulate, determine, and effectuate management policies in the field of labor relations.[26] The two criteria are cumulative, and both must be met if an employee is to be considered a confidential employee — that is, the confidential relationship must exist between the employee and his supervisor, and the supervisor must handle the prescribed responsibilities relating to labor relations. The exclusion from bargaining units of employees who, in the normal course of their duties, become aware of management policies relating to labor relations is a principal objective sought to be accomplished by the "confidential employee rule."[27]

A confidential employee is one entrusted with confidence on delicate, or with the custody, handling or care and protection of the employer's property.[28] Confidential employees, such as

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[26] *Sugbuanon Rural Bank, Inc. v. Laguesma*, G.R. No. 381 Phil. 414, 424 (2000), citing *San Miguel Corp. Supervisors and Exempt Employees Union v. Laguesma*, *supra* note 1, at 374, which cited *Westinghouse Electric Corp. v. NLRB* (CA6) 398 F2d. 689 (1968), *Ladish Co*., 178 NLRB 90 (1969) and *B.F. Goodrich Co.,* 115 NLRB 722 (1956).

[27] *Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery v. Asia Brewery, Inc*., G.R. 162025, August 3, 2010, 626 SCRA 376, 387, citing *San Miguel Corp. Supervisors and Exempt Employees Union v. Laguesma*, *supra* note 1, at 374-375, which cited *Westinghouse Electric Corp. v. NLRB*, *id., Ladish Co., id.,* and *B.F. Goodrich Co., id.*

[28] *Pepsi-Cola Products Philippines, Inc. v. Secretary of Labor*, G.R. No. 103300, August 10, 1999, 312 SCRA 104, 116.

accounting personnel, should be excluded from the bargaining unit, as their access to confidential information may become the source of undue advantage.[29] However, such fact does not apply to the position of Payroll Master and the whole gamut of employees who, as perceived by petitioner, has access to salary and compensation data. The CA correctly held that the position of *Payroll Master* does not involve dealing with confidential labor relations information in the course of the performance of his functions. Since the nature of his work does not pertain to company rules and regulations and confidential labor relations, it follows that he cannot be excluded from the subject bargaining unit.

Corollarily, although Article 245[30] of the Labor Code limits the ineligibility to join, form and assist any labor organization to managerial employees, jurisprudence has extended this prohibition to confidential employees or those who by reason of their positions or nature of work are required to assist or act in a fiduciary manner to managerial employees and, hence, are likewise privy to sensitive and highly confidential records.[31] Confidential employees are thus excluded from the rank-and-file bargaining unit. The rationale for their separate category and disqualification to join any labor organization is similar to

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[29] *Golden Farms, Inc. v. Ferrer-Calleja*, 256 Phil. 903, 909 (1989), cited in *Standard Chartered Bank Employees Union (SCBEU-NUBE) v. Standard Chartered Bank*, G.R. No. 161933, April 22, 2008, 552 SCRA 284, 291-292 and *Philips Industrial Development, Inc. v. NLRC*, G.R. No. 88957, June 25, 1992, 210 SCRA 339, 348.

[30] Art. 245. *Ineligibility of managerial employees to join any labor organization; right of supervisory employees.* — Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in the collective bargaining unit of the rank-and-file employees but may join, assist or form separate collective bargaining units and/or legitimate labor organizations of their own. The rank-and-file union and the supervisor's union operating within the supervisors' union operating within the same establishment may join the same federation or national union.

[31] *Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery v. Asia Brewery, Inc.*, *supra* note 27, at 381, citing *Metrolab Industries, Inc. v. Roldan-Confesor*, G.R. No. 108855, February 28, 1996, 254 SCRA 182, 197.

the inhibition for managerial employees, because if allowed to be affiliated with a union, the latter might not be assured of their loyalty in view of evident conflict of interests and the union can also become company-denominated with the presence of managerial employees in the union membership.[32] Having access to confidential information, confidential employees may also become the source of undue advantage. Said employees may act as a spy or spies of either party to a collective bargaining agreement.[33]

In this regard, the CA correctly ruled that the positions of Human Resource Assistant and Personnel Assistant belong to the category of confidential employees and, hence, are excluded from the bargaining unit, considering their respective positions and job descriptions. As Human Resource Assistant,[34] the

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[32] *Id.* at 381-382, citing *Bulletin Publishing Corporation v. Sanchez*, 228 Phil. 600, 608-609 (1986).

[33] *Id.* at 382, citing *Golden Farms, Inc. v. Ferrer-Calleja*, *supra* note 29.

[34] **Human Resource Assistant:** To support the human resources objectives of the MPPP, MPF this position shall provide coordination, advice, information and assistance to the plant personnel manager in the following duties:

MANPOWER PLANNING (PROCESS[ING] AND LIVE)

1.1. Assists and participates in the studies on manning and manpower forecasts needed to meet the current and future personnel requirements of processing, live operations.

1.2. Checks plans for the implementation of staff movements such as transfers, promotions and separations of both processing [and] live operations.

1.3 Coordinates with all department[s] for the consolidation of manpower cost budget and its complement.

1.4 Provides updated organization to the plant management.

COMPENSATION ADMINISTRATION (PROCESSING AND LIVE)

2.1 Initially evaluates and classifies all positions.

2.2 Prepares salary analyses and recommendations for consultation with compensation dept.

2.3 Develops/updates compensation packages for specific personnel when the need arises.

2.4 Administers compensation-related benefits, such as extra time worked allowance, special allowance, supplementary allowance, housing assistance, *per diem*, relocation expense reimbursement, *etc.*

scope of one's work necessarily involves labor relations, recruitment and selection of employees, access to employees' personal files and compensation package, and human resource management. As regards a Personnel Assistant,[35] one's work includes the recording of minutes for management during collective bargaining negotiations, assistance to management during grievance meetings and administrative investigations, and securing

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2.5 Provide the Personnel Manager Officer and Compensation Department with the records related to Compensation such as salary profiles per classification used negotiations.

RECRUITMENT (PROCESSING, LIVE)

3.1 Conducts preliminary interview of applicants before giving tests.

3.2 Coordinates with Dept. Heads/Managers pertaining to internal recruitment selection and hiring of qualified applicants.

3.3. Checks all pre-employment papers of the applicants to ensure its completeness such as the requisition, approved Plantilla, applicant's SSS number and TIN, *etc*. (CA *rollo*, pp. 66-67) (Emphasis supplied.)

[35] **Personnel Assistant:**

LABOR RELATIONS

1. Records minutes during Labor Management Cooperation dialogues and CBA negotiations meeting and facilitates the same when requested.

2. Coordinates Grievance Meeting officially submitted by the Union to Management and feedbacks PPM on schedules and results.

3. Provides support to departments in recording of minutes and schedule of Administrative Investigations.

4. Consults and coordinates with SMB Legal Group to seek legal clarification or opinion on certain labor issues and reports to PPM for action.

5. Performs and maintains liaison with union representative on certain issues to minimize courses of action.

6. Ensures timely preparation and submission of DOLE monthly and quarterly reportorial requirements.

EMPLOYEE RELATIONS

1. Facilitates timely implementation of Corporate Special Programs in discussion with the PPM aligned with budgeted costs and Management thrust.

2. Coordinates with local unions for participation/support in the activities of program implementation and reports to PPM on results of meetings.

3. Maintains regular dialogues and liaisoning activities with employees on concern affecting them and provides feedback to PPM. (*Id.* at 69-70) (Emphasis supplied.)

legal advice for labor issues from the petitioner's team of lawyers, and implementation of company programs. Therefore, in the discharge of their functions, both gain access to vital labor relations information which outrightly disqualifies them from union membership.

The proceedings for certification election are *quasi*-judicial in nature and, therefore, decisions rendered in such proceedings can attain finality.[36] Applying the doctrine of *res judicata*, the issue in the present case pertaining to the coverage of the employees who would constitute the bargaining unit is now a foregone conclusion.

It bears stressing that a certification election is the sole concern of the workers; hence, an employer lacks the personality to dispute the same. The general rule is that an employer has no standing to question the process of certification election, since this is the sole concern of the workers.[37] Law and policy demand that employers take a strict, hands-off stance in certification elections. The bargaining representative of employees should be chosen free from any extraneous influence of management. A labor bargaining representative, to be effective, must owe its loyalty to the employees alone and to no other.[38] The only exception is where the employer itself has to file the petition

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[36] *United Pepsi-Cola Supervisory Union (UPSU) v. Laguesma*, 351 Phil. 244, 261 (1998) citing *B.F. Goodrich Philippines, Inc. v. B.F. Goodrich (Marikina Factory) Confidential & Salaried Employees Union-NATU*, 151 Phil. 585 (1973).

[37] *Barbizon Philippines, Inc. v. Nagkakaisang Supervisor ng Barbizon Philippines, Inc.* — 330 Phil. 472, 493 (1996), citing *Golden Farms, Inc. v. Secretary of Labor*, G.R. No. 102130, July 26, 1994, 234 SCRA 517, 523; *National Association of Trade Unions — Republic Planters Bank Supervisors Chapter v. Torres*, G.R. No. 93468, December 29, 1994, 239 SCRA 546, 551; *Philippine Telegraph and Telephone Corp. v. Laguesma*, G.R. No. 101730, June 17, 1993, 223 SCRA 452, 456-457.

[38] *Barbizon Philippines, Inc. v. Nagkakaisang Supervisor ng Barbizon Philippines, Inc. - NAFLU, supra*, citing *Golden Farms, Inc. v. Secretary of Labor, supra.*

pursuant to Article 258[39] of the Labor Code because of a request to bargain collectively.[40]

With the foregoing disquisition, the Court writes *finis* to the issues raised so as to forestall future suits of similar nature.

WHEREFORE, the petition is *DENIED*. The Decision dated April 28, 2000 and Resolution dated November 28, 2000 of the Court of Appeals, in CA-G.R. SP No. 55510, which affirmed with modification the Resolutions dated July 30, 1999 and August 27, 1999 of the Secretary of Labor, are *AFFIRMED*.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Abad,* and *Sereno,*[**] *JJ.,* concur.

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[39] Art. 258. *When an employer may file petition.* — When requested to bargain collectively, an employer may petition the Bureau for an election. If there is no existing certified collective bargaining agreement in the unit, the Bureau shall, after hearing, order a certification election.

All certification election cases shall be decided within twenty (20) days.

The Bureau shall conduct a certification election within twenty (20) days in accordance with the rules and regulations prescribed by the Secretary of Labor.

[40] *National Association of Trade Unions — Republic Planters Bank Supervisors Chapter v. Torres, supra* note 37.

[*] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1056a dated July 27, 2011.

[**] Designated as an additional member, per Special Order No. 1028 dated June 21, 2011.

FIRST DIVISION

[G.R. No. 171569. August 1, 2011]

UNION BANK OF THE PHILIPPINES, *petitioner, vs.* **ALAIN[*] JUNIAT, WINWOOD APPAREL, INC., WINGYAN APPAREL, INC., NONWOVEN FABRIC PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; WRIT OF ATTACHMENT AND REPLEVIN; PRAYER THEREFOR IN AN ACTION FOR SUM OF MONEY NOT AFFECTED BY THE FACT THAT CHATTEL MORTGAGE IN ISSUE IS NOT NOTARIZED.— Indeed, the unnotarized Chattel Mortgage executed by Juniat, for and in behalf of Wingyan and Winwood, in favor of petitioner does not bind Nonwoven. However, it must be pointed out that petitioner's primary cause of action is for a sum of money with prayer for the issuance of *ex-parte* writs of attachment and replevin against Juniat, Winwood, Wingyan, and the person in possession of the motorized sewing machines and equipment. Thus, the fact that the Chattel Mortgage executed in favor of petitioner was not notarized does not affect petitioner's cause of action. Petitioner only needed to show that the loan of Juniat, Wingyan and Winwood remains unpaid and that it is entitled to the issuance of the writs prayed for. Considering that writs of attachment and replevin were issued by the RTC, Nonwoven had to prove that it has a better right of possession or ownership over the attached properties.

2. CIVIL LAW; SPECIAL CONTRACTS; PLEDGE; NOT BINDING IF NOT IN A PUBLIC INSTRUMENT.— [U]nder Article 2096 of the Civil Code, "[a] pledge shall not take effect against third persons if a description of the thing pledged and the date of the pledge do not appear in a public instrument."

3. ID.; ID.; ID.; PLEDGE PRESUMED OVER *DACION EN PAGO* IN THE ABSENCE OF EVIDENCE TO SHOW PROPERTIES WERE SOLD BY WAY OF A *DACION EN*

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[*] Also spelled as Allan and Allain in some parts of the records.

PAGO.— Neither can we sustain the finding of the CA that: "The machineries were ceded to THIRD PARTY NONWOVEN by way of *dacion en pago*, a contract later entered into by WINWOOD/ WINGYAN and THIRD PARTY NONWOVEN." As aptly pointed out by petitioner, no evidence was presented by Nonwoven to show that the attached properties were subsequently sold to it by way of a *dacion en pago*. Also, there is nothing in the Agreement dated May 9, 1992 to indicate that the motorized sewing machines, snap machines and boilers were ceded to Nonwoven as payment for the Wingyan's and Winwood's obligation. It bears stressing that there can be no transfer of ownership if the delivery of the property to the creditor is by way of security. In fact, in case of doubt as to whether a transaction is one of pledge or *dacion en pago*, the presumption is that it is a pledge as this involves a lesser transmission of rights and interests.

APPEARANCES OF COUNSEL

Fe T. Becina-Macalino and Associates for petitioner.
Poblador Bautista & Reyes for Nonwoven Fabric Phils.

D E C I S I O N

DEL CASTILLO, *J.*:

To have a binding effect on third parties, a contract of pledge must appear in a public instrument.[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the June 23, 2005 Decision[3] and the February 9, 2006 Resolution[4] of the Court of Appeals (CA) in CA-G.R. CV No. 66392.

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[1] Article 2096 of the Civil Code provides:

A pledge shall not take effect against third persons if a description of the thing pledged and the date of the pledge do not appear in a public instrument.

[2] *Rollo*, pp. 11-91 with Annexes "A" to "E" inclusive.

[3] *Id.* at 52-62; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr.

[4] *Id.* at 63-64; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr.

Factual Antecedents

Petitioner Union Bank of the Philippines (Union Bank) is a universal banking corporation organized and existing under Philippine laws.[5]

Respondents Winwood Apparel, Inc. (Winwood) and Wingyan Apparel, Inc. (Wingyan) are domestic corporations engaged in the business of apparel manufacturing.[6] Both respondent corporations are owned and operated by respondent Alain Juniat (Juniat), a French national based in Hongkong.[7] Respondent Nonwoven Fabric Philippines, Inc. (Nonwoven) is a Philippine corporation engaged in the manufacture and sale of various types of nonwoven fabrics.[8]

On September 3, 1992, petitioner filed with the Regional Trial Court (RTC) of Makati, Branch 57, a Complaint[9] with prayer for the issuance of *ex-parte* writs of preliminary attachment and replevin against Juniat, Winwood, Wingyan, and the person in possession of the mortgaged motorized sewing machines and equipment.[10] Petitioner alleged that Juniat, acting for and in behalf of Winwood and Wingyan, executed a promissory note[11] dated April 11, 1992 and a Chattel Mortgage[12] dated March 27, 1992 over several motorized sewing machines and other allied equipment to secure their obligation arising from export bills transactions to petitioner in the amount of ₱1,131,134.35;[13] that as additional security for the obligation, Juniat executed a

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[5] *Id.* at 15.

[6] *Id.* at 16.

[7] *Id.*

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

[9] Records, pp. 1-9.

[10] *Rollo*, pp. 54-55.

[11] Records, pp. 749-750.

[12] *Id.* at 751-754.

[13] *Rollo*, pp. 65-66.

Continuing Surety Agreement[14] dated April 11, 1992 in favor of petitioner;[15] that the loan remains unpaid;[16] and that the mortgaged motorized sewing machines are insufficient to answer for the obligation.[17]

On September 10, 1992, the RTC issued writs of preliminary attachment and replevin in favor of petitioner.[18] The writs were served by the Sheriff upon Nonwoven as it was in possession of the motorized sewing machines and equipment.[19] Although Nonwoven was not impleaded in the complaint filed by petitioner, the RTC likewise served summons upon Nonwoven since it was in possession of the motorized sewing machines and equipment.[20]

On September 28, 1992, Nonwoven filed an Answer,[21] contending that the unnotarized Chattel Mortgage executed in favor of petitioner has no binding effect on Nonwoven and that it has a better title over the motorized sewing machines and equipment because these were assigned to it by Juniat pursuant to their Agreement[22] dated May 9, 1992.[23] Juniat, Winwood, and Wingyan, on the other hand, were declared in default for failure to file an answer within the reglementary period.[24]

On November 23, 1992, petitioner filed a Motion to Sell Chattels Seized by Replevin,[25] praying that the motorized sewing

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[14] Records, pp. 755-758.

[15] *Rollo*, p. 66.

[16] *Id.* at 55.

[17] *Id*.

[18] *Id*.

[19] *Id.* at 66.

[20] *Id*.

[21] Records, pp. 110-120.

[22] *Id.* at 121.

[23] *Id.* at 113.

[24] *Rollo*, p. 67.

[25] Records, pp. 357-359.

machines and equipment be sold to avoid depreciation and deterioration.[26] However, on May 18, 1993, before the RTC could act on the motion, petitioner sold the attached properties for the amount of ₱1,350,000.00.[27]

Nonwowen moved to cite the officers of petitioner in contempt for selling the attached properties, but the RTC denied the same on the ground that Union Bank acted in good faith.[28]

Ruling of the Regional Trial Court

On May 20, 1999, the RTC of Makati, Branch 145,[29] rendered a Decision[30] in favor of petitioner. The RTC ruled that both the Chattel Mortgage dated March 27, 1992 in favor of petitioner and the Agreement dated May 9, 1992 in favor of Nonwoven have no obligatory effect on third persons because these documents were not notarized.[31] However, since the Chattel Mortgage in favor of petitioner was executed earlier, petitioner has a better right over the motorized sewing machines and equipment under the doctrine of "first in time, stronger in right" (*prius tempore, potior jure)*.[32] Thus, the RTC disposed of the case in this wise:

WHEREFORE, above premises considered, judgment is hereby rendered as follows:

1.] Declaring the [petitioner] UNION BANK OF THE PHILIPPINES, as having the better right to the goods and/or machineries subject of the Writs of Preliminary Attachment and Replevin issued by this Court on September 10, 1992.

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[26] *Rollo*, p. 56.

[27] *Id*.

[28] *Id.* at 57.

[29] *Id.* at 70; The case was re-raffled to Branch 145 of the RTC of Makati as Presiding Judge Francisco X. Velez of Branch 57 inhibited himself from the case.

[30] *Id.* at 65-76; penned by Acting Presiding Judge Oscar B. Pimentel.

[31] *Id.* at 74.

[32] *Id*.

2.] Declaring the [petitioner] as entitled to the proceeds of the sale of the subject machineries in the amount of ₱1,350,000.00;

3.] Declaring [respondents] Allain Juniat, Winwood Apparel, Inc. and Wingyan Apparel, Inc. to be jointly and severally liable to the [petitioner], for the deficiency between the proceeds of the sale of the machineries subject of this suit [₱1,350,000.00] and original claim of the plaintiff [₱1,919,907.03], in the amount of ₱569,907.03, with legal interest at the rate of 12% per annum from date of this judgment until fully paid; and

4.] Declaring [respondents] Allain Juniat, Winwood Apparel, Inc. and Wingyan Apparel, Inc. to be jointly and severally liable to the [petitioner] for the amount of ₱50,000.00 as reasonable attorneys fees; and

5.] Cost of this suit against the [respondents].

SO ORDERED.[33]

Nonwoven moved for reconsideration[34] but the RTC denied the same in its Order[35] dated July 14, 1999.

Ruling of the Court of Appeals

On appeal, the CA reversed the ruling of the RTC. The CA ruled that the contract of pledge entered into between Juniat and Nonwoven is valid and binding, and that the motorized sewing machines and equipment were ceded to Nonwoven by Juniat by virtue of a *dacion en pago*.[36] Thus, the CA declared Nonwoven entitled to the proceeds of the sale of the attached properties.[37] The *fallo* reads:

WHEREFORE, premises considered, the assailed decision is hereby **REVERSED and SET ASIDE**. [Petitioner] Union Bank of the Philippines is hereby **DIRECTED** to pay Nonwoven Fabric

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

[34] Records, pp. 1081-1094.

[35] *Rollo,* p. 77.

[36] *Id.* at 59-61.

[37] *Id.* at 61-62.

Philippines, Inc. ₱1,350,000.00, the amount it holds in escrow, realized from the May 18, 1993 sale of the machineries to avoid deterioration during pendency of suit. No pronouncement as to costs.

SO ORDERED.[38]

Petitioner sought reconsideration[39] which was denied by the CA in a Resolution[40] dated February 9, 2006.

Issues

Hence, the present recourse where petitioner interposes the following issues:

1. Whether x x x the Court of Appeals committed serious reversible error in setting aside the Decision of the trial court holding that Union Bank of the Philippines had a better right over the machineries seized/levied upon in the proceedings before the trial court and/or the proceeds of the sale thereof;

2. Whether x x x the Court of Appeals seriously erred in holding that [Nonwoven] has a valid claim over the subject sewing machines.[41]

Petitioner's Arguments

Echoing the reasoning of the RTC, petitioner insists that it has a better title to the proceeds of the sale.[42] Although the Chattel Mortgage executed in its favor was not notarized, petitioner insists that it is nevertheless valid, and thus, has preference over a subsequent unnotarized agreement.[43] Petitioner further claims that except for the said agreement, no other evidence was presented by Nonwoven to show that the motorized sewing

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[38] *Id*.

[39] *Id.* at 78-87.

[40] *Id.* at 63-64.

[41] *Id.* at 283-284.

[42] *Id.* at 290-291.

[43] *Id.* at 287-293.

machines and equipment were indeed transferred to them by Juniat/Winwood/Wingyan.[44]

Respondent Nonwoven's Arguments

Nonwoven, on the other hand, claims ownership over the proceeds of the sale under Article 1544[45] of the Civil Code on double sale, which it claims can be applied by analogy in the instant case.[46] Nonwoven contends that since its prior possession over the motorized sewing machines and equipment was in good faith, it has a better title over the proceeds of the sale.[47] Nonwoven likewise maintains that petitioner has no right over the proceeds of the sale because the Chattel Mortgage executed in its favor was unnotarized, unregistered, and without an affidavit of good faith.[48]

Our Ruling

The petition has merit.

Nonwoven lays claim to the attached motorized sewing machines and equipment pursuant to the Agreement it entered into with Juniat, to wit:

Hong Kong, 9th May, 1992

With reference to talks held this morning at the Holiday Inn Golden Mile Coffee Shop, among the following parties:

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[44] *Id.* at 286-287.

[45] Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

[46] *Rollo*, p. 257.

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

[48] *Id.* at 252.

a. Redflower Garments Inc. – Mrs. Maglipon
b. Nonwoven Fabrics Phils. Inc. – Mr. J. Tan
c. Winwood Apparel Inc./Wing Yan Apparel, Inc. – Mr. A. Juniat, Mrs. S. Juniat

IT WAS AGREED THAT:

a. Settlement of the accounts between Nonwoven Fabrics Phils. Inc. and Winwood Apparel Inc./Wing Yan Apparel, Inc. should be effected as agreed through partial payment by L/C **with the balance to be settled at a later date for which Winwood Apparel, Inc. agrees to consign 94 sewing machines, 3 snap machines and 2 boilers, presently in the care of Redflower Garments Inc., to the care of Nonwoven Fabrics Phils., Inc. as guarantee.** Meanwhile, Nonwoven will resume delivery to Winwood/Win Yang as usual.

x x x[49] (Emphasis supplied.)

It insists that since the attached properties were assigned or ceded to it by Juniat, it has a better right over the proceeds of the sale of the attached properties than petitioner, whose claim is based on an unnotarized Chattel Mortgage.

We do not agree.

Indeed, the unnotarized Chattel Mortgage executed by Juniat, for and in behalf of Wingyan and Winwood, in favor of petitioner does not bind Nonwoven.[50] However, it must be pointed out that petitioner's primary cause of action is for a sum of money with prayer for the issuance of *ex-parte* writs of attachment and replevin against Juniat, Winwood, Wingyan, and the person in possession of the motorized sewing machines and equipment.[51]

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[49] Records, p. 121.

[50] CIVIL CODE, Art. 2125. In addition to the requisites stated in Article 2085, it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties.

The persons in whose favor the law establishes a mortgage have no other right than to demand the execution and the recording of the document in which the mortgage is formalized.

[51] Records, pp. 1-9.

Thus, the fact that the Chattel Mortgage executed in favor of petitioner was not notarized does not affect petitioner's cause of action. Petitioner only needed to show that the loan of Juniat, Wingyan and Winwood remains unpaid and that it is entitled to the issuance of the writs prayed for. Considering that writs of attachment and replevin were issued by the RTC,[52] Nonwoven had to prove that it has a better right of possession or ownership over the attached properties. This it failed to do.

A perusal of the Agreement dated May 9, 1992 clearly shows that the sewing machines, snap machines and boilers were pledged to Nonwoven by Juniat to guarantee his obligation. However, under Article 2096 of the Civil Code, "[a] pledge shall not take effect against third persons if a description of the thing pledged and the date of the pledge do not appear in a public instrument." Hence, just like the chattel mortgage executed in favor of petitioner, the pledge executed by Juniat in favor of Nonwoven cannot bind petitioner.

Neither can we sustain the finding of the CA that: "The machineries were ceded to THIRD PARTY NONWOVEN by way of *dacion en pago*, a contract later entered into by WINWOOD/WINGYAN and THIRD PARTY NONWOVEN."[53] As aptly pointed out by petitioner, no evidence was presented by Nonwoven to show that the attached properties were subsequently sold to it by way of a *dacion en pago*. Also, there is nothing in the Agreement dated May 9, 1992 to indicate that the motorized sewing machines, snap machines and boilers were ceded to Nonwoven as payment for the Wingyan's and Winwood's obligation. It bears stressing that there can be no transfer of ownership if the delivery of the property to the creditor is by way of security.[54] In fact, in case of doubt as to whether a transaction is one of pledge or *dacion en pago*, the presumption

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[52] *Rollo*, p. 66.

[53] *Id.* at 61.

[54] *Fort Bonifacio Development Corporation v. Yllas Lending Corporation*, G.R. No. 158997, October 6, 2008, 567 SCRA 454, 465.

is that it is a pledge as this involves a lesser transmission of rights and interests.[55]

In view of the foregoing, we are constrained to reverse the ruling of the CA. Nonwoven is not entitled to the proceeds of the sale of the attached properties because it failed to show that it has a better title over the same.

WHEREFORE, the petition is hereby *GRANTED*. The assailed June 23, 2005 Decision and the February 9, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 66392 are hereby *REVERSED and SET ASIDE*. The May 20, 1999 Decision of the Regional Trial Court of Makati, Branch 145, is hereby *REINSTATED* and *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 172110. August 1, 2011]

MINDA VILLAMOR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 181804. August 1, 2011]

GLICERIO VIOS, JR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[55] *Lopez v. Court of Appeals,* 200 Phil. 150, 164 (1982).

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULES PRESCRIBING TIME TO DO CERTAIN ACTS, INDISPENSABLE FOR NEEDLESS DELAYS; MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR RECONSIDERATION OF CA DECISION, PROSCRIBED. — It is axiomatic that the "Rules of Court, promulgated by authority of law, have the force and effect of law. More importantly, rules prescribing the time within which certain acts must be done, or certain proceedings taken, are absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business. Strict compliance with such rules is mandatory and imperative. Only strong considerations of equity will lead us to allow an exception to the procedural rule in the interest of substantial justice. As regards Minda Villamor's petition (G.R. No. 172110), suffice it to say that the CA properly denied her motion for extension of time to file a motion for reconsideration of the assailed CA decision as such motion is clearly proscribed in *Habaluyas Enterprises, Inc. v. Japson.* Thus, the subsequent filing of her motion for reconsideration of the CA decision way beyond the reglementary period has rendered the said decision final and executory.

2. ID.; ID.; ID.; APPEAL BRIEF BELATEDLY FILED WITHOUT PRIOR MOTION TO EXTEND TIME TO FILE THE SAME AND WITHOUT MENTION OF GOOD CAUSE FOR THE DELAY, NOT APPRECIATED.— In dismissing the appeal of Glicerio Vios, Jr., the CA noted that *despite several months had lapsed* from the time the Notice to File Brief dated November 28, 2003 was sent to the appellants and their counsels, he belatedly filed his appeal brief only on June 22, 2004 *without previously filing a motion for extension of time to file the same*. In fact, as further observed by the CA, his Appeal Brief "*makes no mention of any good or sufficient cause explaining the delay of its filing*." x x x The belated explanation proffered by petitioner Vios' counsel to justify his delay in filing the Appeal Brief was well rejected by the CA. Indeed, if the alleged shooting incident at his counsel's law firm was the cause of the delay, it is highly unimaginable why such bizarre episode

which supposedly prompted the temporary closure of the law firm for fear of possible follow-up attacks to the lawyers therein — was not mentioned at all in his Appeal Brief. Strangely, such incident was totally concealed from the CA.

APPEARANCES OF COUNSEL

Javier Javier Lim & Tarranza Law Offices for appellee in both cases.

The Solicitor General for appellant.

D E C I S I O N

PERALTA, *J.*:

These two cases were consolidated as they arose from the same factual milieu and assail the same decision of the Court of Appeals.

Minda Villamor and Glicerio Vios, Jr. (petitioners), along with Nicolas Caballero, Ricardo Tormis, and Jeffrey Cutab, were charged with frustrated murder before the Regional Trial Court (RTC) of Lanao del Norte, Branch 4, Iligan City, docketed as Criminal Case No. 4-7450. The accusatory portion of the Amended Information dated February 2, 1999 filed against them reads:

That on or about January 7, 1999, in the City of Iligan, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping each other, by means of treachery, evident premeditation and inconsideration of a price or reward, armed with a bladed weapon and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, stab and wound one Jean V. Jumawan thereby inflicting upon her the following physical injuries, to wit:

Multiple stab wounds, abdomen.

thus performing all the acts of execution which should have produced the crime of Murder as a consequence, but nevertheless did not produce

it by reason of causes independent of their will.[1] (Underscoring in the original)

When arraigned, all the accused pleaded not guilty.

Soon after, accused Ricardo Tormis changed his previous plea to guilty, was sentenced, and then committed to the San Ramon Penal Colony and Farm in Zamboanga City to serve his sentence.[2] Accused Nicolas Caballero was subsequently discharged as an accused, as he was utilized as a state witness.[3] The case against accused Jeffrey Cutab was later dismissed after his Demurrer to Evidence was granted by the RTC.[4]

The facts established by the evidence of the prosecution, as summarized by the Solicitor General in the People's Brief, are as follows:

About 1:00 P.M. of January 7, 1999, victim Jean Jumawan, a public school teacher, was resting inside her classroom No. 11 at Iligan City East Central School, Tambo, Hinaplanon, Iligan City when Ricardo Tormis and Nicolas Caballero arrived. Immediately thereafter, Caballero stepped out of the classroom while Tormis handed Jumawan an envelope, saying that it came from Minda Villamor and Glicerio Vios, Jr. (TSN, Aug. 18, 1999, p. 7). When Jumawan was about to open the envelope, Tormis suddenly stabbed her successively, hitting the different parts of her body (TSN, *id.*, pp. 7-8). When she parried Tormis' assault, Jumawan's hand likewise sustained injuries. She fell down to the floor. Tormis continued his assault but missed because Jumawan, who was then lying on the floor, kicked him, causing him to stagger backward. Jumawan stood up and shouted for help while Tormis fled (TSN, *id.*, p. 9).

Bloodied and weak, Jumawan was carried and brought to the Mindanao Sanitarium and Hospital where Dr. Anastacio Gayao and Dr. Elfred Solis performed surgery on her major multiple stab wounds x x x. Dr. Gayao issued her a medical certificate (Exh. "B", *rollo*, p. 188), x x x.

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[1] Records, pp. 33-34.

[2] *Id.* at 81-82.

[3] *Id.* at 84, 98, 101.

[4] *Id.* at 342-343.

On February 4 to 12, 1999, because of her inability to move her wounded right hand fingers, Jumawan likewise underwent surgery under Dr. Agustin Morales at the Cebu Doctors' Hospital, Cebu City. Dr. Morales and Dr. Manuel Juanillo, her other attending physician, issued her a medical certificate (Exh. "C", *rollo*, p. 190), x x x.

x x x Until now, despite medical intervention, [Jumawan] cannot write with the use of her right hand. She now uses her left hand, but still with difficulty (TSN, Aug. 18, 1999, p. 12). She cannot anymore move easily and feels anxious that she is no longer the same person as she used to be.

She was absent from her school work for about four (4) months due to her hospital confinement and rehabilitation. Hence, she received no salary.

Jumawan presented numerous receipts of her medical expenses due to the injuries she sustained (Exhs. "Q" to "Q-14"). x x x In prosecuting this case, Jumawan hired the services of Atty. Providencio Abragan, her private prosecutor, and agreed to pay ₱30,000.00 as acceptance fee and ₱1,000.00 as appearance fee.

Prior to the stabbing incident, or on October 27, 1990, when Jumawan, Vios, and Villamor were still teaching colleagues at the Luinab Elementary School, Iligan City, Jumawan and her mother filed an administrative complaint against Vios before the Department of Education, Culture and Sports (DECS) (TSN, Dec. 7, 1999, p. 12).

x x x x x x x x x

Likewise, prior to the stabbing incident, Jumawan filed a case for Grave Oral Defamation against Minda Villamor who was thereafter convicted by the Municipal Trial Court in Cities, Branch 5, Iligan City in its Decision dated April 30, 1998 in Case No. (29570-AF) I-5776. On appeal, the Regional Trial Court of Lanao del Norte, Branch 5, Iligan City, in its Order dated March 3, 1999, affirmed the lower court's decision of conviction. The case is now pending review by the Court of Appeals, docketed as CA-G.R. CR No. 23519.

x x x x x x x x x

Nicolas Caballero x x x who, upon motion by the prosecution, was discharged [as an accused] and utilized as a state witness, affirmed his sworn statement dated January 11, 1999 (Exhs. "A" & "A-1", *rollo*, pp. 186-187).

According to Caballero, Vios and Minda Villamor were the ones who planned the stabbing of Jumawan on January 7, 1999. Upon instruction by Vios and Villamor, he looked for a killer and got Ricardo Tormis to do the job. Unlike Caballero, Vios, Minda Villamor and Jumawan were all from Luinab, Iligan City, while Tormis was a resident of Ladid, Digkilaan, Iligan City. He was promised that Vios and Villamor would take care of him while the killer would be given ₱10,000.00 to be shouldered equally by the two (TSN, July 26, 1999, pp. 10-11).

The plot was first hatched at about 7:00 P.M. of January 2, 1999 in the house of Vios, with Caballero, Vios, Villamor and Michael Quiapo in attendance (TSN, *ibid.*, p. 10). On January 3, 1999, they met again at the house of Villamor, who told Vios to make it fast because she was very angry with Jumawan (TSN, *id.*, p. 11). When Caballero asked her the reason of their hatred against Jumawan, Vios replied that Jumawan implicated him in the burning of her car, while Villamor stated that she had a case with Jumawan (TSN, *id.*).

At 5:50 P.M. of January 6, 1999, Caballero brought Tormis, who agreed to do the "job," to Vios and Villamor who instructed the former to kill Jumawan saying, "*Kami nay bahala ninyo pagkahuman*" (TSN, *id.*, p. 12).

About 12:45 P.M. of January 7, 1999, Caballero, as planned, escorted Ricardo Tormis to the classroom of Jumawan. When inside, Caballero left Tormis and went back to the school gate where he left the bicycle they used, and waited. Shortly thereafter, Tormis, carrying a knife, went out of Jumawan's classroom. Caballero and Tormis boarded the bicycle and fled to Tambo, Bayug, Iligan City (TSN, *id.*, p. 14).

Both the knife used by Tormis to stab Jumawan and the bicycle used by Caballero and Tormis were provided by Vios, x x x.

x x x in the late afternoon of January 7, 1999, Caballero and Tormis returned to the house of Vios. Villamor was fetched from her house just across the street. Vios and Villamor gave Tormis ₱1,000.00 and was told to come back for the balance of ₱9,000.00 (TSN, *id.*, p. 15).

For his participation, Caballero was handed ₱400.00 and was advised to hide somewhere because he was identified (TSN, *id.*). He took refuge for four (4) days in Marawi City but, on January 11, 1999, he went back to Iligan City where he voluntarily related the incident

to the *barangay* captain, and then in the police precinct, with the assistance of a counsel (Exhs. "A" and "A1", *rollo*, pp. 181-187).[5]

Petitioners denied having committed the crime charged.

Invoking the defense of alibi, petitioner Glicerio Vios, Jr. claimed that at the time the crime was committed, he was in his classroom conducting classes when he noticed some pupils running, and then a co-teacher informed him that Jean Jumawan was stabbed inside her classroom. It was only on January 11, 1999 when he first met Nicolas Caballero during the investigation of this incident at the prosecutor's office. He did not harbor any ill-feelings towards private complainant Jean Jumawan, since the administrative case she (and her mother) filed against him before the DECS was dismissed for insufficiency of evidence. He contradicted himself, though, when he stated during cross-examination that there was no DECS order dismissing the said administrative case.

For her part, petitioner Minda Villamor testified that she and her brother Ernesto Lura were in Libonan, Bukidnon from January 1, 1999 until dawn of January 4, 1999 to visit their old sick father. She thus could not have met Nicolas Caballero, as he claimed, at petitioner Vios' house in the evening of January 2, 1999 and at her house the following day where they (petitioners) supposedly discussed with him the plan to kill Jean Jumawan. It was only during the investigation of the stabbing incident that she first met Caballero and Ricardo Tormis. She admitted that she and Jean Jumawan had once an altercation which led to the filing of grave oral defamation by Jumawan and her mother against her (Minda Villamor). She denied, however, that she was angry at the two since, she had already forgotten about that case.

Finding credible and trustworthy the positive and categorical testimonies of prosecution witnesses who have no ill motive in testifying against the petitioners, the RTC, by Decision[6] dated July 7, 2003, convicted the latter of frustrated murder as principals

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[5] *Rollo* (G.R. No. 172110), pp. 96-102.

[6] Records, pp. 454-478.

by inducement, thus:

WHEREFORE, premises all considered, the Court finds both accused, Glicerio Vios, Jr. and Minda Villamor, guilty of Frustrated Murder beyond reasonable doubt. Applying the Indeterminate Sentence Law, each of them is hereby meted the penalty of *Prision Mayor* Maximum of 10 years and 1 day, as minimum, to *Reclusion Temporal* Medium of 17 years and 4 months, as maximum.

Further, accused Glicerio Vios, Jr. and Minda Villamor, as well as Ricardo Tormis, are hereby ordered to pay Jean Jumawan, jointly and solidarily, the following:

a) the sum of ₱207,279.85 as actual and compensatory damages;
b) the amount of ₱59,320.00 as loss of earning capacity;
c) the sum of ₱100,000.00 as moral damages;
d) the amount of ₱50,000.00 as exemplary damages; and
e) the sum of ₱45,000.00 as attorney's fees.[7]

The petitioners seasonably filed separate Notices of Appeal.

The Court of Appeals (CA), Cagayan de Oro City rendered a Decision[8] dated October 27, 2005 in CA-G.R. CR No. 27667, the dispositive portion of which reads:

FOR THE REASONS STATED, We DISMISS the appeal of accused-appellant Glicerio Vios, Jr. and AFFIRM the appealed decision with respect to the accused-appellant Minda Villamor. The award of damages is MODIFIED and the accused-appellants, together with the accused Ricardo Tormis, are ordered to pay, jointly and severally, the victim Jean Jumawan the following amounts:

1) ₱207,279.85 as actual and compensatory damages;
2) ₱25,000.00 as temperate damages;
3) ₱50,000.00 as moral damages;
4) ₱25,000.00 as exemplary damages; and
5) ₱25,000.00 as attorney's fees.[9]

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[7] *Id.* at 478.

[8] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Normandie B. Pizarro and Ricardo R. Rosario, concurring; CA *rollo*, pp. 246-262.

[9] *Id.* at 262.

The appeal of Glicerio Vios, Jr. was dismissed, since his appeal brief was filed too late without even a motion for extension of time to file the same having been made.

His motion for reconsideration of the CA Decision having been denied,[10] Glicerio Vios, Jr. filed the present Petition for Review on *Certiorari*, docketed as G.R. No. 181804. Essentially, he alleged that the CA erred in dismissing his appeal by mere technicality, and in affirming the factual findings of the trial court.[11]

Minda Villamor's motion for reconsideration of the CA Decision was also denied for being late. She *admitted* that a copy of the CA Decision was received by her counsel, Atty. Elpidio N. Cabasan, on November 16, 2005; hence, the *last day* to file her motion for reconsideration was on **December 1, 2005**. On November 30, 2005, however, her new counsel, Atty. David Warren G. Lim, filed a Motion For Extension of Time to File Motion for Reconsideration (with Notice of Appearance), praying for a 30-day extension of time from December 1, 2005, or until December 31, 2005, within which to file the said motion for reconsideration as Atty. Cabasan was suffering from "prostate illness [with] diabetic complication."[12]

It was only on **December 28, 2005** that Atty. Lim filed a motion for reconsideration[13] of the CA Decision, way beyond the reglementary period.

Expectedly, the CA denied both motions, holding that "no motion for extension of time to file a motion for reconsideration is allowed pursuant to *Habaluyas Enterprises, Inc. v. Japson*, 142 SCRA 208 (May 30, 1986)."[14]

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[10] CA Resolution dated January 25, 2008, *id.* at 506-510.

[11] *Rollo* (G.R. No. 181804), p. 32.

[12] CA *rollo*, pp. 267-269.

[13] *Id.* at 279-289.

[14] Resolution dated March 8, 2006, *id.* at 390.

Minda Villamor then filed the present Petition for Review on *Certiorari*, docketed as G.R. No. 172110, alleging in essence that the CA erred in affirming the findings of the trial court, particularly on the credibility of witnesses.[15]

In its separate Comments, the Office of the Solicitor General prays for the denial of both petitions for lack of merit.

The present petitions must fail.

It is axiomatic that the "Rules of Court, promulgated by authority of law, have the force and effect of law. More importantly, rules prescribing the time within which certain acts must be done, or certain proceedings taken, are absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business. Strict compliance with such rules is mandatory and imperative. Only strong considerations of equity will lead us to allow an exception to the procedural rule in the interest of substantial justice."[16]

As regards Minda Villamor's petition (G.R. No. 172110), suffice it to say that the CA properly denied her motion for extension of time to file a motion for reconsideration of the assailed CA decision as such motion is clearly proscribed in *Habaluyas Enterprises, Inc. v. Japson*. Thus, the subsequent filing of her motion for reconsideration of the CA decision way beyond the reglementary period has rendered the said decision final and executory.

With respect to the petition of Glicerio Vios, Jr. (G.R. No. 181804), he *admits* that "he failed to file his appellant's brief within the reglementary period."[17] He submits, though, that the CA "erred in dismissing his appeal for such technical deficiency."[18] He justified the late filing of his Appeal Brief in this wise:

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[15] *Rollo* (G.R. No. 172110), pp. 27-28.

[16] *Bago v. People*, G.R. No. 135638, January 20, 2003, 395 SCRA 404, 405-406.

[17] *Rollo* (G.R. No. 181804), p. 295.

[18] *Id.* at 295-296.

x x x the reason of x x x the delayed filing of petitioner's appeal brief was because of a shooting incident that took place in the law firm of petitioner's counsel wherein one of the lawyers in the said firm was shot. For this reason, the law office was x x x temporarily closed for fear of possible attack to the lawyers in the said law firm. Threats were so high since then that the law office was able to regularly function only sometime in June 2004. With such justifiable reason, a strict application of Rule 124, Section 8 of the Rules of Court is not ideal because it will obviously deprive therein petitioner from substantial justice."[19]

We are not persuaded.

In dismissing the appeal of Glicerio Vios, Jr., the CA noted that *despite several months had lapsed* from the time the Notice to File Brief dated November 28, 2003 was sent to the appellants and their counsels, he belatedly filed his appeal brief only on June 22, 2004 *without previously filing a motion for extension of time to file the same*. In fact, as further observed by the CA, his Appeal Brief "*makes no mention of any good or sufficient cause explaining the delay of its filing*."[20] Thus, the CA ruled:

Vios x x x filed his Brief on June 22, 2004 **without filing a motion for extension of time to file appellant's brief**. The OSG maintained in its second Appellee's Brief that Vios' failure to file his brief within the reglementary period warrants the dismissal of his appeal.

We dismiss Vios' appeal for his failure to file the same within the time allowed by the Rules of Court. Rule 124, Section 8 of the said Rules provides: "x x x. The Court of Appeals may, upon motion of the appellee or *motu propio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by the Rule, except where the appellant is represented by a counsel *de oficio*. x x x."

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

[20] CA *rollo*, p. 254.

Under the Revised Rules of Criminal Procedure (Section 3, Rule 124), the appellant must file his brief within thirty (30) days from receipt by the appellant or his counsel of the notice from the clerk of court of this Court that evidence, oral and documentary, is already attached to the record.

The record reveals that a Notice to File Brief dated November 28, 2003 was sent to the appellants as well as to their counsels. x x x. **Vios did not file any motion for extension of time to file brief despite the fact that several months had lapsed from the time the notice to file brief was sent to the appellants and their counsels. Vios' appeal brief makes no mention of any good or sufficient cause explaining the delay in its filing.** The dismissal of his appeal, therefore, is proper under the Rules, considering that the trial court's judgment of conviction has become final as to him.[21]

The belated explanation proffered by petitioner Vios' counsel to justify his delay in filing the Appeal Brief was well rejected by the CA. Indeed, if the alleged shooting incident at his counsel's law firm was the cause of the delay, it is highly unimaginable why such bizarre episode — which supposedly prompted the temporary closure of the law firm for fear of possible follow-up attacks to the lawyers therein — was not mentioned at all in his Appeal Brief. Strangely, such incident was totally concealed from the CA.

Having failed to show compelling reason to warrant the relaxation of the application of the Rules in his favor, Vios' petition must perforce be denied.

The unjustified failure of both petitioners herein to observe very elementary rules of procedure in the observance of reglementary periods undermines the stability of the judicial process. Thus, their appeal for liberal application of the Rules "in the interest of substantial justice" cannot be successfully invoked. Besides, their petitions, as shown earlier, commonly raise *factual* issues relative to the trial court's findings on the

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[21] *Id.* at 253-255. (Emphasis supplied.)

sufficiency of evidence to establish their guilt beyond reasonable doubt — a matter beyond the province of this Court to review.

WHEREFORE, these consolidated petitions are *DENIED* and the assailed Decision and Resolutions of the Court of Appeals are *AFFIRMED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Brion,[*] *Abad,* and *Sereno,*[**] *JJ.*, concur.

EN BANC

[A.M. No. P-11-2896. August 2, 2011]
(Formerly OCA I.P.I. No. 08-2977-P)

PROSERPINA V. ANICO, *complainant, vs.* **EMERSON B. PILIPIÑA, Sheriff IV, Office of the Clerk of Court, Regional Trial Court, Manila,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; REQUIREMENT TO SECURE THE COURT'S PRIOR APPROVAL OF THE ESTIMATED EXPENSES AND FEES NEEDED TO IMPLEMENT THE COURT PROCESS; PROCEDURE THEREIN. — Under Section 9, Rule 141 of the Rules of Court, the sheriff is required to secure the court's prior approval of the estimated expenses and fees needed to implement the court process. x x x Thus,

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[*] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1056 dated July 27, 2011.

[**] Designated as an additional member, per Special Order No. 1028 dated June 21, 2011.

a sheriff is guilty of violating the Rules if he fails to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ, for which he must seek the court's approval; (2) render an accounting; and (3) issue an official receipt for the total amount he received from the judgment debtor. The rule requires the sheriff executing writs or processes to estimate the expenses to be incurred. Upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and *ex-officio* Sheriff. The expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit.

2. **ID.; ID.; ID.; ID.; ID.; SHERIFFS ARE NOT ALLOWED TO RECEIVE ANY VOLUNTARY PAYMENT FROM PARTIES IN THE COURSE OF THE PERFORMANCE OF THEIR DUTIES.—** It must be stressed that sheriffs are not allowed to receive any *voluntary* payments from parties in the course of the performance of their duties. Corollary, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps; otherwise, it would amount to dishonesty or extortion. Even assuming such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Neither will complainant's acquiescence or consent to such expenses absolve the sheriff for his failure to secure the prior approval of the court concerning such expense.

3. **ID.; ID.; ID.; ID.; RETURN OF WRIT OF EXECUTION; SHERIFFS MUST EXECUTE AND MAKE A RETURN ON THE WRIT OF EXECUTION WITHIN 30 DAYS FROM RECEIPT OF THE WRIT, AND EVERY 30 DAYS THEREAFTER UNTIL SATISFIED IN FULL OR ITS EFFECTIVITY EXPIRES.—** Section 14, Rule 39 of the Rules of Court explicitly provides that: x x x it is mandatory for sheriffs to execute and make a return on the writ of execution within 30 days from receipt of the writ and every 30 days thereafter until it is satisfied in full or its effectivity expires. Even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken

to implement the writ. Periodic reporting also provides the court insights on the efficiency of court processes after promulgation of judgment. Over-all, the purpose of periodic reporting is to ensure the speedy execution of decisions.

4. ID.; ID.; ID.; ID.; DUTY OF EXECUTING FINAL JUDGMENTS OF THE COURTS.— Sheriffs play an important role in the administration of justice. They are tasked to execute final judgments of the courts. If not enforced, such decisions become empty victories of the prevailing parties. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice. We will reiterate that a sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. He is mandated to uphold the majesty of the law as embodied in the decision. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. Accordingly, a sheriff must comply with his mandated ministerial duty as speedily as possible. There is even no need for the litigants to "follow up" a writ's implementation.

5. ID.; ID.; ID.; ID.; GROSS INEFFICIENCY IN THE PERFORMANCE OF DUTY AND DISHONESTY; REVEALED BY THE LONG DELAY IN THE EXECUTION OF JUDGMENT, NEGLECTING TO MAKE PERIODIC REPORTS, AND FAILURE TO TURN OVER THE AMOUNT RECEIVED IN OFFICIAL CAPACITY; PROPER PENALTY.— The long delay in the execution of the judgments and the failure to accomplish the required periodic reports demonstrate respondent sheriff's gross neglect and gross inefficiency in the performance of his official duties. Likewise, respondent sheriff's receipt of the money in his official capacity and his failure to turn over the amount to the clerk of court is an act of misappropriation of funds amounting to dishonesty. x x x Under the Civil Service Rules, if the respondent is found guilty of two or more charges, the penalty to be imposed should be that corresponding to the most serious charge and the rest

will be considered aggravating circumstances. Dishonesty, a grave offense punishable by dismissal on the first offense, is the most serious charge of which respondent sheriff is found guilty. Gross Neglect of Duty will be considered as an aggravating circumstance. Thus, dismissal from service is the appropriate penalty to be imposed on respondent sheriff.

6. ID.; ID.; ID.; PROPER DECORUM, EMPHASIZED.— Time and again, this Court has pointed out the heavy burden and responsibility which court personnel are saddled with in view of their exalted positions as keepers of the public faith. They should, therefore, be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. Those who work in the judiciary must adhere to high ethical standards to preserve the courts' good name and standing. They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence, since they are officers of the court and agents of the law. Indeed, any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.

D E C I S I O N

PER CURIAM:

Before us is an administrative complaint dated September 4, 2008, filed by Proserpina V. Anico against Sheriff Emerson B. Pilipiña, Sheriff IV, Office of the Clerk of Court, Regional Trial Court, Manila, for extortion and neglect of duty.

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

Complainant is one of the plaintiffs in a civil case, docketed as Civil Case No. 02-27454 entitled *Ariel Anico and Spouses Arthur and Proserpina Anico v. Robin J. Taguinod and Jerome T. Cayabyab,* for collection of sum of money, specific performance and damages.

On September 16, 2004, a Decision was issued favoring plaintiffs, including herein complainant. On August 10, 2007, a Writ of Execution was issued for the implementation of said decision. On August 13, 2007, the writ was forwarded to the Office of the Clerk of Court, RTC, Manila and was assigned to respondent sheriff for execution.

Complainant recalled that sometime in September 2007, she called respondent and inquired the status of the execution. In response, complainant alleged that respondent sheriff demanded the amount of ₱5,000.00 to defray his expenses in the implementation of the writ. She claimed that she had no money at hand, thus, she informed respondent that she could only give ₱3,000.00. Respondent sheriff consented. Complainant's sister-in-law, Filipinas N. Villasis, then personally gave the amount of ₱3,000.00 to respondent at his office.

In April 2008, complainant made another follow-up on the status of the writ since the same remained unimplemented. She claimed respondent again demanded the amount of ₱2,000.00, allegedly to defray his gasoline expenses. Complainant immediately sent the money *via* "*Kuarta Padala*" of the M. Lhuillier Pawnshop at SM City, Iloilo City.

On August 27, 2008, complainant inquired again, this time from Branch 32, the status of the writ. She then learned that respondent made no return of the writ even after a lapse of one year. Dissatisfied, complainant filed the instant administrative complaint against respondent sheriff.

On October 10, 2008, in his Comment submitted before the Clerk of Court of the RTC-Manila, Sheriff Pilipiña denied the accusations against him. He claimed that he immediately served the writ and notice to pay judgment to defendant Robin Taguinod but, being a seafarer, he was out of the country. He instead opted to leave the copies of the writ and notice to defendant's relative.

Respondent also claimed that in several occasions, he also attempted to serve the same writ and notice to pay judgment to the other defendant, Jerome T. Cayabyab, at the Coastguard

Headquarters, but to no avail, as defendant was allegedly on board a ship. He added that he came back, but still defendant Cayabyab was not around; thus, he again left copies of the writ and notice to a certain ASN/PCG Efren Tolentino.

Respondent likewise claimed that he even served a notice of garnishment to the Land Bank of the Philippines (LBP), but was informed later on that defendants did not have any existing garnishable/leviable account with the LBP.

Respondent further added that when he got information that defendant Taguinod had returned from abroad, he immediately went back to Cavite on May 14, 2008 to serve the writ. He was, however, informed that defendant was already in Manila. On May 21, 2008, he averred that he was able to finally serve the writ to defendant Cayabyab who, in turn, promised to pay his judgment debt on June 2008. However, when he returned to collect, defendant Cayabyab was already in Romblon. Respondent claimed that he has not heard from defendant Cayabyab since then.

Respondent insisted that he was never negligent in the performance of his duties, considering that even after the filing of the instant case, he still continued to serve the said writ to the defendants. However, respondent argued that he could not make the return because his job was still incomplete. He claimed to be at loss as to where to locate the defendants, because both have no permanent address. He explained that defendant Taguinod, being a seaman, was always out of the country, while defendant Cayabyab was always on board a ship and assigned in different places. Respondent further argued that while he failed to make timely returns, he nevertheless submitted, on September 9, 2008, the Sheriff's Report where he enumerated what transpired during the implementation of the writ.

As to the allegation of extortion, respondent denied that he demanded ₱5,000.00 and received ₱3,000.00 from complainant. He, however, admitted that he received ₱1,500.00 from complainant thru "*Kuarta Padala*" of the M. Lhuiller Pawnshop to defray the cost of his transportation and other reasonable

expenses relative to the implementation of the writ. He justified his receipt of money by claiming that it is judicial knowledge that winning litigants shoulder all legal and incidental expenses to be incurred in the lawful implementation of a writ. He likewise stressed that he never demanded money from any party for his own personal benefit. In fact, respondent contend that it was complainant and her representatives who were constantly inquiring about his expenses, to which he always respond, "*bahala na po kayo*."

Finally, respondent asserted that he did not violate any rule in the implementation of the writ and was never remiss in the performance of his duties and responsibilities as an officer of the court.

On November 13, 2008, the Office of the Court Administrator (OCA) directed respondent to file his Comment to the instant complaint against him.

In compliance with the OCA's directive, respondent manifested that he is adopting his Comment dated October 10, 2008.

On December 19, 2008, in her Reply, complainant refuted respondent's allegations as mere afterthought and cover-ups. She pointed out that respondent made his report only on September 3, 2008, or almost a year after he received the writ on October 10, 2007; and after she had filed the instant administrative complaint against him.

In his Comment to complainant's Reply,[1] respondent sheriff clarified that the Sheriff's report was duly received; thus, it was not a mere cover-up. He explained that he was not able to make a return within the 30-day period from the receipt of the court order because he was always on the run to locate defendant's properties.

Respondent reiterated anew that "it is a judicial knowledge that the winning parties and litigants should shoulder all the legal, incidental and necessary expenses to be incurred in the

[1] Dated January 15, 2009.

lawful implementation/enforcement of a WRIT" and that he never demanded any amount for his own personal benefit. He claimed to have never violated any rule pertaining to the implementation of the subject writ.

In a Memorandum dated October 22, 2010, the OCA found respondent sheriff guilty of conduct prejudicial to the best interest of the service and recommended the penalty of suspension of one (1) year.

The OCA noted that this is respondent's first offense in his more than 11 years of service in the judiciary. It, however, did not apply this as a mitigating circumstance, considering that respondent was not apologetic for his transgression.

We agree with findings of the OCA, except its recommendation as to the imposable penalty.

Under Section 9, Rule 141 of the Rules of Court, the sheriff is required to secure the court's prior approval of the estimated expenses and fees needed to implement the court process. Specifically, the Rules provide:

SEC. 9. S*heriffs and other persons serving processes*.— x x x

(l) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit:

1. On the first four thousand (₱4,000.00) pesos, four (4%) per centum.

2. On all sums in excess of four thousand (₱4,000.00) pesos, two (2%) per centum.

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's fees, warehousing and similar charges, in an amount estimated by the sheriff, *subject to the approval of the court*. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation

within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.[2]

Thus, following the above-mentioned rules, a sheriff is guilty of violating the Rules if he fails to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ, for which he must seek the court's approval; (2) render an accounting; and (3) issue an official receipt for the total amount he received from the judgment debtor. The rule requires the sheriff executing writs or processes to estimate the expenses to be incurred. Upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and *ex-officio* Sheriff. The expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit.[3] In the instant case, none of these procedures were complied with by respondent sheriff.

It must be stressed that sheriffs are not allowed to receive any *voluntary* payments from parties in the course of the performance of their duties. Corollary, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps; otherwise, it would amount to dishonesty or extortion.[4] Even assuming such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Neither will complainant's acquiescence or consent to such expenses absolve the sheriff for his failure to secure the prior approval of the court concerning such expense.[5]

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[2] Italics ours.

[3] *Bercasio v. Benito*, 341 Phil. 404, 410 (1997), citing Rules of Court, Rule 141, Sec. 9.

[4] *Tan v. Paredes*, A.M. No. P-04-1789, July 22, 2005, 464 SCRA 47, 55.

[5] *Balanag, Jr. v. Osita*, 437 Phil. 453, 458 (2002).

Likewise, Section 14, Rule 39 of the Rules of Court explicitly provides that:

> Sec. 14. *Return of writ of execution.* — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof furnished the parties.

The Rules clearly provide that it is mandatory for sheriffs to execute and make a return on the writ of execution within 30 days from receipt of the writ and every 30 days thereafter until it is satisfied in full or its effectivity expires. Even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken to implement the writ. Periodic reporting also provides the court insights on the efficiency of court processes after promulgation of judgment. Over-all, the purpose of periodic reporting is to ensure the speedy execution of decisions.[6]

Indeed, respondent's submission of sheriff's report was long overdue, considering that it was filed only on September 9, 2008, or about 11 months delayed as the writ was assigned to him on October 4, 2007. His allegation that he had gone to various places did not excuse him from promptly submitting a return.

Sheriffs play an important role in the administration of justice. They are tasked to execute final judgments of the courts. If not enforced, such decisions become empty victories of the prevailing parties. As agents of the law, sheriffs are called upon

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[6] *Benitez v. Acosta*, 407 Phil. 687, 694 (2001).

to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice.[7]

We will reiterate that a sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. He is mandated to uphold the majesty of the law as embodied in the decision. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. Accordingly, a sheriff must comply with his mandated ministerial duty as speedily as possible. There is even no need for the litigants to "follow up" a writ's implementation.[8]

Respondent's failure to carry out what is a purely ministerial duty and to follow well-established rules in the implementation of court orders and writs is truly deplorable. The long delay in the execution of the judgments and the failure to accomplish the required periodic reports demonstrate respondent sheriff's gross neglect and gross inefficiency in the performance of his official duties. Likewise, respondent sheriff's receipt of the money in his official capacity and his failure to turn over the amount to the clerk of court is an act of misappropriation of funds amounting to dishonesty.[9] These, we will not tolerate.

Time and again, this Court has pointed out the heavy burden and responsibility which court personnel are saddled with in view of their exalted positions as keepers of the public faith. They should, therefore, be constantly reminded that any

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[7] *Teresa T. Gonzales La'o & Co., Inc. v. Sheriff Hatab*, 386 Phil. 88, 92-93.

[8] *Judge Calo v. Dizon*, A.M. No. P-07-2359, August 11, 2008, 561 SCRA 517, 532.

[9] *Judge Badoles-Algodon v. Zaldivar*, A.M. No. P-04-1818, August 3, 2006, 497 SCRA 446, 458.

impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. Those who work in the judiciary must adhere to high ethical standards to preserve the courts' good name and standing. They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence, since they are officers of the court and agents of the law. Indeed, any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.[10]

Under the Civil Service Rules, if the respondent is found guilty of two or more charges, the penalty to be imposed should be that corresponding to the most serious charge and the rest will be considered aggravating circumstances.[11] Dishonesty, a grave offense punishable by dismissal on the first offense, is the most serious charge of which respondent sheriff is found guilty.[12] Gross Neglect of Duty will be considered as an aggravating circumstance. Thus, dismissal from service is the appropriate penalty to be imposed on respondent sheriff.

WHEREFORE, respondent *EMERSON B. PILIPIÑA*, Sheriff IV, Office of the Clerk of Court, Regional Trial Court of Manila, is found *GUILTY of DISHONESTY and GROSS NEGLECT OF DUTY* and is ordered *DISMISSED* from service with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

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[10] *OCA v. Ramano,* A.M. No. P-90-488, January 25, 2011.

[11] Revised Rules on Administrative Cases in the Civil Service, Rule IV, Sec. 55.

[12] *Id*., Sec. 52 (A) (1).

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

Velasco, Jr., J., no part due to relationship to a party.

Mendoza, J., on official leave.

FIRST DIVISION

[G.R. No. 169901. August 3, 2011]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **CIRIACO JUMAMOY and HEIRS OF ANTONIO GO PACE, represented by ROSALIA PACE,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; INNOCENT PURCHASER FOR VALUE.— Undoubtedly, our land registration statute extends its protection to an innocent purchaser for value, defined as "one who buys the property of another, without notice that some other person has a right or interest in such property and pays the full price for the same, at the time of such purchase or before he has notice of the claims or interest of some other person in the property." An "innocent purchaser for value" includes an innocent lessee, mortgagee, or other encumbrancer for value.

2. ID.; ID.; ID.; A BANKING INSTITUTION IS NOT AN INNOCENT PURCHASER FOR VALUE.— [W]e agree with the disposition of the RTC and the CA that PNB is not an innocent purchaser for value. As we have already declared: A banking institution is expected to exercise due diligence before entering into a mortgage contract. **The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.**

3. ID.; LAND TITLES; INCONTROVERTIBILITY THEREOF DOES NOT PRECLUDE A RIGHTFUL CLAIMANT TO A

PROPERTY FROM SEEKING OTHER REMEDIES.— [T]he incontrovertibility of a title does not preclude a rightful claimant to a property from seeking other remedies because it was never the intention of the Torrens system to perpetuate fraud. As explained in *Vda. de Recinto v. Inciong:* The mere possession of a certificate of title under the Torrens system does not necessarily make the possessor a true owner of all the property described therein for he does not by virtue of said certificate alone become the owner of the land illegally included. It is evident from the records that the petitioner owns the portion in question and therefore the area should be conveyed to her. **The remedy of the land owner whose property has been wrongfully or erroneously registered in another's name is, after one year from the date of the decree, not to set aside the decree, but, respecting the decree as incontrovertible and no longer open to review, to bring an ordinary action in the ordinary court of justice for reconveyance or, if the property has passed into the hands of an innocent purchaser for value, for damages.**

4. ID.; ID.; ID.; ACTION FOR RECONVEYANCE BASED ON IMPLIED TRUST; PRESCRIPTION OF TEN YEARS WHEN THE PERSON ENFORCING THE TRUST IS NOT IN POSSESSION OF THE PROPERTY.— "If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes." An action for reconveyance based on implied trust prescribes in 10 years as it is an obligation created by law, to be counted from the date of issuance of the Torrens title over the property. This rule, however, applies only when the plaintiff or the person enforcing the trust is not in possession of the property.

5. ID.; ID.; ID.; ID.; NO PRESCRIPTION WHEN CLAIMANT IS IN ACTUAL POSSESSION OF THE PROPERTY.— In *Vda. de Cabrera v. Court of Appeals,* we said that there is no prescription when in an action for reconveyance, the claimant is in actual possession of the property because this in effect is an action for quieting of title: [S]ince if a person claiming to be the owner thereof is in actual possession of the property, as the defendants are in the instant case, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until

his possession is disturbed or his title is attacked before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a 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 own title, which right can be claimed only by one who is in possession.

APPEARANCES OF COUNSEL

Franc Evan L. Dandoy for petitioner.
Paulino and Magdangal Law Firm for Ciriaco Jumamoy.

D E C I S I O N

DEL CASTILLO, *J.*:

A PARTY enters into an agreement or contract with an eye to reap benefits therefrom or be relieved of an oppressive economic condition. The other party likewise assumes that the agreement would be advantageous to him. But just like in any other human undertaking, the end-result may not be as sweet as expected.

The problem could not be resolved by any other means but to litigate.

Courts, however, are not defenders of bad bargains. At most, they only declare the rights and obligations of the parties to the contract in order to preserve sanctity of the same.

We are confronted in this case with this legal predicament.[1]

This Petition for Review on *Certiorari* assails the February 28, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 73743 which dismissed petitioner Philippine National Bank's (PNB's) appeal from the July 30, 2001 Decision[3] of the Regional

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[1] July 30, 2001 Decision of the Regional Trial Court, Branch 18, Digos City, Davao del Sur in Civil Case No. 3313, records, p. 122.

[2] CA *rollo*, pp. 59-75; penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Teresita Dy-Liacco Flores and Edgardo A. Camello.

[3] Records, pp. 122-126; penned by Judge Marivic Trabajo Daray.

Trial Court (RTC), Branch 18, Digos City, Davao del Sur. Said Decision of the RTC ordered PNB to reconvey to respondent Ciriaco Jumamoy (Ciriaco) a portion of the parcel of land subject of this case.

Likewise assailed in this petition is the September 28, 2005 Resolution[4] of the CA denying PNB's Motion for Reconsideration.

Factual Antecedents

On December 27, 1989, the RTC, Branch 19, of Digos City, Davao del Sur, rendered a Decision[5] in Civil Case No. 2514 (a case for Reconveyance and Damages), ordering the exclusion of 2.5002 hectares from Lot 13521. The trial court found that said 2.5002 hectares which is part of Lot 13521, a 13,752-square meter parcel of land covered by Original Certificate of Title (OCT) No. P-4952[6] registered in the name of Antonio Go Pace (Antonio) on July 19, 1971 actually pertains to Sesinando Jumamoy (Sesinando), Ciriaco's predecessor-in-interest. The RTC found that said 2.5002-hectare lot was erroneously included in Antonio's free patent application which became the basis for the issuance of his OCT. It then ordered the heirs of Antonio (the Paces [represented by Rosalia Pace (Rosalia)]) to reconvey said portion to Ciriaco. In so ruling, the RTC acknowledged Ciriaco's actual and exclusive possession, cultivation, and claim of ownership over the subject lot which he acquired from his father Sesinando, who occupied and improved the lot way back in the early 1950s.[7]

The December 27, 1989 RTC Decision became final and executory but the Deed of Conveyance[8] issued in favor of Ciriaco could not be annotated on OCT No. P-4952 since said title was

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[4] CA *rollo*, p. 133.

[5] Records, pp. 9-19.

[6] *Id.* at 88-91, 141-142.

[7] Sesinando's possession has been upheld in the case of CA-G.R. No. 29215-R entitled *De Salvilla vs. Jumamoy*.

[8] Records, pp. 20-21.

already cancelled. Apparently, Antonio and his wife Rosalia mortgaged Lot 13521 to PNB as security for a series of loans dated February 25, 1971, April 26, 1972, and May 11, 1973.[9] After Antonio and Rosalia failed to pay their obligation, PNB foreclosed the mortgage on July 14, 1986[10] and title to Lot 13521 was transferred to PNB under Transfer Certificate of Title (TCT) No.T-23063. Moreover, the Deed of Conveyance could not be annotated at the back of OCT No. P-4952 because PNB was not impleaded as a defendant in Civil Case No. 2514.

Thus, in February 1996, Ciriaco filed the instant complaint against PNB and the Paces for Declaration of Nullity of Mortgage, Foreclosure Sale, Reconveyance and Damages,[11] docketed as Civil Case No. 3313 and raffled to Branch 18 of RTC, Digos City, Davao del Sur.

In his complaint, Ciriaco averred that Antonio could not validly mortgage the entire Lot 13521 to PNB as a portion thereof consisting of 2.5002 hectares belongs to him (Ciriaco), as already held in Civil Case No. 2514. He claimed that PNB is not an innocent mortgagee/purchaser for value because prior to the execution and registration of PNB's deed of sale with the Register of Deeds, the bank had prior notice that the disputed lot is subject of a litigation. It would appear that during the pendency of Civil Case No. 2514, a notice of *lis pendens* was annotated at the back of OCT No. P-4952 as Entry No. 165547[12] on November 28, 1988.

The Paces did not file any answer and were declared in default.[13] Meanwhile PNB filed its Amended Answer[14] denying for lack

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[9] Entry Nos. 5575, 11332, 17171, *id.* at 89-90 and 142-143.

[10] See Entry No. 178169 in OCT No. P-4952, *id.* at 91 and dorsal side of p. 142.

[11] *Id.* at 1-8.

[12] *Id.* at 91 and dorsal side of p. 142.

[13] *Id.* at 42.

[14] *Id.* at 46-50.

of knowledge and information Ciriaco's claim of ownership and reliance on the judgment in Civil Case No. 2514. It argued that it is a mortgagee and a buyer in good faith since at the time of the mortgage, Antonio's certificate of title was "clean" and "devoid of any adverse annotations." PNB also filed a cross-claim against the Paces.

Instead of having a full-blown trial, Ciriaco and PNB opted to submit the case for decision based on their respective memoranda.

Ruling of the Regional Trial Court

In its July 30, 2001 Decision,[15] the RTC ordered the partial nullification of the mortgage and the reconveyance of the subject lot claimed by Ciriaco. The RTC found that PNB was not a mortgagee/purchaser in good faith because it failed to take the necessary steps to protect its interest such as sending a field inspector to the area to determine the real owner, its occupants, its improvements and its boundaries.

The dispositive portion of the RTC Decision reads:

> WHEREFORE, it is hereby ordered that defendant PNB shall reconvey, by the proper instrument of reconveyance, that portion of the land owned and claimed by plaintiff CIRIACO JUMAMOY.
>
> The claim for damages by all the parties are hereby DISMISSED for lack of proper basis.
>
> SO ORDERED.[16]

PNB filed a Motion for Reconsideration.[17] It argued that the trial court erred in finding that it is not an innocent mortgagee for value due to its alleged failure to send its field inspector to the area considering that such matter was never alleged in Ciriaco's complaint. PNB claimed that Ciriaco merely stated in his complaint that the bank is not an innocent mortgagee for value because it

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[15] *Id.* at 122-126.

[16] *Id.* at 126.

[17] *Id.* at 127-140.

had already constructive notice that the subject land is under litigation by virtue of the notice of *lis pendens* already annotated on Antonio's title when PNB consolidated in its name the title for Lot 13521. PNB however argued that at the time of the constitution and registration of the mortgage in 1971, Antonio's title was clean as the notice of *lis pendens* was annotated only in 1988. And since there was no cause to arouse suspicion, it may rely on the face of the Torrens title. As for its cross-claim against the heirs of Antonio, PNB prayed that a hearing be set.

Ciriaco filed an Opposition to the Motion for Reconsideration.[18] He insisted that PNB cannot validly claim that it is an innocent mortgagee based on its reliance on Antonio's Torrens title because when it first granted Antonio's loan application, the subject property was still untitled and unregistered.

On January 7, 2002, the RTC denied PNB's motion for reconsideration.[19]

PNB thus filed its appeal with the CA.

Ruling of the Court of Appeals

In its Decision of February 28, 2005,[20] the CA affirmed the RTC's ruling that PNB is not an innocent mortgagee/purchaser. The CA reiterated that the business of a bank or a financial institution is imbued with public interest thus it is obliged to exercise extraordinary prudence and care by looking beyond what appears on the title. The CA pointed out that in this case, PNB failed to prove that it conducted an investigation on the real condition of the mortgaged property. Had the bank done so, it could have discovered that Ciriaco had possession of the disputed lot for quite some time. Moreover, the CA held that PNB could not validly claim that it merely relied on the face of a "clean" Torrens title because when the disputed lot was first mortgaged in 1971, the same was still an untitled and unregistered

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[18] *Id.* at 144-154.

[19] *Id.* at 158-161.

[20] *Supra* note 2.

land. It likewise ruled that Ciriaco's action for reconveyance is based on implied trust and is imprescriptible because the land has always been in his possession.

Anent PNB's cross-claim against the Paces, the CA gave due course thereto and ordered the records remanded to the RTC for further proceedings.

The dispositive portion of the CA Decision reads:

> WHEREFORE, premises considered, herein appeal is hereby DISMISSED and the decision of the trial court is hereby AFFIRMED with MODIFICATION, giving due course to the cross-claim of the defendant-appellant PNB against the Heirs of ANTONIO GO PACE as represented by ROSALIA PACE. Accordingly, let the entire records of this case be remanded to the lower court for further proceedings of the said cross-claim.
>
> SO ORDERED.[21]

PNB moved for a reconsideration.[22] However, the CA sustained its ruling in a Resolution[23] dated September 28, 2005.

Hence, this petition.

Issues

PNB ascribed upon the CA the following errors:

A. THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S DECISION IN DECLARING THAT PNB FAILED TO QUALIFY AS AN INNOCENT MORTGAGEE FOR VALUE IN THE ABSENCE OF EVIDENCE TO ESTABLISH THIS FACT.

B. THE COURT OF APPEALS ERRED IN ORDERING THE PARTIAL NULLIFICATION OF THE REAL ESTATE MORTGAGE EXECUTED IN FAVOR OF PNB IN DISREGARD OF THE LAW AND ESTABLISHED JURISPRUDENCE ON THE MATTER.

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[21] CA *rollo*, p. 75.

[22] *Id.* at 81-98.

[23] *Supra* note 4.

C. THE COURT OF APPEALS ERRED IN ORDERING THE PARTIAL NULLIFICATION OF PNB'S TITLE CONTRARY TO THE LAW AND ESTABLISHED JURISPRUDENCE ON THE MATTER.

D. THE COURT OF APPEALS ERRED IN DENYING PNB'S MOTION FOR RECONSIDERATION AND SUSTAINING RESPONDENT JUMAMOY'S INVOCATION OF THE RULING OF THE SUPREME COURT IN *SPOUSES FLORENTINO AND FRANCISCA TOMAS VS. PNB (98 SCRA 280)* INSTEAD OF THE LANDMARK CASE OF *LILIA Y. GONZALES VS. IAC AND RURAL BANK OF PAVIA, INC. (157 SCRA 587)* WHICH IS THE ONE APPLICABLE TO THE INSTANT CASE.

E. THE COURT OF APPEALS ERRED IN ORDERING PNB TO RECONVEY THE PORTION OF LAND CLAIMED BY RESPONDENT JUMAMOY NOTWITHSTANDING THE FACT THAT IT IS APPARENT FROM THE COMPLAINT THAT RESPONDENT JUMAMOY'S ACTION FOR RECONVEYANCE IS ALREADY BARRED BY PRESCRIPTION.[24]

In essence, PNB contends that the lower courts grievously erred in declaring that it is not an innocent mortgagee/purchaser for value. PNB also argues that Ciriaco's complaint is barred by prescription. TCT No. T-23063 was issued on March 23, 1990, while Ciriaco filed his complaint only six years thereafter. Thus, the one-year period to nullify PNB's certificate of title had lapsed, making PNB's title indefeasible. Moreover, PNB claims that an action for reconveyance prescribes in four years if based on fraud, or, 10 years if based on an implied trust, both to be counted from the issuance of OCT No. P-4952 in July 1971 which constitutes as a constructive notice to the whole world. Either way, Ciriaco's action had already prescribed since it took him 17 years to file his first complaint for reconveyance in Civil Case No. 2514 and around 23 years to file his second complaint in Civil Case No. 3313.

Our Ruling

We deny the petition.

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[24] *Rollo,* pp. 43-44.

PNB is not an innocent purchaser/ mortgagee for value.

Undoubtedly, our land registration statute extends its protection to an innocent purchaser for value, defined as "one who buys the property of another, without notice that some other person has a right or interest in such property and pays the full price for the same, at the time of such purchase or before he has notice of the claims or interest of some other person in the property."[25] An "innocent purchaser for value" includes an innocent lessee, mortgagee, or other encumbrancer for value.[26]

Here, we agree with the disposition of the RTC and the CA that PNB is not an innocent purchaser for value. As we have already declared:

> A banking institution is expected to exercise due diligence before entering into a mortgage contract. **The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.**[27] (Emphasis ours.)

PNB's contention that Ciriaco failed to allege in his complaint that PNB failed to take the necessary precautions before accepting the mortgage is of no moment. It is undisputed that the 2.5002-hectare portion of the mortgaged property has been adjudged in favor of Ciriaco's predecessor-in-interest in Civil Case No. 2514. Hence, PNB has the burden of evidence that it acted in good faith from the time the land was offered as collateral. However, PNB miserably failed to overcome this burden. There was no showing at all that it conducted an investigation; that it observed due diligence and prudence by checking for flaws in the title; that it verified the identity of the true owner and possessor of the land; and, that it visited subject premises to determine its actual condition before accepting the same as collateral.

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[25] *Dela Cruz v. Dela Cruz*, 464 Phil. 812, 823 (2004), citing *Spouses Chu, Sr. v. Benelda Estate Development Corporation*, 405 Phil. 936 (2001).

[26] PRESIDENTIAL DECREE NO. 1529, Section 32.

[27] *Cruz v. Bancom Finance Corporation*, 429 Phil. 225, 239 (2002).

Both the CA and the trial court correctly observed that PNB could not validly raise the defense that it relied on Antonio's clean title. The land, when it was first mortgaged, was then unregistered under our Torrens system. The first mortgage was on February 25, 1971[28] while OCT No. P-4952 was issued on July 19, 1971. Since the Paces offered as collateral an unregistered land, with more reason PNB should have proven before the RTC that it had verified the status of the property by conducting an ocular inspection before granting Antonio his first loan. Good faith which is a question of fact could have been proven in the proceedings before the RTC, but PNB dispensed with the trial proper and let its opportunity to dispute factual allegations pass. Had PNB really taken the necessary precautions, it would have discovered that a large portion of Lot 13521 is occupied by Ciriaco.

Ciriaco's action for reconveyance is inprescriptible.

Also, the incontrovertibility of a title does not preclude a rightful claimant to a property from seeking other remedies because it was never the intention of the Torrens system to perpetuate fraud. As explained in *Vda. de Recinto v. Inciong:*[29]

> The mere possession of a certificate of title under the Torrens system does not necessarily make the possessor a true owner of all the property described therein for he does not by virtue of said certificate alone become the owner of the land illegally included. It is evident from the records that the petitioner owns the portion in question and therefore the area should be conveyed to her. **The remedy of the land owner whose property has been wrongfully or erroneously registered in another's name is, after one year from the date of the decree, not to set aside the decree, but, respecting the decree as incontrovertible and no longer open to review, to bring an ordinary action in the ordinary court of justice for reconveyance or, if the property has passed into the hands of an innocent purchaser for value, for damages.** (Emphasis supplied.)

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[28] Records, p. 89.

[29] 167 Phil. 555, 559 (1977).

"If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes."[30] An action for reconveyance based on implied trust prescribes in 10 years as it is an obligation created by law,[31] to be counted from the date of issuance of the Torrens title over the property.[32] This rule, however, applies only when the plaintiff or the person enforcing the trust is not in possession of the property.

In *Vda. de Cabrera v. Court of Appeals*,[33] we said that there is no prescription when in an action for reconveyance, the claimant is in actual possession of the property because this in effect is an action for quieting of title:

> [S]ince if a person claiming to be the owner thereof is in actual possession of the property, as the defendants are in the instant case, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a 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 own title, which right can be claimed only by one who is in possession.[34]

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[30] CIVIL CODE, Article 1456.

[31] CIVIL CODE, Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

x x x x x x x x x

(2) Upon an obligation created by law;

x x x x x x x x x

[32] *Crisostomo v. Garcia, Jr.*, G.R. No. 164787, January 31, 2006, 481 SCRA 402, 413.

[33] 335 Phil. 19 (1997).

[34] *Id.* at 32. Reiterated in *Ney v. Sps. Quijano*, G.R. No. 178609, August 4, 2010, 626 SCRA 800, 808 citing *Mendizabel v. Apao*, G.R.

In Ciriaco's case, as it has been judicially established that he is in actual possession of the property he claims as his and that he has a better right to the disputed portion, his suit for reconveyance is in effect an action for quieting of title. Hence, petitioner's defense of prescription against Ciriaco does not lie.

WHEREFORE, the petition is *DENIED*. The February 28, 2005 Decision and September 28, 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 73743 are hereby *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 174507-30. August 3, 2011]

ATTY. EMELITA H. GARAYBLAS and ATTY. RENATO G. DE LA CRUZ, *petitioners, vs.* **THE HON. GREGORY ONG, HON. JOSE HERNANDEZ and HON. RODOLFO PONFERRADA, as Chairman & Members, respectively, 4th Division, Sandiganbayan; and People of the Philippines,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRE-TRIAL; NON-APPEARANCE AT PRE-TRIAL CONFERENCE; THAT COUNSEL WAS SUFFERING FROM HYPERGLYCEMIA AND HYPERTENSION AND THUS

No. 143185, February 20, 2006, 482 SCRA 587, 609 and *Lasquite v. Victory Hills, Inc.*, G.R. No. 175375, June 23, 2009, 590 SCRA 616, 631.

FAILED TO ATTEND OR FIND A SUBSTITUTE COUNSEL TO ATTEND PRE-TRIAL CONFERENCE, APPRECIATED. — Pursuant to Section 3, Rule 118 of the Revised Rules of Criminal Procedure on Non-appearance at Pre-Trial Conference, the court may sanction or penalize counsel for the accused if the following concur: (1) counsel does not appear at the pre-trial conference AND (2) counsel does not offer an acceptable excuse. The SB 4th Division already said it believed Atty. Garayblas' claim that a day before the scheduled pre-trial conference in Davao City, she started suffering from hyperglycemia (high blood sugar) and hypertension, and she felt the symptoms thereof until the day of the pre-trial itself. This incapacitated her from traveling to Davao City to appear at the proceedings. x x x Verily, the Court can understand that a person suffering from confusion, difficulty in concentrating, blurred vision, fatigue, and others, would be hard put to attend a hearing, much less have the clarity of mind to think or worry about finding another lawyer to substitute for her. Indeed, it would not be reasonable to expect her to have been able to make the necessary arrangements for another lawyer to attend in her stead.

2. ID.; ID.; ID.; ID.; IMPORTANCE OF SUBSTITUTE COUNSEL ATTENDING PRE-TRIAL CONFERENCE TO BE WELL-VERSED ON THE FACTS OF THE CASE, CONSIDERED. — Consider, further, the importance of having counsel who is the most well-versed on the facts of the case, to be the one attending a pre-trial conference. In *Bayas v. Sandiganbayan*, the Court expounded on the role of lawyers in pre-trials, to wit: Pre-trial is meant to simplify, if not fully dispose of, the case at its early stage. x x x . x x x during pre-trial, **attorneys must make a full disclosure of their positions** as to what the real issues of the trial would be. They should not be allowed to embarrass or inconvenience the court or injure the opposing litigant by their **careless preparation** for a case; or by their **failure to raise relevant issues** at the outset of a trial x x x This being so, it is not quite prudent to send in a new lawyer, who has not had ample time to fully familiarize himself or herself with the facts and issues involved in the case, to attend a pre-trial conference. Sending to the pre-trial conference a new lawyer who is not very knowledgeable about the case would most probably lead to such careless preparation which the Court abhors.

3. ID.; ID.; ID.; ID.; CONSIDERING ACCEPTABLE EXCUSES THEREFOR, IMPOSITION OF FINE ON PETITIONER-COUNSELS AND ORDERING THEM TO ANSWER PART OF THE COURT PERSONNEL'S TRAVEL EXPENSES, DELETED.— [T]he Court deems imposing a fine on petitioners and ordering them to answer part of the court personnel's travel expenses to be too harsh. In *Inonog v. Ibay*, the Court reiterated that: The power to punish for contempt is inherent in all courts so as to preserve order in judicial proceedings as well as to uphold the administration of justice. The courts must exercise the power of contempt for purposes that are impersonal because that power is intended as a safeguard not for the judges but for the functions they exercise. Thus, **judges have, time and again, been enjoined to exercise their contempt power judiciously, sparingly, with utmost restraint and with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retaliation or vindication.** x x x Petitioner Atty. De la Cruz has presented a valid and acceptable excuse, for which he should not be found liable under Section 3, Rule 118 of the Revised Rules of Criminal Procedure. On the other hand, petitioner Atty. Garayblas showed some lapse in judgment, not to mention discourteous behavior, in not informing the SB 4th Division at the earliest possible time of her illness and inability to attend said pre-trial conference. x x x [P]etitioner Atty. Garayblas is hereby given a **STERN WARNING** that a repetition of the same or similar act shall be dealt with more severely.

APPEARANCES OF COUNSEL

Emelita H. Garayblas and Renato G. Dela Cruz in their behalf.
Office of the Special Prosecutor for respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for *Certiorari* under Rule 65 of the Rules of Court, praying that the Order[1] of the 4th Division

[1] Penned by Sandiganbayan Associate Justice Rodolfo A. Ponferrada with Associate Justices Gregory Ong and Jose R. Hernandez, concurring.

of the Sandiganbayan (SB 4th Division) dated June 14, 2006, holding petitioners liable for their non-appearance in the scheduled pre-trial conferences, and the Resolution[2] dated August 10, 2006, denying petitioners' motion for reconsideration, be annulled and set aside.

The records reveal the following antecedent facts.

Petitioner Atty. Emelita H. Garayblas (Atty. Garayblas) is the principal legal counsel, with petitioner Atty. Renato G. De la Cruz (Atty. De la Cruz) as collaborating counsel, for Gen. Jose S. Ramiscal who is facing charges for falsification of public documents and violation of Section 3 (e) of Republic Act No. 3019 before several divisions of the Sandiganbayan. Criminal Case Nos. 25741 and 25742 are pending before the Second Division, while Criminal Case Nos. 25122-45 are pending in the Fourth Division.[3]

Accused Gen. Jose S. Ramiscal was arraigned on February 20, 2006, and the SB 4th Division set the pre-trial for April 6, 2006 in Davao City. On February 28, 2006, the Office of the Clerk of Court of the SB 4th Division sent a Notice of Hearing to all the parties, informing them of the cancellation of the April 6, 2006 pre-trial hearing and the resetting to April 27, 2006 in Davao City. Petitioner Atty. Garayblas, opposing the resetting to April 27, 2006, filed a Motion to Reset. On March 23, 2006, the SB 4th Division issued an Order[4] denying said motion to reset, stating that "Atty. Garayblas and Associates must adjust their schedule to suit all the other accused and their counsels, who are available for the pre-trial hearing in Davao City on April 27, 2006."

Petitioners failed to appear for pre-trial on April 27, 2006 in Davao City; hence, public respondents ordered petitioners to explain why they should not be held in contempt.[5] Atty. Garayblas

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[2] *Id.*

[3] *Rollo*, p. 21.

[4] *Id.* at 22.

[5] *Id.* at 25.

filed a Compliance/Manifestation dated June 5, 2006, explaining as follows:

> On the morning of April 26, 2006, she went home from her office in view of her severe headache, body weakness and sluggishness. She gave a call to her doctor/diabetologist who instructed her to get her sugar count and blood pressure. The blood sugar taken revealed that her sugar count was 420 and the blood pressure, was 170/140, a very precarious condition.
>
> She was advised to enter the hospital but the undersigned [Atty. Garayblas] opted to stay home and just follow the instruction given by her doctor, Dr. Graciella Garayblas-Gonzaga of UST Hospital. She was requested to administer her insulin injection every six (6) hours x x x. She was also advised to stay on (sic) bed until her sugar count and blood pressure normalize.
>
> Till the evening of the said date, the undersigned [Atty. Garayblas] continued to suffer the recurrent headaches, sluggishness and body weakness. Her condition did not disappear. Due to this continuous discomforts and pains, and apprehensive that she might lose her consciousness, she was unable to attend the above numbered criminal cases scheduled for pre-trial hearings on April 27, 2006.[6]

Atty. De la Cruz also filed his Explanation[7] dated June 3, 2006, stating that he did not attend the pre-trial of the cases on April 27, 2006 in Davao City because he had to appear before the Second Division of the SB in Criminal Case No. 25741 involving the same accused, attaching a certificate of appearance from the Second Division as proof of his explanation.

On June 14, 2006, the SB 4th Division issued the first assailed Order, pertinent portions of which read as follows:

> After reading and considering the respective submissions of Attys. De la Cruz and Habacon-Garayblas for their absence in the scheduled pre-trial proceedings of the above-entitled cases in Davao City on April 27, 2006, which caused the cancellation thereof, the Court finds them not quite satisfactory. It appears that they belong to the same law office and, therefore, one or the other should have appeared

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[6] *Id.* at 82-83.

[7] *Id.* at 29.

or made the necessary arrangement to let one of their associates or colleagues appear in the pre-trial conference knowing as they do of the Davao City (out of town) schedule and the corresponding expenses thereof. Atty. De la Cruz should have been more prudent in the scheduling of his cases in order to avoid his alleged conflict of schedule. Moreover, in case of conflict, he should [have given] precedence or priority to the out of town schedule of this Court considering the additional expenses for such out of town hearings.

On the other hand, the Court commiserates with the alleged plight and/or adverse medical condition of Atty. Habacon-Garayblas (at that time) but, with the advance or modern means of communication at her disposal, she should have made the necessary arrangement with her co-counsel Atty. De la Cruz or the other members of her law office. Besides, the Court notes the absence of a medical certificate attesting to such medical condition of Atty. Habacon-Garayblas.

Under these circumstances, the Court is constrained to hold Attys. De la Cruz and Habacon-Garayblas liable for their absence or non-appearance which caused the cancellation of the scheduled pre-trial conference and thus wasted the time of the Court. Hence, pursuant to Sec. 3 of Rule 118 of the Revised Rules of Criminal Procedure, the Court hereby orders them to pay the amount of ten thousand pesos (₱10,000) each as sanction or penalty and to partially answer the traveling and other expenses of the Court in holding the subject pre-trial conference in Davao City, within ten (10) days from receipt of this order.

x x x x x x x x x

SO ORDERED.[8]

From the above-quoted Order, petitioners moved for reconsideration.

Atty. Garayblas reasoned that: (1) she had no intention whatsoever of disregarding the scheduled pre-trial but her health and physical condition prevented her from attending the same, and **records would show that except for her non-appearance at the pre-trial, she had never been absent in all the**

[8] *Id.* at 31-33.

proceedings for subject criminal cases before the SB 4th Division; (2) her failure to submit a medical certificate was purely out of inadvertence; (3) her non-appearance was not the only reason for the cancellation of the pre-trial as the records show that all the accused failed to submit their respective pre-trial briefs; (4) while the Court has the duty to act on cases with promptness, it should also act with understanding and compassion; (5) just so there would be a lawyer to attend the proceedings scheduled on the same date in both the Second Division and the Fourth Division, they agreed that Atty. De la Cruz would be the one to appear before the Second Division, while she (Atty. Garayblas) would be the one to attend the pre-trial in Davao City before the Fourth Division; and (6) there were no other lawyers from their law office who could attend the pre-trial in Davao City, as one had already resigned and another member, Atty. Rafaelito Garayblas, just suffered from acute myocardial infraction complicated by diabetes.[9]

Atty. De la Cruz, for his part, reiterated Atty. Garayblas' explanation that he did not appear before the SB 4th Division because they agreed that it was the latter who would appear for their client at the pre-trial in Davao City.[10]

On August 10, 2006, the SB 4th Division promulgated the Resolution denying petitioners' motions for reconsideration, stating that even if the Court is inclined to believe Atty. Garayblas' illness, the Court still expected her to make the necessary arrangement for co-counsel or any other colleague to attend the pre-trial. It was also reiterated in said Resolution that Atty. De la Cruz should have given priority to the pre-trial hearing in Davao City.[11]

Aggrieved by the foregoing disposition of the SB 4th Division, petitioners filed the present petition for *certiorari*, alleging that the SB 4th Division acted with grave abuse of discretion amounting to lack or excess of jurisdiction in not finding their explanation

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[9] Motion for Reconsideration, *id.* at 90-91.

[10] *Rollo*, pp. 39-40.

[11] *Id.* at 43-46.

satisfactory and ordering them to pay a fine of Ten Thousand Pesos (₱10,000.00) each and to partially answer the traveling and other expenses of the Court in holding the subject pre-trial conference in Davao City.

The Court finds some merit in the petition.

Section 3, Rule 118 of the Revised Rules of Criminal Procedure provides as follows:

> Sec. 3. *Non-appearance at Pre-Trial Conference*. — If the counsel for the accused or the prosecutor does not appear at the pre-trial conference and does not offer an acceptable excuse for his lack of cooperation, the court may impose proper sanctions or penalties.

Pursuant to the foregoing provision, the court may sanction or penalize counsel for the accused if the following concur: (1) counsel does not appear at the pre-trial conference AND (2) counsel does not offer an acceptable excuse. There is no cavil that petitioners failed to appear at the pre-trial conference in Davao City on April 27, 2006. The crux of the matter in this case then is, did petitioners present an acceptable or valid excuse for said non-appearance?

The SB 4th Division already said it believed Atty. Garayblas' claim that a day before the scheduled pre-trial conference in Davao City, she started suffering from hyperglycemia (high blood sugar) and hypertension, and she felt the symptoms thereof until the day of the pre-trial itself. This incapacitated her from traveling to Davao City to appear at the proceedings. Note that symptoms of hypertension include **confusion**, ear noise or buzzing, **fatigue, headache**, irregular heartbeat, and vision changes.[12] As for hyperglycemia, a person suffering therefrom experiences **headaches**, increased thirst, **difficulty concentrating, blurred vision**, frequent urinating, and **fatigue**, among others.[13] Verily,

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[12] http://www.righthealth.com/topic/High_Blood_Pressure_Symptom/overview/adam20?fdid=Adam v2_000468; July 12, 2011.

[13] http://www.medicinenet.com/hyperglycemia/page2.htm#tocd; July 12, 2011.

the Court can understand that a person suffering from confusion, difficulty in concentrating, blurred vision, fatigue, and others, would be hard put to attend a hearing, much less have the clarity of mind to think or worry about finding another lawyer to substitute for her. Indeed, it would **not** be reasonable to expect her to have been able to make the necessary arrangements for another lawyer to attend in her stead.

Consider, further, the importance of having counsel who is the most well-versed on the facts of the case, to be the one attending a pre-trial conference. In *Bayas v. Sandiganbayan*,[14] the Court expounded on the role of lawyers in pre-trials, to wit:

> Pre-trial is meant to simplify, if not fully dispose of, the case at its early stage. x x x.
>
> x x x during pre-trial, **attorneys must make a full disclosure of their positions** as to what the real issues of the trial would be. They should not be allowed to embarrass or inconvenience the court or injure the opposing litigant by their **careless preparation** for a case; or by their **failure to raise relevant issues** at the outset of a trial x x x[15]

This being so, it is not quite prudent to send in a new lawyer, who has not had ample time to fully familiarize himself or herself with the facts and issues involved in the case, to attend a pre-trial conference. Sending to the pre-trial conference a new lawyer who is not very knowledgeable about the case would most probably lead to such careless preparation which the Court abhors.

Moreover, respondents do not refute Atty. Garayblas' claim that before the pre-trial conference, she had never been absent for a hearing before the SB 4th Division. This circumstance should be taken in her favor, as it shows that she is not in the habit of feigning illness to deliberately delay the proceedings.

However, Atty. Garayblas should have at least sent word to the SB 4th Division and to her co-counsel, Atty. De la Cruz,

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[14] G.R. Nos. 143689-91, November 12, 2002, 391 SCRA 415.

[15] *Id.* at 427-428. (Emphasis supplied.)

when she began feeling the symptoms of hypertension and hyperglycemia, that she would be unable to attend said pre-trial conference. This would have been the courteous thing to do.

With regard to Atty. De la Cruz, his non-appearance at the pre-trial conference was also excusable. There were hearings for their client's case in two separate divisions of the Sandiganbayan on the very same date in two distant locations. To ensure representation for their client at the hearings in both divisions of the Sandiganbayan, petitioners agreed that Atty. De la Cruz would attend the one before the Second division, while Atty. Garayblas would attend the one before the SB 4th Division in Davao City. It appears that Atty. De la Cruz was not fully apprised of the fact that his co-counsel would not be able to attend the pre-trial conference. It is understandable why Atty. De la Cruz could not have abandoned the hearing before the Second Division so he could attend the pre-trial in Davao City. It was already too late in the day for Atty. De la Cruz to change plans and to notify the Second Division that he would be absent so he could attend the pre-trial in Davao City instead of the hearing at the Second Division.

The Court finds respondents' directive for petitioners to pay part of the travel expenses of court personnel in holding the hearing in Davao City to be unwarranted. There is nothing on record to show that the proceedings were being held in Davao City mainly because of the cases being handled by petitioners. In fact, the SB 4th Division does not deny Atty. Garayblas' asseveration that the cancellation of the hearing on April 27, 2006 in Davao City was caused not only by her and her co-counsel's failure to attend the pre-trial, but also because of all the other accused's failure to submit their respective pre-trial briefs. The Minutes of the Session held on April 27, 2006,[16] also shows that hearings/arraignment of the accused in Criminal Cases Nos. 25144 and 25143 (which are cases different from the ones being handled by petitioners) were held on that day

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[16] Records, Vol. III, back portion of p. 554.

for the Davao City sessions of the SB 4th Division. Hence, the SB 4th Division's time and effort in holding sessions in Davao City were not entirely wasted due to petitioners' inability to attend the pre-trial conference.

For the foregoing reasons, the Court deems imposing a fine on petitioners and ordering them to answer part of the court personnels' travel expenses to be too harsh. In *Inonog v. Ibay*,[17] the Court reiterated that:

> The power to punish for contempt is inherent in all courts so as to preserve order in judicial proceedings as well as to uphold the administration of justice. The courts must exercise the power of contempt for purposes that are impersonal because that power is intended as a safeguard not for the judges but for the functions they exercise. Thus, **judges have, time and again, been enjoined to exercise their contempt power judiciously, sparingly, with utmost restraint and with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retaliation or vindication.** x x x[18]

Petitioner Atty. De la Cruz has presented a valid and acceptable excuse, for which he should not be found liable under Section 3, Rule 118 of the Revised Rules of Criminal Procedure. On the other hand, petitioner Atty. Garayblas showed some lapse in judgment, not to mention discourteous behavior, in not informing the SB 4th Division at the earliest possible time of her illness and inability to attend said pre-trial conference.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The Sandiganbayan 4th Division's Order dated June 14, 2006 and its Resolution dated August 10, 2006 in Criminal Cases Nos. 25122, 25125-29, 25133, 25135, 25137-38, are hereby *MODIFIED* by *DELETING* the fine and the order for both petitioners to pay part of the traveling expenses of the court. Instead, petitioner Atty. Garayblas is hereby given a *STERN WARNING* that a repetition of the same or similar act shall be dealt with more severely.

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[17] A.M. No. RTJ-09-2175, July 28, 2009, 594 SCRA 168.

[18] *Id.* at 177-178. (Emphasis supplied.)

SO ORDERED.

Velasco, Jr. (Chairperson), Brion,[*] *Abad,* and *Sereno,*[**] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 177816. August 3, 2011]

NIPPON HOUSING PHILS., INC., and/or YASUHIRO KAWATA, *petitioners, vs.* **MAIAH ANGELA LEYNES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; EMPLOYER'S PREROGATIVE TO CHANGE ASSIGNMENTS OF EMPLOYEES, RESPECTED.— Considering that even labor laws discourage intrusion in the employers' judgment concerning the conduct of their business, courts often decline to interfere in their legitimate business decisions, absent showing of illegality, bad faith or arbitrariness. Indeed, the right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them.

2. ID.; ID.; FLOATING STATUS; CONSIDERED CONSTRUCTIVE DISMISSAL ONLY WHEN SUCH STATUS CONTINUES FOR MORE THAN SIX MONTHS.— The record shows that Leynes filed the complaint for actual illegal dismissal from which the case originated on 22 February 2002 or immediately

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[*] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1056 dated July 27, 2011.

[**] Designated as an additional member, per Special Order No. 1028 dated June 21, 2011.

upon being placed on floating status as a consequence of NHPI's hiring of a new Property Manager for the Project. The rule is settled, however, that "off-detailing" is not equivalent to dismissal, so long as such status does not continue beyond a reasonable time and that it is only when such a "floating status" lasts for more than six months that the employee may be considered to have been constructively dismissed. A complaint for illegal dismissal filed prior to the lapse of said six-month and/or the actual dismissal of the employee is generally considered as prematurely filed.

3. ID.; ID.; CONSTRUCTIVE DISMISSAL; ELUCIDATED.— There is said to be constructive dismissal when an act of clear discrimination, insensitivity or disdain on the part of the employer has become so unbearable as to leave an employee with no choice but to forego continued employment. Constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. Stated otherwise, it is a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not. In constructive dismissal cases, the employer is, concededly, charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity.

4. ID.; ID.; TERMINATION; REDUNDANCY; ELUCIDATED. — One of the recognized authorized causes for the termination of employment, redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of service activity priorly undertaken by the business. It has been held that the exercise of business judgment to characterize an employee's service as no longer necessary or sustainable is not subject to discretionary review where, as here, it is exercised [and] there is no showing of violation of the law or arbitrariness or malice on the part of the employer. An employer has no legal obligation to keep more employees than are necessary for the operation of its business.

5. ID.; ID.; ID.; ID.; EMPLOYER IS REQUIRED TO SERVE WRITTEN NOTICE OF TERMINATION ON THE WORKER AND THE DOLE, AT LEAST ONE MONTH FROM THE INTENDED DATE THEREOF; VIOLATION HERE WARRANTS PAYMENT OF ₱50,000 IN DAMAGES AS DISMISSAL PROCESS WAS INITIATED BY THE EMPLOYER'S EXERCISE OF ITS MANAGEMENT PREROGATIVE.— Where dismissal is for an authorized cause like redundancy, the employer is required to serve a written notice of termination on the worker concerned and the DOLE, at least one month from the intended date thereof. x x x For its failure to comply strictly with the 30-day minimum requirement for said notice and effectively violating Leynes' right to due process, NHPI should be held liable to pay nominal damages in the sum of ₱50,000.00. The penalty should understandably be stiffer because the dismissal process was initiated by the employer's exercise of its management prerogative.

6. ID.; ID.; ID.; ID.; TERMINATED EMPLOYEE ENTITLED TO SEPARATION PAY.— Having been validly terminated on the ground of redundancy, Leynes is entitled to separation pay equivalent to one month salary for every year of service but not to the backwages adjudicated in her favor by the Labor Arbiter. Hired by NHPI on 26 March 2001 and terminated effective 22 August 2002, Leynes is entitled to a separation pay in the sum of ₱40,000.00, in addition to her last pay which, taking into consideration her proportionate 13th month pay, tax refund and SILP, was computed by NHPI at ₱28,188.16. For lack of showing of bad faith, malice or arbitrariness on the part of NHPI, there is, however, no justifiable ground for an award of moral and exemplary damages. For lack of factual or legal bases, we find no cause to award attorney's fees in favor of Leynes. In the absence of the same showing insofar as NHPI's corporate officers are concerned, neither is there cause to hold them jointly and severally liable for the above-discussed monetary awards.

APPEARANCES OF COUNSEL

Jimenez Gonzales Ballo Valdez Caluya and Fernandez for petitioners.

George A. Soriano for respondent.

D E C I S I O N

PEREZ, *J.*:

Assailed in this petition for review on *certiorari*[1] filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure* is the 23 November 2006 Decision rendered by the Sixteenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 84781,[2] the decretal portion of which states:

> WHEREFORE, the foregoing considered, the petition is *GRANTED* and the assailed Decision and Resolution are *REVERSED* and *SET ASIDE*. Accordingly, the Decision of the Labor Arbiter is *REINSTATED.*
>
> SO ORDERED.[3]

The Facts

From its original business of providing building maintenance, it appears that petitioner Nippon Housing Philippines, Inc. (NHPI) ventured into building management, providing such services as handling of the lease of condominium units, collection of dues and compliance with government regulatory requirements. Having gained the Bay Gardens Condominium Project (the Project) of the Bay Gardens Condominium Corporation (BGCC) as its first and only building maintenance client, NHPI hired respondent Maiah Angela Leynes (Leynes) on 26 March 2001 for the position of Property Manager, with a salary of ₱40,000.00 per month. Tasked with surveying the requirements of the government and the client for said project, the formulation of house rules and regulations and the preparation of the annual operating and capital expenditure budget, Leynes was also responsible for the hiring and deployment of manpower, salary and position determination

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[1] *Rollo*, pp. 8-34, Petition.

[2] CA *rollo*, CA-G.R. SP No. 84781, CA's 23 November 2006 Decision, pp. 283-295.

[3] *Id.* at 295.

as well as the assignment of the schedules and responsibilities of employees.[4]

On 6 February 2002, Leynes had a misunderstanding with Engr. Honesto Cantuba (Cantuba), the Building Engineer assigned at the Project, regarding the extension of the latter's working hours. Aside from instructing the security guards to bar Engr. Cantuba from entry into the Project and to tell him to report to the NHPI's main office in Makati, Leynes also sent a letter dated 8 February 2002 by telefax to Joel Reyes (Reyes), NHPI's Human Resources Department (HRD) Head, apprising the latter of said Building Engineer's supposed insubordination and disrespectful conduct.[5] With Engr. Cantuba's submission of a reply in turn accusing Leynes of pride, conceit and poor managerial skills,[6] Hiroshi Takada (Takada), NHPI's Vice President, went on to issue the 12 February 2002 memorandum, attributing the incident to "simple personal differences" and directing Leynes to allow Engr. Cantuba to report back for work.[7]

Disappointed with the foregoing management decision, Leynes submitted to Tadashi Ota, NHPI's President, a letter dated 12 February 2002, asking for an emergency leave of absence for the supposed purpose of coordinating with her lawyer regarding her resignation letter.[8] While NHPI offered the Property Manager position to Engr. Carlos Jose on 13 February 2002[9] as a consequence Leynes' signification of her intention to resign, it also appears that Leynes sent another letter to Reyes by telefax on the same day, expressing her intention to return to work on 15 February 2002 and to call off her planned resignation upon

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[4] Record, NLRC NCR (South) Case No. 30-02-01119-02, Leynes' Position Paper, pp. 9-10.

[5] Leynes' 8 February 2002 Letter, *id.* at 31-33.

[6] Cantuba's 8 February 2002 Letter, *id.* at 34-36.

[7] Takada's 12 February 2002 Memorandum, *id.* at 38.

[8] Leynes' 12 February 2002 Letter and Application for Leave, *id.* at 39-40.

[9] Carlos Jose's 10 June 2002 Affidavit, *id.* at 262.

the advice of her lawyer.[10] Having subsequently reported back for work and resumed performance of her assigned functions, Leynes was constrained to send out a 20 February 2002 written protest regarding the verbal information she supposedly received from Reyes that a substitute has already been hired for her position.[11] On 22 February 2002, Leynes was further served by petitioner Yasuhiro Kawata and Noboyushi Hisada, NHPI's Senior Manager and Janitorial Manager,[12] with a letter and memorandum from Reyes, relieving her from her position and directing her to report to NHPI's main office while she was on floating status.[13]

Aggrieved, Leynes lost no time in filing against NHPI and its above-named officers the 22 February 2002 complaint for illegal dismissal, unpaid salaries, benefits, damages and attorney's fees docketed before the arbitral level of the National Labor Relations Commission (NLRC) as NLRC-NCR South Sector Case No. 30-02-01119-02.[14] Against Leynes' claim that her being relieved from her position without just cause and replacement by one Carlos Jose amounted to an illegal dismissal from employment,[15] NHPI and its officers asserted that the management's exercise of the prerogative to put an employee on floating status for a period not exceeding six months was justified in view of her threatened resignation from her position and BGCC's request for her replacement.[16] During the pendency of the case, however, Reyes eventually served the Department of Labor and Employment (DOLE)[17] and Leynes with the 8 August 2002 notice terminating her services effective 22 August

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[10] Leynes' 13 February 2002 Letter, *id.* at 18.

[11] Leynes' 20 February 2002 Letter, *id.* at 19.

[12] Marlette Lagradilla's 20 April 2002 Affidavit, *id.* at 62.

[13] Reyes' 22 February 2002 Letter and Memorandum, *id.* at 41-42.

[14] Leynes' 22 February 2002 Complaint, *id.* at 1-2.

[15] Leynes' 20 March 2002 Position Paper, *id.* at 7-14.

[16] NHPI's 18 March 2002 Position Paper, *id.* at 23-29.

[17] DOLE Establishment Termination Report, *id.* at 269.

2002, on the ground of redundancy or lack of a posting commensurate to her position at the Project.[18] Leynes was offered by NHPI the sum of ₱28,188.16 representing her unpaid wages, proportionate 13th month pay, tax refund and service incentive leave pay (SILP).

On 14 January 2003, Labor Arbiter Manuel Manansala rendered a decision, finding that NHPI's act of putting Leynes on floating status was equivalent to termination from employment without just cause and compliance with the twin requirements of notice and hearing. Likewise finding that NHPI's officers acted with bad faith in effecting Leynes' termination,[19] the Labor Arbiter disposed of the case in the following wise:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. Declaring respondent Nippon Housing Philippines, Inc. (NHPI) guilty of illegal dismissal for the reasons above-discussed. Consequently, the aforenamed respondent is hereby directed to reinstate complainant Maiah Angela Leynes to her former position as Property Manager without loss of seniority rights and with full backwages from the time of her unjust dismissal up to the time of her actual reinstatement. The backwages due to complainant Leynes is initially computed at ₱471,844.87 x x x subject to the finality of this Decision.
>
> Be that as it may, on account of strained relationship between the parties brought about by the institution of the instant case/complaint plus the fact that complainant Leynes occupied a managerial position, it is better for the parties to be separated. Thus, in lieu of reinstatement, respondent NHPI is hereby directed to pay complainant Leynes the sum of ₱80,000.00 representing the latter's initial separation pay subject to the finality of this Decision x x x.
>
> 2. Declaring respondent NHPI and individual respondents Tadashi Ota (President), Hirochi Takada (Vice President for Finance), Yasuhiro Kawata (Senior Manager), Noboyushi [Hisada] (Janitorial Manager), and Joel Reyes (HRD Manager) guilty of evident bad faith in effecting the dismissal of complainant Leynes from the service.

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[18] Reyes' 8 August 2002 Letter, *id.* at 266.

[19] Labor Arbiter's 14 January 2003 Decision, *id.* at 298-316.

Consequently, the aforenamed respondents are hereby directed to pay, jointly and severally, complainant Leynes the sum of ₱20,000.00 for moral damages and the sum of ₱20,000.00 for exemplary damages;

3. Directing respondent NHPI to pay complainant Leynes the total sum of ₱56,888.44 representing her unpaid salary, proportionate 13th month pay, and proportionate service incentive leave pay x x x

4. Directing the aforenamed respondent NHPI to pay complainant Leynes ten (10%) percent attorney's fees based on the total monetary award for having been forced to prosecute and/or litigate the instant case/complaint by hiring the services of legal counsel.

5. Dismissing the other mon[e]y claims and/or charges of complainant Leynes for lack of merit.

SO ORDERED.[20]

On appeal, the foregoing decision was reversed and set aside in the 30 September 2003 decision rendered by the NLRC in NLRC NCR CA No. 035229. In ordering the dismissal of the complaint for lack of merit, the NLRC ruled that NHPI's placement of Leynes on floating status was necessitated by the client's contractually guaranteed right to request for her relief.[21] With Leynes' elevation of the case to the CA on a Rule 65 petition for *certiorari*,[22] the NLRC's decision was, however, reversed and set aside in the herein assailed 23 November 2006 decision, upon the following findings and conclusions: (a) absent showing that there was a *bona fide* suspension of NHPI's business operations, Leynes' relief from her position — even though requested by the client — was tantamount to a constructive dismissal; (b) the bad faith of NHPI and its officers is evident from the hiring of Engr. Jose as Leynes' replacement on 13 February 2002 or prior to her being relieved from her position on 22 February 2002; and, (c) the failure of NHPI and its officers to prove a just cause for Leynes' termination, the redundancy

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

[21] NLRC's 30 September 2003 Decision, *id.* at 472-484.

[22] CA *rollo*, CA-G.R. SP No. 84781, Leynes' Rule 65 Petition for *Certiorari*, pp. 2-33.

of her services and their compliance with the requirements of due process renders them liable for illegal dismissal.[23]

The motion for reconsideration of the foregoing decision filed by NHPI and its officers[24] was denied for lack of merit in the CA's 8 May 2007 resolution, hence, this petition.[25]

The Issues

Petitioners NHPI and Kawata urge the grant of their petition on the following grounds, to wit:

I. THE HONORABLE COURT OF APPEALS' RULING THAT PETITIONERS' DECISION TO PLACE RESPONDENT ON FLOATING STATUS IS TANTAMOUNT TO CONSTRUCTIVE DISMISSAL IS CONTRARY TO LAW AND SETTLED JURISPRUDENCE.

II. THE HONORABLE COURT OF APPEALS' DECLARATION THAT NHPI'S DECISION TO REDUNDATE RESPONDENT IS UNJUSTIFIED, IS CONTRARY TO LAW AND SETTLED JURISPRUDENCE.[26]

The Court's Ruling

We find the petition impressed with merit.

Petitioners argue that the CA erred in finding that Leynes was constructively dismissed when she was placed on floating status prior to her termination from employment on the ground of redundancy. Maintaining that the employee's right to security of tenure does not give him a vested right thereto as would deprive the employer of its prerogative to change his assignment

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[23] CA's 23 November 2006 Decision, *id.* at 283-295.

[24] NHPI's 19 December 2006 Motion for Reconsideration, *id.* at 299-314.

[25] CA's 8 May 2007 Resolution, *id.* at 320-321.

[26] *Rollo*, p. 19.

or transfer him to where he will be most useful, petitioners call our attention to the supposed fact that Leynes was unacceptable to BGCC which had a contractually guaranteed right to ask for her relief. Rather than outrightly terminating Leynes' employment as a consequence of her threats to resign from her position, moreover, petitioners claim that she was validly placed on floating status pursuant to Article 286 of the *Labor Code of the Philippines* which provides as follows:

> Art. 286. *When employment not deemed terminated*. — The bona fide suspension of the operation of a business undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a civic duty shall not terminate employment. In all such cases the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

Although the CA correctly found that the record is bereft of any showing that Leynes was unacceptable to BGCC, the evidence the parties adduced *a quo* clearly indicates that petitioners were not in bad faith when they placed the former under floating status. Disgruntled by NHPI's countermanding of her decision to bar Engr. Cantuba from the Project, Leynes twice signified her intention to resign from her position to Ota on 12 February 2002. Upon receiving the copy of the memorandum issued for Engr. Cantuba's return to work, Leynes inscribed thereon the following handwritten note addressed to Ota, "*Good Morning! I'm sorry but I would like to report to you my plan of resigning as your Prop. Manager. Thank You.*"[27] In her application letter for an immediate emergency leave,[28] Leynes also distinctly expressed her dissatisfaction over NHPI's resolution of her dispute with Engr. Cantuba and announced her plan of coordinating with her lawyer regarding her resignation letter, to wit:

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[27] Records, NLRC-NCR South Sector Case No. 30-02-01119-02, p. 38.

[28] *Id.* at 39.

This is in line with the Management decision re: Return to work order of Mr. Honesto Cantuba at Bay Gardens. I would like to express my deepest disappointed (sic) for having received this kind of decision from Nippon Housing Philippines, Inc.

Mr. Ota, I have been working with NHPI, as your Building Property Manager, for almost a year now. I had exerted all my effort to set-up the Property Management, experienced each and every pain and sacrifice[d] everything before we were able to get the Bay Gardens project. Mr. Hiro Matsumoto, Hiroshi Takada and Yasuhiro Kawata had witnessed these things.

Given your decision, I am respecting this. The most painful thing for me is that the management did not value my effort for what I have done to the Company.

I am therefore submitting my letter for emergency leave of absence starting today, while I am still coordinating with my Lawyer re: my resignation letter.

Thank you for your support.[29]

In view of the sensitive nature of Leynes' position and the critical stage of the Project's business development, NHPI was constrained to relay the situation to BGCC which, in turn, requested the immediate adoption of remedial measures from Takada, including the appointment of a new Property Manager for the Project. Upon BGCC's recommendation,[30] NHPI consequently hired Engr. Jose on 13 February 2002 as Leynes' replacement.[31] Far from being the indication of bad faith the CA construed the same to be, these factual antecedents suggest that NHPI's immediate hiring of Engr. Jose as the new Property Manager for the Project was brought about by Leynes' own rash announcement of her intention to resign from her position. Although she subsequently changed her mind and sent Reyes a letter by telefax on 13 February 2002 announcing the reconsideration of her planned resignation and her intention to

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[29] *Id*.

[30] Chan Say Lim's 19 April 2002 Affidavit; *Id.*, at 227, Lian Lian Lim's 24 April 2002, *id.* at 76-77.

[31] Eng. Carlos Jose's 10 June 2002 Affidavit, *id.* at 262.

return to work on 15 February 2002,[32] Leynes evidently had only herself to blame for precipitately setting in motion the events which led to NHPI's hiring of her own replacement.

Acting on Leynes' 20 February 2002 letter protesting against the hiring of her replacement and reiterating her lack of intention to resign from her position,[33] the record, moreover, shows that NHPI simply placed her on floating status "until such time that another project could be secured" for her.[34] Traditionally invoked by security agencies when guards are temporarily sidelined from duty while waiting to be transferred or assigned to a new post or client,[35] Article 286 of *the Labor Code* has been applied to other industries when, as a consequence of the *bona fide* suspension of the operation of a business or undertaking, an employer is constrained to put employees on floating status for a period not exceeding six months.[36] In brushing aside respondents' reliance on said provision to justify the act of putting Leynes on floating status, the CA ruled that no evidence was adduced to show that there was a *bona fide* suspension of NHPI's business. What said court clearly overlooked, however, is the fact that NHPI had belatedly ventured into building management and, with BGCC as its only client in said undertaking, had no other Property Manager position available to Leynes.

Considering that even labor laws discourage intrusion in the employers' judgment concerning the conduct of their business, courts often decline to interfere in their legitimate business decisions,[37] absent showing of illegality, bad faith or arbitrariness.

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[32] *Id.* at 18.

[33] *Id.* at 19.

[34] *Id.* at 42.

[35] *Nationwide Security and Allied Services, Inc. v. Ronald P. Valderama*, G.R. No. 186614, 23 February 2011.

[36] *JPL Marketing Promotions v. Court of Appeals*, 501 Phil. 440, 449 (2005).

[37] *Coca-Cola Bottlers Philippines, Inc. v. Del Villar*, G.R. No. 163091, 6 October 2010, 632 SCRA 293, 312.

Indeed, the right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them.[38] The record shows that Leynes filed the complaint for actual illegal dismissal from which the case originated on 22 February 2002 or immediately upon being placed on floating status as a consequence of NHPI's hiring of a new Property Manager for the Project. The rule is settled, however, that "off-detailing" is not equivalent to dismissal, so long as such status does not continue beyond a reasonable time and that it is only when such a "floating status" lasts for more than six months that the employee may be considered to have been constructively dismissed.[39] A complaint for illegal dismissal filed prior to the lapse of said six-month and/or the actual dismissal of the employee is generally considered as prematurely filed.[40]

Viewed in the light of the foregoing factual antecedents, we find that the CA reversibly erred in holding petitioners liable for constructively dismissing Leynes from her employment. There is said to be constructive dismissal when an act of clear discrimination, insensitivity or disdain on the part of the employer has become so unbearable as to leave an employee with no choice but to forego continued employment.[41] Constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay.[42] Stated otherwise, it is a dismissal in disguise or an act

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[38] *Mendoza v. Rural Bank of Lucban*, G.R. No. 155421, 7 July 2004, 433 SCRA 756, 766.

[39] *Megaforce Security and Allied Services, Inc. v. Lactao*, G.R. No. 160940, 21 July 2008, 559 SCRA 110, 117.

[40] *Sasan, Sr. v. National Labor Relations Commission 4th Division*, G.R. No. 176240, 17 October 2008, 569 SCRA 670, 696.

[41] *Soliman Security Services, Inc. v. Court of Appeals*, 433 Phil. 902, 910 (2002).

[42] *Endico v. Quantum Foods Distribution Center*, G.R. No. 161615, 30 January 2009, 577 SCRA 299, 310 citing *Blue Dairy Corporation v. NLRC*, 373 Phil. 179, 186.

amounting to dismissal but made to appear as if it were not.[43] In constructive dismissal cases, the employer is, concededly, charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity.[44] To our mind, respondents have more than amply discharged this burden with proof of the circumstances surrounding Engr. Carlos' employment as Property Manager for the Project and the consequent unavailability of a similar position for Leynes.

With no other client aside from BGCC for the building management side of its business, we find that NHPI was acting well within its prerogatives when it eventually terminated Leynes' services on the ground of redundancy. One of the recognized authorized causes for the termination of employment, redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise.[45] A redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of service activity priorly undertaken by the business.[46] It has been held that the exercise of business judgment to characterize an employee's service as no longer necessary or sustainable is not subject to discretionary review where, as here, it is exercised there is no showing of violation of the law or arbitrariness or malice on the part of the employer.[47] An employer has no legal

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[43] *Uniwide Sales Warehouse Club v. National Labor Relations Commission*, G.R. No. 154503, 29 February 2008, 547 SCRA 220, 236.

[44] *Philippine Veterans Bank v. National Labor Relations Commission (Fourth Division)*, G.R. No. 188882, 30 March 2010, 617 SCRA 204, 212.

[45] *Edge Apparel, Inc. v. National Labor Relations Commission*, G.R. No. 121314, 19 February 1998, 286 SCRA 302, 311.

[46] *AMA Computer College v. Garcia*, G.R. No. 166703, 14 April 2008, 551 SCRA 254, 264.

[47] *DOLE Philippines, Inc. v. National Labor Relations Commission*, 417 Phil. 428, 440 (2001).

obligation to keep more employees than are necessary for the operation of its business.[48]

Considering that Leynes was terminated from service upon an authorized cause, we find that the CA likewise erred in faulting NHPI for supposedly failing to notify said employee of the particular act or omission leveled against her and the ground/s for which she was dismissed from employment. Where dismissal, however, is for an authorized cause like redundancy, the employer is, instead, required to serve a written notice of termination on the worker concerned and the DOLE, at least one month from the intended date thereof.[49] Here, NHPI specifically made Leynes' termination from service effective 22 August 2002, but only informed said employee of the same on 8 August 2002[50] and filed with the DOLE the required Establishment Termination Report only on 16 August 2002.[51] For its failure to comply strictly with the 30-day minimum requirement for said notice and effectively violating Leynes' right to due process, NHPI should be held liable to pay nominal damages in the sum of ₱50,000.00. The penalty should understandably be stiffer because the dismissal process was initiated by the employer's exercise of its management prerogative.[52]

Having been validly terminated on the ground of redundancy, Leynes is entitled to separation pay equivalent to one month salary for every year of service but not to the backwages adjudicated in her favor by the Labor Arbiter.[53] Hired by NHPI

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[48] *Almodiel v. National Labor Relations Commission*, G.R. No. 100641, 14 June 1993, 223 SCRA 341, 348.

[49] *Serrano v. National Labor Relations Commission*, 380 Phil. 416, 439 (2000).

[50] Record, NLRC NCR (South) Case No. 30-02-01119-02, pp. 266-268.

[51] *Id.* at 269.

[52] *Smart Communications, Inc. v. Astorga*, G.R. Nos. 148132, 151079, 151372, 28 January 2008, 542 SCRA 434, 452 citing *Jaka Food Processing Corporation v. Pacot*, G.R. No. 151378, 28 March 2005, 454 SCRA 119, 125-126.

[53] *Lowe, Inc. v. Court of Appeals*, G.R. Nos. 164813 & 174590, 14 August 2009, 596 SCRA 140, 154.

on 26 March 2001 and terminated effective 22 August 2002, Leynes is entitled to a separation pay in the sum of ₱40,000.00, in addition to her last pay which, taking into consideration her proportionate 13th month pay, tax refund and SILP, was computed by NHPI at ₱28,188.16.[54] For lack of showing of bad faith, malice or arbitrariness on the part of NHPI, there is, however, no justifiable ground for an award of moral and exemplary damages.[55] For lack of factual or legal bases, we find no cause to award attorney's fees in favor of Leynes. In the absence of the same showing insofar as NHPI's corporate officers are concerned, neither is there cause to hold them jointly and severally liable for the above-discussed monetary awards.

WHEREFORE, premises considered, the petition is *GRANTED* and the assailed 23 November 2006 Decision is, accordingly, *REVERSED* and *SET ASIDE*. In lieu thereof, another is entered ordering NHPI to pay Leynes the following sums: (a) ₱40,000.00 as separation pay; (b) ₱28,188.16 representing her unpaid wages, proportionate 13th month pay, tax refund and SILP; and (c) ₱50,000.00 by way of nominal damages.

SO ORDERED.

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

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[54] Record, NLRC NCR (South) Case No. 30-02-01119-02, p. 267.

[55] *Lambert Pawnbrokers & Jewelry Corporation v. Binamira,* G.R. No. 170464, 12 July 2010, 624 SCRA 705, 720-721.

[*] Associate Justice Teresita J. Leonardo-de Castro is designated as Acting Member of the Second Division as per Special Order No. 1006 dated 10 June 2011.

SECOND DIVISION

[G.R. No. 179344. August 3, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGARDO FERMIN *Y* GREGORIO and JOB MADAYAG, JR., *Y* BALDERAS,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT (RA NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — In a prosecution for illegal sale of dangerous drugs, the following elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. The presence of these elements is sufficient to support the trial court's finding of appellants' guilt. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. The delivery of the contraband to the *poseur*-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused. The presentation in court of the *corpus delicti* — the body or substance of the crime – establishes the fact that a crime has actually been committed.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESS; FINDINGS OF TRIAL COURT, RESPECTED; EXCEPTIONS; SUBSTANTIAL FACTS AND CIRCUMSTANCES THAT WOULD MATERIALLY AFFECT THE RESULT OF THE CASE, OVERLOOKED. — We have repeatedly held that the trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal. However, this is not a hard and fast rule. We have reviewed such factual findings when there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case. Cognate to this, while the entrenched rule is that the assessment of witnesses and their testimonies is a matter best undertaken by the trial court which had the opportunity to observe the

demeanor, conduct or attitude of the witnesses, the findings of the lower court on this point will be reversed on appeal, if it overlooked substantial facts and circumstances which, if considered, would materially affect the result of the case. x x x The clear inconsistencies on important points cannot be disregarded where the issue is one's liberty. The contradictory statements of the main prosecution witnesses need not even be appreciated together with the defense position. The proof of the supposed buy-bust operation rests exclusively on the prosecution.

3. CRIMINAL LAW; DANGEROUS DRUGS ACT (RA NO. 9165); CHAIN OF CUSTODY; NON-COMPLIANCE EXCUSED ONLY AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICERS. — We now examine the chain of custody of the *corpus delicti* of this case. Section 21, paragraph 1, Article II of Republic Act No. 9165 provides for the custody and disposition of the confiscated illegal drugs, to wit: x x x Further, the Implementing Rules and Regulations of Republic Act No. 9165, provides: x x x Strict compliance with the prescribed procedures is required because of the unique characteristic of illegal drugs, rendering them indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Hence, we have the rules on the measures to be observed during and after the seizure, during the custody and transfer of the drugs for examination, and at all times up to their presentation in court. While Section 21(a) of the Implementing Rules and Regulations of Republic Act No. 9165 excuses non-compliance with the afore-quoted procedure, **the same holds true only for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.** Here, the failure of the buy-bust team to comply with the procedural requirements cannot be excused since there was a break in the chain of custody of the substance taken from appellant. **It should be pointed out that the identity of the seized substance is established by showing its chain of custody**. The following are the links that must be established in the chain of custody in a buy-bust situation: *first,* the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending

officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

4. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; REQUIRED TO OVERCOME PRESUMPTION OF INNOCENCE. — In considering a criminal case, it is critical to start with the law's own starting perspective on the status of the accused — in all criminal prosecutions, he is presumed innocent of the charged laid unless the contrary is proven beyond reasonable doubt. The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. To repeat, the prosecution must rest on its own merits and must not rely on the weakness of the defense. And if the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf. In which case, the presumption prevails and the accused should necessarily be acquitted.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Job B. Madayag, Sr. for accused-appellants.

D E C I S I O N

PEREZ, *J.*:

For our review is the Decision[1] of the Special Fifteenth Division of the Court of Appeals in CA-G.R. CR-HC No. 01852 dated 31 May 2007, convicting the herein accused-appellants Edgardo Fermin *y* Gregorio and Job Madayag, Jr. *y* Balderas guilty beyond reasonable doubt of violation of Section 5, Article II of Republic

[1] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Vicente S.E. Veloso and Arturo G. Tayag, concurring. *Rollo*, pp. 2-27.

Act No. 9165. The dispositive portion of the assailed decision reads:

> WHEREFORE, the Decision of the Regional Trial Court of Quezon City, Branch 103 in Criminal Case No. Q-03-119028, finding accused-appellants Edgardo Fermin *y* Gregorio and Job Madayag, Jr. *y* Balderas guilty beyond reasonable doubt of violation of Article 5 [Section 5], Article II of R.A. 9165, and sentencing them to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of **FIVE HUNDRED THOUSAND PESOS (PhP 500,000)** each is **AFFIRMED *in toto.***

The facts as presented by the prosecution follow:

At around 9 a.m. of 9 July 2003, a police informant went to La Loma Police Station in Quezon City and reported that two (2) male persons are engaged in illegal sale of drugs at No. 93 Iba St., *Brgy.* San Isidro, Quezon City. The two were eventually identified as the herein accused Job B. Madayag, Jr. (Madayag, Jr.) *alias* "Rolan" and Edgardo G. Fermin (Fermin) *alias* "Jon-Jon." Acting upon the report, Station Chief Police Senior Inspector Oliver M. Villanueva (Senior Inspector Villanueva) created a team to conduct a buy-bust operation. The team was composed of the police members of the station namely, PO1 Roderick Valencia (PO1 Valencia), PO1 Albert Mabutol (PO1 Mabutol), PO2 Ronald Pascua (PO2 Pascua), PO2 Edsel Ibasco (PO2 Ibasco) and one identified only as PO De Guzman. In their briefing, Senior Inspector Villanueva gave each member of the team their respective assignments; PO2 Ibasco will act as the *poseur*-buyer with the rest of the team completing the cast. Senior Inspector Villanueva gave PO2 Ibasco one (1) One Hundred Peso Bill for use as marked money. PO2 Ibasco, in turn, put his initial "EI" on the bill.[2]

At around 11 a.m. of the same day, the buy-bust team, together with Senior Inspector Villanueva and the confidential informant, went to the target area of operation at No. 93 Iba St., *Brgy.* San Isidro in Quezon City on board a *Tamaraw FX*. PO2 Ibasco and the confidential informant proceeded to the area

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[2] TSN, 15 June 2004, pp. 1-6.

where they saw the subject, Madayag, Jr., in front of the house. The rest of the team positioned themselves, more or less ten to fifteen meters away from the location of PO2 Ibasco, the informant and Madayag, Jr. The informant then introduced PO2 Ibasco to Madayag, Jr. as a drug-dependent who wanted to buy drugs. When Madayag, Jr. asked for payment, PO2 Ibasco paid in the one-hundred-peso marked money. Madayag, Jr. then called another person from inside the house. The man, later identified as the co-accused Fermin, came out and gave three (3) plastic sachets to Madayag, Jr. Madayag, Jr. turned again to PO2 Ibasco and showed him the three (3) plastic sachets at his palm and told the *poseur*-buyer, "*Dahil kasama ka na namin, mamili ka dito sa tatlo para makasigurado kang di ka talo, sisiguraduhin kong babalik ka*."[3] PO2 Ibasco then took one plastic sachet from Madayag Jr.'s palm and examined its content. Being convinced that the content was positive for *shabu*, PO2 Ibasco made the pre-arranged signal of scratching his head in order to alert the other members of the buy-bust team. The members then immediately rushed to the location and introduced themselves as police officers.

PO2 Ibasco testified in his Direct Examination[4] that PO2 Pascua got hold of Fermin while PO1 Valencia got hold of Madayag, Jr. He added that PO2 Pascua was able to recover the buy-bust money and plastic sachet from Fermin while PO1 Valencia recovered a *bente nueve* knife from Madayag, Jr. PO2 Ibasco added that the plastic sachet which was the subject of illegal sale remained in his possession which he marked "EI-JM," while the rest were in the custody of PO2 Pascua. The buy-bust team returned to the police station with the two (2) accused and all the [pieces of] of evidence were turned over to the desk officer, and the desk officer turned them over to the police investigator.[5]

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[3] *Id.* at 6-11; *Id.* at 9-20.

[4] TSN, 15 June 2004, pp. 1-36.

[5] *Id.* at 11-16.

PO2 Pascua affirmed in open court that he arrested and bodily frisked Fermin and was able to recover one plastic sachet and one (1) .38 *Paltik* Revolver.[6] However, he contradicted the previous statement of PO2 Ibasco that PO1 Valencia was the one who got hold of Madayag, Jr. He testified that it was PO2 Ibasco who arrested Madayag, Jr. and recovered from the latter the buy-bust money.[7] He contradicted himself when, on the earlier part of his testimony he said that all the pieces of evidence including the plastic sachet which was the subject of sale were in his possession until they were turned over to the investigator,[8] he later testified that PO2 Ibasco recovered one plastic sachet from Madayag, Jr.[9]

Nonetheless, the two police officers were one in testifying that a Joint Affidavit about the conducted operation was executed by them at the police station.[10]

PO2 Ibasco identified the one (1) hundred peso bill with serial number ZT-427430 bearing his initial "EI" as the marked money used in the buy-bust operation.[11] PO2 Pascua, on the other hand, admitted that he put his initial "RP-EF" in all the plastic sachets he recovered[12] and in the .38 *paltik* revolver.[13]

The confiscated sachets of *shabu* were turned over to the Police Crime Laboratory at Central Police District in Quezon City for examination.[14] Police Forensic Chemist Officer Bernardino Banac, Jr. executed Chemistry Report No. D-605-03

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[6] TSN, 19 April 2004, p. 21.

[7] *Id.* at 20.

[8] *Id.* at 23.

[9] *Id.* at 26.

[10] *Id.* at 28.

[11] TSN, 15 June 2004, p. 15.

[12] TSN, 19 April 2004, p. 23.

[13] *Id.* at 24.

[14] TSN, 15 June 2004, p. 33.

finding the submitted specimen positive for *methylamphetamine hydrochloride*, a dangerous drug.[15]

The factual version presented by the defense is:

Madayag, Jr. testified that before 12 noon of 9 July 2003, while he was buying some cigarettes from a nearby store, he noticed that around eight (8) armed male persons wearing civilian clothes, who turned out to be police officers, were in front of his house located at No. 93 Iba St., *Brgy*. San Isidro, Quezon City. He approached them to ask what they were looking for. However, instead of answering, two of the police officers, one identified as PO1 Valencia, drew their firearms and poked them at Madayag, Jr.'s head.[16] One of them then pulled the accused inside the house. He was then made to lie down on the cement floor of the veranda. The police officers entered the house and when they came out after around ten minutes, the other accused Fermin, who was then sleeping inside one of the bedrooms of the same house, and his mother were brought to the veranda.[17] Fermin was also forced to lie down by the police officers.[18] PO1 Valencia recovered a cigarette lighter from Madayag, Jr., which the police described as, "*eto ang gamit mo sa shabu*."[19] The police then took the two accused and Fermin's mother to the police station where they were detained.[20]

Fermin, the other accused, said his mother was later released because she paid the police officers the amount of ₱11,000.00.[21] He added that they remained in detention because they could not produce the additional demanded amount of ₱14,000.00.[22]

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[15] *Id.* at 32.

[16] TSN, 28 February 2005, pp. 4-9.

[17] TSN, 18 April 2005, p. 3.

[18] TSN, 28 February 2005, pp. 10-14.

[19] *Id*.

[20] *Id.* at 13-14 and 19.

[21] TSN, 18 April 2005, p. 7.

[22] *Id.* at 9.

Fermin corroborated the testimony of Madayag, Jr. in court. He said that at around 11:00 a.m. of 9 July 2003, while he was sleeping, together with his nieces, at one of the rooms of the house at No. 93 Iba St., *Brgy.* San Isidro, Quezon City, police officers entered the room and grabbed him on his nape and arrested his mother.[23] Then they were brought to the veranda of the house where he saw Madayag, Jr. lying facedown on the floor.[24] He was ordered to lie down by Valencia. He denied that a gun was taken from him or that he was called by Madayag, Jr.[25] He further denied having given three (3) plastic sachets to Madayag, Jr. or that he was frisked by the police for plastic sachets and money.[26]

Eventually, an Information was filed against Fermin *alias* "Jon-Jon" and Madayag, Jr. *alias* "Rolan" dated 14 July 2003 which reads:

> That on or about 9th day of July 2003, in Quezon city, Philippines, the said accused, conspiring together, confederating with and mutually helping one another, not being authorized by law to sell, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as a broker in the said transaction, zero point eleven (0.11) gram of white crystalline substance containing *Methylamphetamine Hydrochloride*, a dangerous drug.[27]

Upon arraignment, both the accused entered a plea of not guilty.

On 19 December 2005, the trial court found both the accused guilty of the crime charged. The dispositive portion reads:

> WHEREFORE, in view of the foregoing, the court hereby finds accused Job Madayag, Jr. *y* Balderas and accused Edgardo Fermin

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[23] TSN, 26 April 2005, pp. 4-6.

[24] *Id.* at 14.

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

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

[27] RTC Decision. CA *rollo*, p. 26.

y Gregorio GUILTY as conspirator of the crime of drug pushing and each is hereby sentenced to suffer Life Imprisonment and to pay a fine of ₱500,000 each.

Upon appeal before the Court of Appeals, the accused in its Appellee's Brief assigned the following errors:[28]

1. THE TRIAL COURT COMMITTED SERIOUS AND REVERSIBLE ERROR IN FINDING THAT A BUY-BUST OPERATION WAS CONDUCTED AGAINST APPELLANT AT ABOUT 11:30 O'CLOCK IN THE MORNING OF JULY 9, 2003 IN FRONT OF HOUSE NO. 93 IBA ST., BRGY. SAN ISIDRO LABRADOR, QUEZON CITY.

2. THE TRIAL COURT COMMITTED SERIOUS AND REVERSIBLE ERROR IN FINDING APPELLANTS GUILTY AS CONSPIRATORS OF THE CRIME OF DRUG PUSHING AND SENTENCING EACH TO SUFFER LIFE IMPRISONMENT AND TO PAY A FINE OF ₱500,000.00 EACH.

3. THE TRIAL COURT COMMITTED SERIOUS AND REVERSIBLE ERROR IN FAILING TO ACQUIT APPELLANTS OF THE CHARGE ALLEGED IN THE INFORMATION.

In its Decision, the Court of Appeals agreed with the judgment of the trial court that the two accused were guilty beyond reasonable doubt of the offense charged against him.[29]

The appellate court found that the testimonies of PO2 Ibasco and PO2 Pascua were straightforward and candid as against the claim of *alibi* or frame-up and extortion of the two accused. Further, the appellate court found no motive on the part of the police officers to frame up both of the accused. Finally, it ruled against the alleged lack of "verisimilitude" of the prosecution's version because the improbabilities, inconsistencies contradictions and self-contradictions did not pertain to the actual buy-bust itself but only to peripheral matters.

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[28] Appellee's Brief. *Id.* at 46.

[29] Decision of the Court of Appeals. *Rollo*, p. 44.

The Court's Ruling

The defense's main argument is whether or not there was really a buy-bust operation on 9 July 2003. While we are not in total agreement with all the submissions of the defense, this Court is reversing the ruling of the lower courts and now acquits the two accused of the crime charged.

In a prosecution for illegal sale of dangerous drugs, the following elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[30] The presence of these elements is sufficient to support the trial court's finding of appellants' guilt.[31] What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. The delivery of the contraband to the *poseur*-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused.[32] The presentation in court of the *corpus delicti* — the body or substance of the crime — establishes the fact that a crime has actually been committed.[33]

We have repeatedly held that the trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal. However, this is not a hard and fast rule. We have reviewed such factual

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[30] *People v. Orteza*, G.R. No. 173051, 31 July 2007, 528 SCRA 750, 757 citing *People v. Bandang*, G.R. No. 151314, 3 June 2004, 430 SCRA 570, 579.

[31] *People v. Miranda*, G.R. No. 174773, 2 October 2007, 534 SCRA 552, 567.

[32] *People v. Nazareno*, G.R. No. 174771, 11 September 2007, 532 SCRA 630, 636-637 citing *People v. Orteza*, *supra* note 30 at 758 citing further *People v. Zeng Hua Dian*, G.R. No. 145348, 14 June 2004, 432 SCRA 25, 34.

[33] *People v. Gutierrez*, G.R. No. 179213, 3 September 2009, 598 SCRA 92, 101 citing *People v. Del Mundo*, G.R. No. 169141, 6 December 2006, 510 SCRA 554, 562.

findings when there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case.[34]

Cognate to this, while the entrenched rule is that the assessment of witnesses and their testimonies is a matter best undertaken by the trial court which had the opportunity to observe the demeanor, conduct or attitude of the witnesses, the findings of the lower court on this point will be reversed on appeal, if it overlooked substantial facts and circumstances which, if considered, would materially affect the result of the case.[35]

This Court believes that on application of the rule to the testimonies of the prosecution witnesses, the exception to the high value of the trial court's findings surfaces. We find irreconcilable conflicts in the recollections about the principal *factum probandum* which is the buy-bust itself. The varying versions about the pre-operation, the illegal sale itself and the immediately preceding actions put doubts about what really transpired on 9 July 2003.

PO2 Ibasco, in his testimony of 15 June 2004, stated that after the transaction, PO2 Pascua arrested Fermin and recovered the buy-bust money and the two plastic sachets; while PO1 Valencia was the one who arrested Madayag, Jr. and recovered from him a *bente nueve* knife.

Fiscal Araula: After giving the pre-arranged signal, what happened?

Ibasco: My companions rushed towards us and approached us sir.

Q: Now you said your companions approached the both accused at that time?

A: Yes sir.

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[34] *People v. Racho*, G.R. No. 186529, 3 August 2010; *Valdez v. People*, G.R. No. 170180, 23 November 2007, 538 SCRA 611, 621-622; *People v. Chua*, G.R. Nos. 136066-67, 4 February 2003, 396 SCRA 657, 664.

[35] *People v. Hajili*, 447 Phil. 283, 296 (2003); *People v. Gonzales, Jr.*, 424 Phil. 336, 352-353 (2002) citing *People v. Tabones*, 364 Phil. 439, 449 (1999); *People v. Ticalo*, 425 Phil. 912, 917 (2002).

Q: Who approached Fermin?

A: It was Ronald Pascua sir.

Q: How about Job Madayag?

A: It was Valencia sir.

Q: After your companion Pascua and Valencia arrested them, what happened next?

A: After the arrest, Pascua was able to get the buy-bust money and the plastic sachet sir.

Q: From whom?

A: Fermin sir.

Q: How about from Madayag, was there anything recovered from him?

A: Knife *bente nueve* sir.

Q: How about the plastic sachet that you able to buy from him, where was it?

A: At that time I was holding it sir.

Q: You said Pascua arrested Fermin, he was able to recover the buy-bust money and plastic sachets and from Madayag, Valencia recovered the *bente nueve*?

A: Yes sir.

Q: What *bente nueve*?

A: *Balisong* sir.[36]

However, PO2 Pascua in his 19 April 2004 testimony stated that it was PO2 Ibasco who arrested Madayag, Jr. and recovered the buy-bust money while he, on the other hand, arrested Fermin and recovered the .38 *paltik* revolver and two plastic sachets.

Fiscal Araula: When Ibasco made the pre-arranged signal what happened Mr. Witness?

Pascua: When we saw Ibasco made the pre-arranged signal we rushed towards him.

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[36] TSN, 15 June 2004, pp. 11-13.

Q: Were you able to approach them at that time?

A: Yes, sir.

Q: What happened when you rushed to the transaction?

A: We introduced ourselves as police officer and I got hold of Fermin, sir.

Q: How about Madayag, where was he when you got hold of Fermin?

A: Ibasco got hold of him, sir.

Q: When you got hold of accused Fermin, what happened?

A: After it bodily frisked.

Q: You frisked Fermin at that time?

A: Yes, sir.

Q: What was the result?

A: We recovered one plastic sachet.

Q: From whom?

A: Fermin and one (1) .38 *paltik* Revolver, sir.

Q: How about Madayag, where was he when you frisked Fermin and got hold the two plastic sachets and got one (1) .38 *paltik*?

A: I saw that the buy-bust money was recovered.

Q: Who recovered that buy-bust money?

A: Ibasco, sir.

Q: After you frisked Fermin and got two plastic sachets and paltik revolver and Police Officer Ibasco recovered the buy-bust money which was held in possession of Madayag, what happened after that?

A: We proceeded to the vehicle.[37]

There is another material contradiction. The testimony of PO2 Ibasco dated 7 December 2004 corroborated by PO2 Pascua

[37] TSN, 19 April 2004, pp. 19-22.

in his 5 October 2004 testimony was that coordination was made with the Philippine Drug Enforcement Agency (PDEA). However, as per Certification of PDEA dated 26 July 2003,[38] none was made. This was affirmed by Police Inspector Avelino Ecaldre[39] when he testified that no coordination was made by the La Loma Police Station with the PDEA.[40] This was viewed by the trial court as an administrative matter and not an element of a valid entrapment. Nonetheless, the difference in the prosecution testimonies is evident. And, evident too is the attempt to project regularity in the buy-bust operation by the disputed testimony on coordination. These are what matter.

Finally, PO2 Ibasco testified that the sachet which is the subject of the illegal sale remained in his possession and was subsequently marked as EI-JM.[41] However, PO2 Pascua, contradicted this statement when he testified on 19 April 2004 that the sachet was in his possession. This contradiction will be underscored in the discussion on the chain of custody of the *corpus delicti*.

The clear inconsistencies on important points cannot be disregarded where the issue is one's liberty. The contradictory statements of the main prosecution witnesses need not even be appreciated together with the defense position. The proof of the supposed buy-bust operation rests exclusively on the prosecution.[42]

We now examine the chain of custody of the *corpus delicti* of this case. Section 21, paragraph 1, Article II of Republic Act No. 9165 provides for the custody and disposition of the confiscated illegal drugs, to wit:

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[38] RTC Decision. *Rollo,* p. 71.

[39] Police Inspector and Chief, National Operation Center, Philippine Drug Enforcement Agency (PDEA).

[40] RTC Decision. *Rollo,* p. 73.

[41] TSN, 15 June 2004, p. 13.

[42] *People v. Sanchez*, G.R. No. 175832, 15 October 2008, 569 SCRA 194, 222.

(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;

Further, the Implementing Rules and Regulations of Republic Act No. 9165, provides:

SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.—The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items x x x.

Strict compliance with the prescribed procedures is required because of the unique characteristic of illegal drugs, rendering them indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Hence, we have the rules on the measures to be observed during and after the seizure, during the custody and transfer of the drugs for examination, and at all times up to their presentation in court.[43]

While Section 21(a) of the Implementing Rules and Regulations of Republic Act No. 9165 excuses non-compliance with the afore-quoted procedure, **the same holds true only for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.** Here, the failure of the buy-bust team to comply with the procedural requirements cannot be excused since there was a break in the chain of custody of the substance taken from appellant. **It should be pointed out that the identity of the seized substance is established by showing its chain of custody**.[44]

The following are the links that must be established in the chain of custody in a buy-bust situation: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[45]

As provided by the implementing rules and jurisprudence, strict compliance of the requisites under Section 21 of Republic Act No. 9165 can be disregarded as long as the evidentiary value and integrity of the illegal drug are properly preserved; and its preservation can be well established if the chain of custody of illegal drug was unbroken. The break is clear in this case.

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[43] *People v. Magpayo*, G.R. No. 187069, 20 October 2010.

[44] *Id*.

[45] *Id*.

It must be noted that the police officer who had the initial custody and control of the illegal drug was not clearly identified. In the preceding discussion on the inconsistency in the statements of PO2 Ibasco and PO2 Pascua, it was pointed out that PO2 Ibasco admitted that he was in possession of the confiscated drug, but this was contradicted by PO2 Pascua who testified that he was the one who was in possession of the illegal drug which was the subject of sale when it was brought to the police station.

Fiscal Araula: After both accused were arrested and recovered buy-bust money and two plastic sachet[s], in which you recovered from the accused, what happened next?

PO2 Ibasco: We turned over all the evidence to the desk officer and the desk officer turned it to the police investigator for proper investigation sir.

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Fiscal Araula: All the recovered evidence that we recovered from the accused, can you tell to this Honorable Court what are these?

PO2 Ibasco: The plastic sachet that I bought, paltik, two sachets, one bente nueve and the buy-bust money sir.

Fiscal Araula: Who was in possession of the evidence when your group went to the police station?

PO2 Ibasco: I was the one holding the plastic sachet what I was able to buy, my companion was holding on the items that they recovered, sir.[46]

In his direct examination, PO2 Pascua testified differently:

Fiscal Araula: Now, who was in possession of that two plastic sachets and the *paltik* revolver taken from Fermin at that time when you proceeded to La Loma Police Station?

PO2 Pascua: I was in possession of that, together with the paltik, sir.

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[46] TSN, 15 June 2004, pp. 15-16.

Fiscal Araula: How about the ₱100.00 bill and **the plastic sachet which was the subject of sell [sale], who was in possession?**

PO2 Pascua: All of them were in my possession, sir.[47]

Additionally, no photograph was taken of the substance immediately after its supposed seizure.

Atty. Madayag: When the alleged shabu was confiscated, was there any photographs taken?

PO2 Pascua: No sir.

Atty. Madayag: That is in violation of Section 21 of [R.A. No.] 9165. So there was no inventory and photographs?

PO2 Pascua: There was an inventory.

Atty. Madayag: On the night of the incident?

PO2 Pascua: All the evidences were turned over to Villanueva.

x x x x x x x x x

Atty. Madayag: Where was the inventory made?

PO2 Pascua: At the office.

Atty. Madayag: At the office there was no photographing?

PO2 Pascua: None, sir.[48]

The fundamentals of a criminal prosecution were, indeed, disregarded. In considering a criminal case, it is critical to start with the law's own starting perspective on the status of the accused — in all criminal prosecutions, he is presumed innocent of the charged laid unless the contrary is proven beyond reasonable doubt.[49] The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. To repeat, the prosecution must

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[47] TSN, 19 April 2004, pp. 22-23.

[48] TSN, 5 October 2004, pp. 20-23.

[49] *People v. Capuno*, G.R. No. 185715, 19 January 2011; *People v. Sanchez, supra* note 42 at 207.

rest on its own merits and must not rely on the weakness of the defense. And if the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf. In which case, the presumption prevails and the accused should necessarily be acquitted.[50]

The prosecution failed to prove beyond reasonable doubt the guilt of the two accused. The rule that high respect must be accorded the lower courts in their findings of facts cannot be misused to diminish the required evidence to overcome the presumption of innocence of the accused as guaranteed by the Constitution.

WHEREFORE, the appeal is *GRANTED*. The 31 May 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01852 in affirming the judgment of conviction dated 19 December 2005 of the Regional Trial Court, Branch 103 of Quezon City in Criminal Case No. Q-03-119028 is hereby *REVERSED* and *SET ASIDE*. Accused-appellant Edgardo Fermin *y* Gregorio and Job Madayag, Jr. *y* Balderas are hereby *ACQUITTED* and ordered immediately released from detention unless their continued confinement is warranted from some other cause or ground.

SO ORDERED.

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

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[50] *People v. Dela Cruz*, G.R. No. 177222, 29 October 2008, 570 SCRA 273, 283.

[*] Per Special Order No. 1006.

SECOND DIVISION

[G.R. No. 182237. August 3, 2011]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **TERENCIO FUNESTO *y* LLOSPARDAS,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— Based on the records before us, we see no reason to disturb the RTC's appreciation of the credibility of AAA's testimony. The assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; his findings are binding and conclusive upon this Court when affirmed by the CA.

2. CRIMINAL LAW; STATUTORY RAPE; QUALIFYING CIRCUMSTANCES; MINORITY OF THE VICTIM, NOT ESTABLISHED BY INDEPENDENT EVIDENCE; GUIDELINES IN APPRECIATING THE ELEMENT OF AGE.— We differ from the lower court's conclusion that AAA's minority can be appreciated to qualify the crime as statutory rape since her minority was not proven by independent evidence. In *People v. Pruna*, the Court set out the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance: 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party. 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age. 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances: a. If the victim

is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old; b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old; c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old. 4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused. 5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him. 6. The trial court should always make a categorical finding as to the age of the victim.

3. ID.; RAPE; ELEMENTS; FORCE AND INTIMIDATION; FORCE IN RAPE CASES IS RELATIVE.— [T]he prosecution sufficiently proved that force and intimidation attended the commission of the crime, as alleged in the Information. Jurisprudence firmly holds that the force or violence required in rape cases is relative; it does not need to be overpowering or irresistible; it is present when it allows the offender to consummate his purpose. In this case, the appellant employed that amount of force sufficient to consummate rape. In fact, the medical findings confirmed AAA's non-virgin state.

4. ID.; ID.; PROPER PENALTY AND CIVIL LIABILITIES IN SIMPLE RAPE IN CASE AT BAR.— [T]he appellant is guilty of simple rape under Article 335(2) of the Revised Penal Code, and was properly sentenced with the penalty of *reclusion perpetua*. On the appellant's civil liabilities, a victim in simple rape cases is entitled under prevailing jurisprudence not only to ₱50,000.00 as civil indemnity and to an added ₱50,000.00 as moral damages, but also to ₱30,000.00 as exemplary damages to serve as an example to deter persons with perverse or aberrant sexual behavior from sexually abusing children.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

We decide the appeal filed by accused Terencio Funesto *y* Llospardas (*appellant*) from the December 13, 2006 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 00415 MIN.

The Factual Antecedents

On June 9, 1992, the prosecution charged[2] the appellant at the Regional Trial Court (*RTC*), Branch 2, Libertad, Butuan City,[3] with rape[4] committed on January 15, 1992 against AAA,[5]

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[1] Penned by Associate Justice Sixto C. Marella, Jr., and concurred in by Associate Justices Edgardo A. Camello and Mario V. Lopez; *rollo*, pp. 4-13.

[2] The accusatory portion of the Information reads:

> That on or about the 15th day of January, 1992, at more or less 9:00 o'clock (sic) in the evening, in Barangay Marcos, Municipality of Magallanes, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant, AAA, a woman under 12 years old, against her will, to her damage and prejudice.
>
> CONTRARY TO LAW. (Records, p. 1.)

[3] Docketed as Criminal Case No. 5142.

[4] See REVISED PENAL CODE, Art. 335.

[5] Pursuant to Republic Act No. (*RA*) 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; RA 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 15, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, the real name of the rape victim is withheld and, instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, is not disclosed.

a child below 12 years old. The appellant pleaded not guilty to the charge.[6] In the trial that followed, AAA, her mother (BBB), and Dr. Teonesto K. Mora (Medical Officer at Cabadbaran District Health Office) testified on the details of the crime.

The appellant, BBB, and AAA lived in a house in *Barangay* Marcos, Magallanes, Agusan del Norte. At around 9:00 p.m. of January 15, 1992, while BBB was at a prayer service, the appellant approached the sleeping AAA, then nine years old, and removed her panty. He then forcibly inserted his penis into her vagina, waking up AAA. Due to the extreme pain and numbness in her legs, AAA could not push him away. After satisfying his lust, the appellant restored AAA's panty and returned to his mosquito net. AAA noticed blood in her private parts.[7]

When BBB returned from the prayer service (held at the residence of a certain Edna M. Almonte in observance of the feast of Sto. Niño),[8] she noticed blood at the hemline and at the back part of AAA's dress. Upon inquiry, AAA disclosed to her what the appellant did to her. BBB confronted the appellant who denied the allegations and threatened to slap AAA.[9] BBB wanted to go out to ask for help, but the appellant threatened to kill her if she reported the incident.[10]

BBB brought AAA the following day to the Cabadbaran Emergency Hospital because AAA could not stand, could hardly urinate, and felt extreme pain in her abdomen.[11] Dr. Mora, who medically examined AAA, found that her hymen was no longer intact, and that she had an anterior vaginal laceration. He also noticed the reddish discoloration of her *labia minora*.

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[6] Records, p. 42.

[7] TSN, November 11, 1992, pp. 3-4, 6, and 13.

[8] *Id.* at 13.

[9] *Id.* at 7.

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

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

Specimen taken from her genitalia also tested positive for the presence of human spermatozoa.[12]

The appellant, interposing denial as a defense, alleged that BBB fabricated the charge due to his rejection of her sexual advances, and to extort money.[13]

The RTC Ruling

The RTC found the appellant guilty of statutory rape in its May 4, 1999 decision. It gave credence to the candid testimony of AAA and the corroborating medical findings, and rejected the appellant's allegation of fabrication. In appreciating the victim's minority to qualify the crime as statutory rape, the RTC noted that while the prosecution did not present AAA's certificate of live birth to prove her age, the defense did not question AAA's age when she testified that she was nine years old. The court also observed that if AAA did not look her age of nine years, the defense would have called its attention while AAA was on the witness stand. It imposed the penalty of *reclusion perpetua* on the appellant, and ordered him to pay AAA ₱100,000.00 as compensatory and moral damages, and to pay BBB ₱50,000.00 as moral damages.[14]

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[12] TSN, November 9, 1992, p. 6; Exhibit "A", records, p. 5.

[13] TSN, November 11, 1996, pp. 4-5, 17.

[14] The dispositive portion of the decision reads:

> WHEREFORE, IN VIEW OF THE FOREGOING, the court hereby finds accused TERENCIO FUNESTO *Y* LLOPARDAS guilty beyond reasonable doubt for the crime of RAPE[,] as defined and penalized under Article 335 of the Revised Penal Code[,] and accordingly hereby sentences him to suffer the penalty of *RECLUSION PERPETUA*, condemning and ordering said accused to pay the victim AAA the amount of PhP100,000.00 as compensatory and moral damages and the amount of PhP50,000.00 to BBB, the mother of the victim[,] as moral damages.
>
> The accused, in the service of his sentence, shall be credited with the period of his preventive imprisonment he has so far undergone pursuant to RA 6127.
>
> SO ORDERED. (Records, p. 246.)

The RTC forwarded the records of the case to this Court for automatic review. Pursuant to *People v. Mateo*,[15] we referred the case to the CA for intermediate appellate review.

The CA Ruling

In its December 13, 2006 decision, the CA affirmed the RTC's appreciation of AAA's clear, straightforward, and spontaneous testimony that pointed to the appellant as the person who raped her. The CA deleted the ₱50,000.00 moral damages awarded to BBB, noting that such award is only for the victims.[16]

From the CA, the case is now with us for final review.

Our Ruling

We affirm the appellant's conviction.

Based on the records before us, we see no reason to disturb the RTC's appreciation of the credibility of AAA's testimony. The assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; his findings are binding and conclusive upon this Court when affirmed by the CA.[17]

We differ from the lower courts' conclusion that AAA's minority can be appreciated to qualify the crime as statutory rape since her minority was not proven by independent evidence. In *People v. Pruna*,[18] the Court set out the following guidelines

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

[16] The dispositive portion of the decision reads:

> WHEREFORE, the appealed Judgment is affirmed with modification. The award of ₱50,000.00 to BBB is deleted.
>
> SO ORDERED. (*Rollo*, p. 12.)

[17] *Vidar v. People*, G.R. No. 177361, February 1, 2010, 611 SCRA 216, 230; and *Heirs of Florentino Remetio v. Villaruel*, G.R. No. 132357, May 31, 2006, 490 SCRA 43, 47.

[18] 439 Phil. 440 (2002).

in appreciating age, either as an element of the crime or as a qualifying circumstance:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

   a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

   b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

   c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.[19]

In the present case, the prosecution failed to present any certificate of live birth or any similar authentic document to

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[19] *Id.* at 470-471.

prove the age of AAA when she was sexually violated. Neither did the appellant expressly admit AAA's age.

This conclusion notwithstanding, we find that the prosecution sufficiently proved that force and intimidation attended the commission of the crime, as alleged in the Information. Jurisprudence firmly holds that the force or violence required in rape cases is relative; it does not need to be overpowering or irresistible; it is present when it allows the offender to consummate his purpose.[20] In this case, the appellant employed that amount of force sufficient to consummate rape. In fact, the medical findings confirmed AAA's non-virgin state.

Thus, the appellant is guilty of simple rape under Article 335(2) of the Revised Penal Code, and was properly sentenced with the penalty of *reclusion perpetua*.[21]

On the appellant's civil liabilities, a victim in simple rape cases is entitled under prevailing jurisprudence not only to ₱50,000.00 as civil indemnity and to an added ₱50,000.00 as moral damages, but also to ₱30,000.00 as exemplary damages to serve as an example to deter persons with perverse or aberrant sexual behavior from sexually abusing children.[22] So, this should be in the present case.

WHEREFORE, the December 13, 2006 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00415 MIN is hereby *AFFIRMED* with *MODIFICATION*. Appellant Terencio Funesto *y* Llospardas is found guilty beyond reasonable doubt of rape, and sentenced to suffer the penalty of *reclusion perpetua.* He

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[20] *People v. Buban*, G.R. No. 172710, October 9, 2009, 603 SCRA 205, 223-224; and *People v. Nogpo, Jr.*, G.R. No. 184791, April 16, 2009, 585 SCRA 725, 744-745.

[21] The crime was committed in 1992, prior to the passage of the law imposing death for rape cases (RA 7659 took effect on December 31, 1993) and the new rape law (RA 8353, or the Anti-Rape Law of 1997, took effect on October 22, 1997).

[22] *People v. Aguilar*, G.R. No. 185206, August 25, 2010, 629 SCRA 437, 450; and *People v. Macapanas*, G.R. No. 187049, May 4, 2010, 620 SCRA 54, 76.

is also ordered to pay AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. Costs against the appellant.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183018. August 3, 2011]

ADVENT CAPITAL AND FINANCE CORPORATION, *petitioner, vs.* **ROLAND YOUNG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; REPLEVIN; RETURN OF THE SEIZED CAR PROPER UPON THE DISMISSAL OF REPLEVIN CASE FOR FAILURE TO PROSECUTE.— Upon the dismissal of the replevin case for failure to prosecute, the writ of seizure, which is merely ancillary in nature, became *functus officio* and should have been lifted. There was no adjudication on the merits, which means that there was no determination of the issue who has the better right to possess the subject car. x x x The dismissal of the replevin case for failure to prosecute results in the restoration of the parties' status prior to litigation, as if no complaint was filed at all.

2. COMMERCIAL LAW; CORPORATION LAW; INTERIM RULES ON CORPORATE REHABILITATION; STAY

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

ORDER OR CLAIMS THEREIN HAS NO EFFECT/ CONNECTION ON REPLEVIN CASE.— Advent's contention that returning the subject car to Young would constitute a violation of the stay order issued by the rehabilitation court is untenable. As the Court of Appeals correctly concluded, returning the seized vehicle to Young is not an enforcement of a claim against Advent which must be suspended by virtue of the stay order issued by the rehabilitation court pursuant to Section 6 of the Interim Rules on Corporate Rehabilitation (Interim Rules). The issue in the replevin case is who has better right to possession of the car, and it was Advent that claimed a better right in filing the replevin case against Young. In defense, Young claimed a better right to possession of the car arising from Advent's car plan to its executives, which he asserts entitles him to offset the value of the car against the proceeds of his retirement pay and stock option plan. Young cannot collect a money "claim" against Advent within the contemplation of the Interim Rules. The term "claim" has been construed to refer to debts or demands of a pecuniary nature, or the assertion to have money paid by the company under rehabilitation to its creditors. In the replevin case, Young cannot demand that Advent pay him money because such payment, even if valid, has been "stayed" by order of the rehabilitation court. However, in the replevin case, Young can raise Advent's car plan, coupled with his retirement pay and stock option plan, as giving him a better right to possession of the car.

3. **ID.; ID.; ID.; ID.; CLAIM FOR DAMAGES AGAINST SURETY BOND MUST BE FILED BEFORE TERMINATION OF THE MAIN ACTION.—** Section 10, Rule 60 of the Rules of Court governs claims for damages on account of improper or irregular seizure in replevin cases. It provides that in replevin cases, as in receivership and injunction cases, the damages to be awarded upon the bond "shall be claimed, ascertained, and granted" in accordance with Section 20 of Rule 57. x x x The [Rule] essentially allows the application to be filed at any time before the judgment becomes executory. It should be filed in the same case that is the main action, and with the court having jurisdiction over the case at the time of the application. x x x In *Jao v. Royal Financing Corporation*, the Court held that defendant therein was precluded from claiming damages against the surety bond since defendant failed to file the application for damages before the termination of the case.

APPEARANCES OF COUNSEL

Verano Law Firm for petitioner.
Buñag and Uy Law Offices for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 28 December 2007 Decision[2] and 15 May 2008 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 96266. The Court of Appeals set aside the 24 March 2006 and 5 July 2006 Orders[4] of the Regional Trial Court of Makati City, Branch 147, and directed petitioner Advent Capital and Finance Corporation to return the seized vehicle to respondent Roland Young. The Court of Appeals denied the motion for reconsideration.

The Antecedents

The present controversy stemmed from a replevin suit instituted by petitioner Advent Capital and Finance Corporation (Advent) against respondent Roland Young (Young) to recover the possession of a 1996 Mercedes Benz E230 with plate number UMN-168, which is registered in Advent's name.[5]

Prior to the replevin case, or on 16 July 2001, Advent filed for corporate rehabilitation with the Regional Trial Court of Makati City, Branch 142 (rehabilitation court).[6]

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

[2] *Rollo*, pp. 37-48. Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro concurring.

[3] *Id.* at 50. Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro concurring.

[4] *Id.* at 90-91, 92. Penned by Judge Maria Cristina J. Cornejo.

[5] Young admitted Advent's ownership of the subject car. *Id.* at 159.

[6] Docketed as Civil Case No. 01-1122.

On 27 August 2001, the rehabilitation court issued an Order (stay order) which states that "the enforcement of all claims whether for money or otherwise, and whether such enforcement is by court action or otherwise, against the petitioner (Advent), its guarantors and sureties not solidarily liable with it, is stayed."[7]

On 5 November 2001, Young filed his Comment to the Petition for Rehabilitation, claiming, among others, several employee benefits allegedly due him as Advent's former president and chief executive officer.

On 6 November 2002, the rehabilitation court approved the rehabilitation plan submitted by Advent. Included in the inventory of Advent's assets was the subject car which remained in Young's possession at the time.

Young's obstinate refusal to return the subject car, after repeated demands, prompted Advent to file the replevin case on 8 July 2003. The complaint, docketed as Civil Case No. 03-776, was raffled to the Regional Trial Court of Makati City, Branch 147 (trial court).

After Advent's posting of ₱3,000,000 replevin bond, which was double the value of the subject car at the time, through Stronghold Insurance Company, Incorporated (Stronghold), the trial court issued a Writ of Seizure[8] directing the Sheriff to seize the subject car from Young. Upon receipt of the Writ of Seizure, Young turned over the car to Advent,[9] which delivered the same to the rehabilitation receiver.[10]

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[7] *Rollo*, p. 66.

[8] *Id.* at 155.

[9] *Id.* at 156. In a Manifestation dated 8 August 2003, Young stated that he turned over the possession of the subject car to Atty. Gerald Soriano, an Associate of Advent's counsel Atty. Edgardo L. de Jesus.

[10] *Id.* at 94-95. Atty. Johnny Y. Aruego, Jr. from the Office of the Rehabilitation Receiver wrote a letter, addressed to Verano Law Firm (Young's counsel), confirming that the subject car was indeed in the possession, control and custody of Atty. Danilo L. Concepcion.

Thereafter, Young filed an Answer alleging that as a former employee of Advent, he had the option to purchase the subject car at book value pursuant to the company car plan and to offset the value of the car with the proceeds of his retirement pay and stock option plan. Young sought the (1) execution of a deed of sale over the subject car; and (2) determination and payment of the net amount due him as retirement benefits under the stock option plan.

Advent filed a Reply with a motion to dismiss Young's counterclaim, alleging that the counterclaim did not arise from or has no logical relationship with the issue of ownership of the subject car.

After issues have been joined, the parties entered into pre-trial on 2 April 2004, which resulted in the issuance of a pre-trial order of even date reciting the facts and the issues to be resolved during the trial.

On 28 April 2005, the trial court issued an Order dismissing the replevin case without prejudice for Advent's failure to prosecute. In the same order, the trial court dismissed Young's counterclaim against Advent for lack of jurisdiction. The order pertinently reads:

> It appears that as of July 28, 2003, subject motor vehicle has been turned over to the plaintiff, thru its authorized representative, and adknowledged (sic) by the parties' respective counsels in separate Manifestations filed. To date, no action had been taken by the plaintiff in the further prosecution of this case. Accordingly, this case is ordered dismissed without prejudice on the ground of failure to prosecute.
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> Anent plaintiff's Motion to Dismiss defendant Young's counterclaim for benefits under the retirement and stock purchase plan, the Court rules as follows: The only issue in this case is who is entitled to the possession of the subject motor vehicle. This issue may have a connection, but not a necessary connection with defendant's rights under the retirement plan and stock purchase plan as to be considered a compulsory counterclaim.
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> x x x x x x x x x

Notably, defendant's claim is basically one for benefits under and by virtue of his employment with the plaintiff, and the subject vehicle is merely an incident in that claim. Said claim is properly ventilated, as it is resolvable by, the Rehabilitation Court which has jurisdiction and has acquired jurisdiction, to the exclusion of this Court. Accordingly, plaintiff's Motion To Dismiss defendant Young's counterclaim is granted.[11]

On 10 June 2005, Young filed a motion for partial reconsideration of the dismissal order with respect to his counterclaim.

On 8 July 2005, Young filed an omnibus motion, praying that Advent return the subject car and pay him ₱1.2 million in damages "(f)or the improper and irregular seizure" of the subject car, to be charged against the replevin bond posted by Advent through Stronghold.

On 24 March 2006, the trial court issued an Order denying Young's motion for partial reconsideration, *viz*:

In the instant case, defendant, in his counterclaim anchored her [sic] right of possession to the subject vehicle on his alleged right to purchase the same under the company car plan. However, considering that the Court has already declared that it no longer has jurisdiction to try defendant's counterclaim as it is now part of the rehabilitation proceedings before the corporate court concerned, the assertions in the Motion for Reconsiderations (sic) will no longer stand.

On the other hand, the plaintiff did not file a Motion for Reconsideration of the same Order, dismissing the complaint for failure to prosecute, within the reglementary period. Hence, the same has attained finality.

Defendant alleged that the dismissal of the case resulted in the dissolution of the writ. Nonetheless, the Court deems it proper to suspend the resolution of the return of the subject vehicle. In this case, the subject vehicle was turned over to plaintiff by virtue of a writ of replevin validly issued, the latter having sufficiently shown that it is the absolute/registered owner thereof. This was not denied

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[11] *Id.* at 89.

by the defendant. Plaintiff's ownership includes its right of possession. The case has been dismissed without a decision on the merits having been rendered. Thus, to order the return of the vehicle to one who is yet to prove his right of possession would not be proper.

Accordingly, the Motion for Partial Reconsideration is denied.[12]

On 8 June 2006, Young filed a motion to resolve his omnibus motion.

In an Order dated 5 July 2006, the trial court denied the motion to resolve, to wit:

> In the instant case, the Court suspended the resolution of the return of the vehicle to defendant Roland Young. It should be noted that the writ of replevin was validly issued in favor of the plaintiff and that it has sufficiently established ownership over the subject vehicle which includes its right to possess. On the other hand, the case (*Olympia International vs. Court of Appeals*) cited by defendant finds no application to this case, inasmuch as in the former the Court has not rendered judgment affirming plaintiff's (Olympia) right of possession on the property seized. Moreover, the Court, in the Order dated April 28, 2005, has already denied defendant's counterclaim upon which he based his right of possession on the ground of lack of jurisdiction. Accordingly, the Court reiterates its previous ruling that to order the return of the subject vehicle to defendant Young, who is yet to prove his right of possession before the Rehabilitation Court would not be proper.
>
> WHEREFORE, there being no new and substantial arguments raised, the Motion to Resolve is denied.[13]

Young filed a petition for *certiorari* and *mandamus* with the Court of Appeals seeking to annul the trial court's Orders of 24 March 2006 and 5 July 2006.

The Court of Appeals' Ruling

In his petition before the Court of Appeals, Young argued mainly that the trial court committed grave abuse of discretion

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[12] *Id.* at 91.

[13] *Id.* at 92.

amounting to lack or excess of jurisdiction in (1) not directing the return of the subject vehicle to him; (2) refusing to hold a hearing to determine the damages to be recovered against the replevin bond; and (3) dismissing his counterclaim.

The Court of Appeals ruled in favor of Young and annulled the assailed rulings of the trial court. The Court of Appeals held:

> It is noteworthy that the case was dismissed by the court *a quo* for failure of Advent to prosecute the same. Upon dismissal of the case, the writ of seizure issued as an incident of the main action (for replevin) became *functus officio* and should have been recalled or lifted. Since there was no adjudication on the merits of the case, the issue of who between Advent and petitioner has the better right to possess the subject car was not determined. As such, the parties should be restored to their status immediately before the institution of the case.
>
> The Supreme Court's ruling in *Olympia International, Inc. vs. Court of Appeals* (*supra*) squarely applies to the present controversy, to wit:
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> > "Indeed, logic and equity demand that the writ of replevin be cancelled. Being provisional and ancillary in character, its existence and efficacy depended on the outcome of the case. The case having been dismissed, so must the writ's existence and efficacy be dissolved. To let the writ stand even after the dismissal of the case would be adjudging Olympia as the prevailing party, when precisely, no decision on the merits had been rendered. The case having been dismissed, it is as if no case was filed at all and the parties must revert to their status before the litigation."
> >
> > Indeed, as an eminent commentator on Remedial Law expounds:
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> > "The plaintiff who obtains possession of the personal property by a writ of replevin does not acquire absolute title thereto, nor does the defendant acquire such title by rebonding the property, as they only hold the property subject to the final judgment in the action." (I Regalado, *Remedial Law Compendium*, Eighth Revised Edition, p. 686)

Reversion of the parties to the *status quo ante* is the consequence *ex proprio vigore* of the dismissal of the case. Thus, in *Laureano vs. Court of Appeals* (324 SCRA 414), it was held:

> "(A)lthough the commencement of a civil action stops the running of the statute of prescription or limitations, its dismissal or voluntary abandonment by plaintiff leaves the parties in exactly the same position as though no action had been commenced at all."

By the same token, return of the subject car to petitioner pending rehabilitation of Advent does not constitute enforcement of claims against it, much more adjudication on the merits of petitioner's counterclaim. In other words, an order for such return is not a violation of the stay order, which was issued by the rehabilitation court on August 27, 2001. x x x

Corollarily, petitioner's claim against the replevin bond has no connection at all with the rehabilitation proceedings. The claim is not against the insolvent debtor (Advent) but against bondsman, Stronghold. Such claim is expressly authorized by Sec. 10, Rule 60, in relation to Sec. 20, Rule 57, *id.*, x x x[14]

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, premises considered, the instant petition is PARTLY GRANTED. The orders of the Regional Trial Court dated March 24, 2006 and July 5, 2006 are ANNULLED and SET ASIDE in so far as they suspended resolution of petitioner's motion for, and/or disallowed, the return of the subject car to petitioner. Accordingly, respondent Advent Capital and Finance Corporation is directed to return the subject car to petitioner.

The Regional Trial Court of Makati City (Branch 147) is directed to conduct a hearing on, and determine, petitioner's claim for damages against the replevin bond posted by Stronghold Insurance Co.

SO ORDERED.[15]

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[14] *Id.* at 43-45.

[15] *Id.* at 47.

Advent filed a motion for reconsideration, which was denied by the Court of Appeals in a Resolution dated 15 May 2008.

The Issue

The main issue in this case is whether the Court of Appeals committed reversible error in (1) directing the return of the seized car to Young; and (2) ordering the trial court to set a hearing for the determination of damages against the replevin bond.

The Court's Ruling

The petition is partially meritorious.

On returning the seized vehicle to Young

We agree with the Court of Appeals in directing the trial court to return the seized car to Young since this is the necessary consequence of the dismissal of the replevin case for failure to prosecute without prejudice. Upon the dismissal of the replevin case for failure to prosecute, the writ of seizure, which is merely ancillary in nature, became *functus officio* and should have been lifted. There was no adjudication on the merits, which means that there was no determination of the issue who has the better right to possess the subject car. Advent cannot therefore retain possession of the subject car considering that it was not adjudged as the prevailing party entitled to the remedy of replevin.

Contrary to Advent's view, *Olympia International Inc. v. Court of Appeals*[16] applies to this case. The dismissal of the replevin case for failure to prosecute results in the restoration of the parties' status prior to litigation, as if no complaint was filed at all. To let the writ of seizure stand after the dismissal of the complaint would be adjudging Advent as the prevailing party, when precisely no decision on the merits had been rendered. Accordingly, the parties must be reverted to their *status quo ante*. Since Young possessed the subject car before the filing of the replevin case, the same must be returned to him, as if no complaint was filed at all.

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[16] 259 Phil. 841 (1989).

Advent's contention that returning the subject car to Young would constitute a violation of the stay order issued by the rehabilitation court is untenable. As the Court of Appeals correctly concluded, returning the seized vehicle to Young is not an enforcement of a claim against Advent which must be suspended by virtue of the stay order issued by the rehabilitation court pursuant to Section 6 of the Interim Rules on Corporate Rehabilitation (Interim Rules).[17] The issue in the replevin case is who has better right to possession of the car, and it was Advent that claimed a better right in filing the replevin case against Young. In defense, Young claimed a better right to possession of the car arising from Advent's car plan to its executives, which he asserts entitles him to offset the value of the car against the proceeds of his retirement pay and stock option plan.

Young cannot collect a money "claim" against Advent within the contemplation of the Interim Rules. The term "claim" has been construed to refer to debts or demands of a pecuniary nature, or the assertion to have money paid by the company under rehabilitation to its creditors.[18] In the replevin case, Young cannot demand that Advent pay him money because such payment, even if valid, has been "stayed" by order of the rehabilitation court. However, in the replevin case, Young can raise Advent's car plan, coupled with his retirement pay and stock option plan, as giving him a better right to possession of the car. To repeat, Young is entitled to recover the subject car as a necessary

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[17] Sec. 6. *Stay Order*. — If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order (a) appointing a Rehabilitation Receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; x x x

[18] *Finasia Investments and Finance Corporation v. Court of Appeals*, G.R. No. 107002, 7 October 1994, 237 SCRA 446, 450 cited in *Panlilio v. Regional Trial Court*, G.R. No. 173846, 2 February 2011.

consequence of the dismissal of the replevin case for failure to prosecute without prejudice.

On the damages against the replevin bond

Section 10, Rule 60 of the Rules of Court[19] governs claims for damages on account of improper or irregular seizure in replevin cases. It provides that in replevin cases, as in receivership and injunction cases, the damages to be awarded upon the bond "shall be claimed, ascertained, and granted" in accordance with Section 20 of Rule 57 which reads:

> Sec. 20. *Claim for damages on account of improper, irregular or excessive attachment.* — An application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching obligee or his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.
>
> If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application in the appellate court with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court.
>
> Nothing herein contained shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching obligee not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award.

The above provision essentially allows the application to be filed at any time before the judgment becomes executory.[20] It

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[19] Sec. 10 (Rule 60) Judgment to include recovery against sureties. The amount, if any, to be awarded to any party upon any bond filed in accordance with the provisions of this Rule, shall be claimed, ascertained, and granted under the same procedure as prescribed in Section 20 of Rule 57.

[20] *Carlos v. Sandoval*, 508 Phil. 260, 277.

should be filed in the same case that is the main action,[21] and with the court having jurisdiction over the case at the time of the application.[22]

In this case, there was no application for damages against Stronghold resulting from the issuance of the writ of seizure before the finality of the dismissal of the complaint for failure to prosecute. It appears that Young filed his omnibus motion claiming damages against Stronghold after the dismissal order issued by the trial court on 28 April 2005 had attained finality. While Young filed a motion for partial reconsideration on 10 June 2005, it only concerned the dismissal of his counterclaim, without any claim for damages against the replevin bond. It was only on 8 July 2005 that Young filed an omnibus motion seeking damages against the replevin bond, after the dismissal order had already become final for Advent's non-appeal of such order. In fact, in his omnibus motion, Young stressed the finality of the dismissal order.[23] Thus, Young is barred from claiming damages against the replevin bond.

In *Jao v. Royal Financing Corporation*,[24] the Court held that defendant therein was precluded from claiming damages against the surety bond since defendant failed to file the application for damages before the termination of the case, thus:

> The dismissal of the case filed by the plaintiffs-appellees on July 11, 1959, had become final and executory before the defendant-appellee corporation filed its motion for judgment on the bond on September 7, 1959. In the order of the trial court, dismissing the complaint, there appears no pronouncement whatsoever against the surety bond. The appellee-corporation failed to file its proper

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[21] *Id.* citing *Paramount Insurance Corp. v. Court of Appeals*, 369 Phil. 641 (1999).

[22] *Id.*

[23] CA *rollo*, p. 75. Young alleged in his Omnibus Motion that "In an Order dated 28 April 2005, the [trial court] dismissed the case on the ground of failure to prosecute. To date and despite the lapse of more than fifteen (15) days from notice, Advent has not moved for reconsideration."

[24] No. L-16716, 28 April 1962, 4 SCRA 1210, 1215-1216.

application for damages prior to the termination of the case against it. It is barred to do so now. The prevailing party, if such would be the proper term for the appellee-corporation, having failed to file its application for damages against the bond prior to the entry of final judgment, the bondsman-appellant is relieved of further liability thereunder.

Since Young is time-barred from claiming damages against the replevin bond, the dismissal order having attained finality after the application for damages, the Court of Appeals erred in ordering the trial court to set a hearing for the determination of damages against the replevin bond.

WHEREFORE, the Court *GRANTS* the petition *IN PART*. The Court *SETS ASIDE* the portion in the assailed decision of the Court of Appeals in CA-G.R. SP No. 96266 ordering the trial court to set a hearing for the determination of damages against the replevin bond.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 184454. August 3, 2011]

CO GIOK LUN, as substituted by his legal heirs namely: MAGDALENA D. CO, MILAGROS D. CO, BENJAMIN D. CO, ALBERTO D. CO, ANGELINA

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[*] Designated Actimg Member per Special Order No. 1006 dated 10 June 2011.

C. TENG, VIRGINIA C. RAMOS, CHARLIE D. CO, and ELIZABETH C. PAGUIO, *petitioners, vs.* **JOSE CO, as substituted by his legal heirs namely: ROSALINA CO, MARLON CO, JOSEPH CO, FRANK CO, ANTONIO CO, NELSON CO, ROLAND CO, JOHNSON CO, CORAZON CO, ADELA CO, SERGIO CO, PAQUITO CO, JOHN CO, NANCY CO, and TERESITA CO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PARTITION; THE EXISTENCE OF CO-OWNERSHIP MUST FIRST BE ESTABLISHED BEFORE THE COURT CAN ORDER A DIVISION OF THE PROPERTY.— The original complaint filed by Lun involves an action for partition and damages. A division of property cannot be ordered by the court unless the existence of co-ownership is first established. In *Ocampo v. Ocampo*, we held that an action for partition will not lie if the claimant has no rightful interest over the property. Basic is the rule that the party making an allegation in a civil case has the burden of proving it by a preponderance of evidence.

2. ID.; ID.; ID.; THE ACTION FOR PARTITION CANNOT BE ACTED UPON WHERE THE CLAIMANT FAILED TO ESTABLISH ANY RIGHTFUL INTEREST IN THE PROPERTIES.— We see no reason to disturb the findings of the CA. Petitioners failed to substantiate their claim of co-ownership over the Gubat and Barcelona properties. The action for partition cannot be acted upon since petitioners failed to establish any rightful interest in the properties. Petitioners also failed to prove that co-ownership existed between the parties' predecessors-in-interest. Thus, respondents, as legal heirs of Fieng, are entitled to the exclusive ownership of the Gubat and Barcelona properties.

APPEARANCES OF COUNSEL

Raul A. Bo for petitioners.
De Castro Naredo & Associates for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition[1] for review on *certiorari* assailing the Decision[2] dated 23 April 2008 and Resolution[3] dated 10 September 2008 of the Court of Appeals (CA) in CA-G.R. CV. No. 85920.

The Facts

This case involves two lots allegedly co-owned by two brothers, petitioner Co Giok Lun (Lun) and Co Bon Fieng (Fieng), the father of respondent Jose Co (Co). The lots, which are situated in Sorsogon province, one in the town of Gubat and the other in the town of Barcelona, are described as:

Gubat Property

A parcel of commercial/residential land, located at Poblacion, Gubat, Sorsogon, containing an area of 720.68 square meters, more or less, bounded on the North by Angel Camara, on the East by Rodolfo Rocha, on the South by Guariña Street and on the West by Zulueta Street declared under Tax Declaration No. 11379 in the name of Co Bon Fieng and assessed at ₱12,370.00.[4]

Barcelona Property

Terreno cocal radicada en el sitio de Telegrafo barrio de Luneta, Barcelona, Sorsogon, I. F. cabida de sesenta y cinco (65 a.) lindates por Norte Hertrudes Casulla, por sur Antonio Evasco, por Este con los manglares y por Oeste Atanacio Espera y Eugenio Esteves.

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

[2] *Rollo*, pp. 11-23. Penned by Justice Marlene Gonzales-Sison with Justices Lucenito N. Tagle and Monina Arevalo Zenarosa, concurring.

[3] *Id.* at 6-10. Penned by Justice Marlene Gonzales-Sison with Presiding Justice Conrado M. Vasquez, Jr. and Justice Monina Arevalo Zenarosa, concurring.

[4] *Id.* at 66.

Terreno cocalero ubicado en el barrio de Luneta, Barcelona, Sorsogon, I.F. cabida de una hectaria dies y ocho areas y sesenta y ciete centiarias (1 hects. 18 hareas 67 centiareas) lindantes al Norte Cementerio Municipal antes Eugenio Esteves, al Este Gabriel Gredoña y Laudia Asis, al Sur Amando Torilla y Florentino Mercader, y al Oeste Carretera Provincial.

Terreno solar con doce ponos de coco situada en el barrio de Luneta, Barcelona, Sorsogon, I.F. cabida de dos riales y quevalente a trienta y cuatro areas y un camarin de materiales fuertes y deficada dentro de la misma lindante al Norte Camino para S. Antonio, al Sur Eugenio Esteves, al Este Carretera Provincial y al Oeste a los herederos del defunto Feliciano Fontelar.[5]

Petitioners, the legal heirs of Lun who died on 12 January 1997, filed a complaint[6] for partition and damages against Co with the Regional Trial Court (RTC) of Gubat, Sorsogon, Branch 54.

Claim of Petitioners

Petitioners claimed that Lun and Fieng came to the Philippines from China in 1929. Lun allegedly acquired the Gubat property from the ₱8,000.00 capital the brothers inherited from their father, Co Chaco (Chaco), before Chaco returned to China in

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[5] *Id.* Roughly translated as:

"Cocoa land situated in Telegrafo Luneta barrio, Barcelona , Sorsogon, with a capacity of 65 "areas" bordered in the North by Hertrudes Casulla, in the south by Antonio Evasco, in the east by the mangroves, and in the west by Atanacio Espera and Eugenio Esteves.

Cocoa land located in Luneta barrio, Barcelona, Sorsogon, with a capacity of 1 hectare, 18 hareas and 67 centiareas, bordered in the north by the Municipal Cemetery before Eugenio Esteves, to the east by Gabriel Gredoña and Laudia Asis, to the south by Amanda Torilla and Florentino Mercader, and to the West by the provincial road.

Undeveloped land with 12 cocoa (or coconut) located in Luneta Barrio, Barcelona, Sorsogon, with a capacity of 2 river inlets equivalent to 34 areas, and a house within the same borders to the North: S. Antonio, to the South: Eugenio Esteves, to the East: provincial road, and to the West: the heirs of the deceased Feliciano Fontelar."

[6] Docketed as Civil Case No. 1601.

1926 due to old age. The Gubat property was named under Fieng only since it has been a common practice and custom in China that properties intended for the children are placed in the name of the eldest child. The Barcelona property, on the other hand, was acquired by Chaco in 1923 while he was still doing his business in Gubat.

Lun and Fieng set up a business, selling and trading of dry goods, called the Philippine Honest and Company. Using the company's funds, they rented the property of Crispina Rocha (Rocha), which was mortgaged and finally sold to them in 1935. Later, from the income of the business, they acquired the two adjoining residential and commercial lots which increased the size of the Gubat property to its present area of 720.68 square meters.

In 1946, Lun and Fieng dissolved and liquidated the business. After receiving his share of ₱26,000 from the liquidation, Lun established his own dry goods business called Shanghai Trading. Fieng, on the other hand, entered into other businesses with different partners.

Petitioners claimed that Lun stayed at the Gubat property from the time he arrived in China in 1929. Lun was the one who religiously paid for the realty taxes and made several repairs on the building to make the Gubat property habitable. It was only sometime in 1946 when Lun and Fieng decided to divide the two lots. However, the partition did not push through on the insistence of their mother, Po Kiat, who wanted to preserve and maintain close family ties.

Petitioners also alleged that Lun prevented the Gubat property from being appropriated when the lot was used by Fieng as a loan guarantee. Fieng incurred the ₱4,500 obligation from Erquiaga Corporation which Lun assumed and paid without any contribution from respondents, specifically Co. After Fieng suffered financial bankruptcy in Manila, he went back to Gubat. Upon the request of their mother, Lun lent his brother ₱30,000 which Fieng used to start up a business. However, until Fieng's death on 8 July 1958, the amount which Lun lent was never returned to him.

Lun even extended financial assistance to Co amounting to no less than ₱30,000 which remained unpaid. Later, when Lun already refused to lend money to Co, the latter made himself the administrator of the Gubat property without Lun's knowledge. Thereafter, Co filed a case for unlawful detainer against Lun with the Municipal Trial Court (MTC) of Gubat, docketed as Civil Case No. 210. This case was decided by the MTC in favor of Co but was reversed by the RTC in its Decision dated 28 April 1994. The RTC's decision was later affirmed by the CA and this Court.

Claim of Respondents

On the other hand, respondents, in their Amended Answer, maintained that the Gubat property is the exclusive property of their father. They asserted that Fieng acquired the lot by purchase from Rocha in 1935 or nine years after Chaco left for China in 1926. While Lun was still in China, Fieng and Rocha entered into an agreement for the use of the lot where Fieng built a "camalig" and started his *sari-sari* store business. On 13 March 1929, Fieng and Rocha entered into another contract extending Fieng's right to occupy the lot until 17 August 1938. On 16 March 1930, another extension was given until 19 August 1940. On 13 October 1935, Fieng and Rocha executed a Deed of Absolute Sale where Rocha sold the lot to Fieng for ₱3,000. On 6 August 1936, Ireneo Rocha also sold a parcel of the adjoining land to Fieng which increased the size of the Gubat property to its present area. Both documents had been properly notarized.

Fieng used the property not only as the family's residence but also for business and trade purposes until his death in 1958. It was even Fieng who had constructed the commercial building on the property in 1928. From 1937 to 1983, the land and tax declarations of the property was in the sole name of their father. In 1983, Co became the administrator of the Gubat property and had the property declared in his own name in substitution of his father without any objection from Lun.

Respondents denied that Lun and Fieng entered into any business together. Respondents claim that it was only in 1956 or 1957 when Lun was taken in by Fieng, who was then ill and

could not manage his general merchandising business. Fieng allowed Lun to use the lower portion of the Gubat property and let him manage his business and properties as administrator. Lun was in possession of the property even after Fieng's death in 1958 because of the consent and tolerance of the respondents who were still young at that time.

Respondents further insisted that Chaco gave the Barcelona property to Fieng exclusively as advance inheritance and denied that Co ever borrowed money from Lun. As a counterclaim, respondents asked for the payment of rent for the use by Lun of the Gubat property, as well as moral damages, attorney's fees and litigation expenses.

The RTC's Ruling

In a Decision[7] dated 21 July 2004, the RTC decided the case in favor of petitioners. The RTC stated that the documentary evidence presented in court showed that the Gubat property is indeed under Fieng's name. However, the chain of events prior to the purchase of the property and the evidence submitted by the petitioners prove the presence of co-ownership. The dispositive portion of the decision states:

> WHEREFORE, in view of all the foregoing and by preponderance of evidence, judgment is hereby rendered that the Heirs of Co Chaco are *pro indiviso* owners of the Gubat and Barcelona properties which are to be partitioned among these heirs. They are hereby directed to cause the survey of the property and to submit to this Court the plan of partition for approval.
>
> No costs.
>
> SO ORDERED.[8]

The Court of Appeals' Ruling

Respondents appealed to the CA. In a Decision dated 23 April 2008, the CA reversed the decision of the RTC and ruled in favor of the respondents. The dispositive portion states:

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[7] *Rollo*, pp. 66-78.

[8] *Id.* at 78.

WHEREFORE, in view of the foregoing, the instant appeal is GRANTED. The assailed decision of the Regional Trial Court of Gubat, Sorsogon (Branch 54) in Civil Case No. 1601, is REVERSED. The order of the trial court to cause the survey of the subject properties for the partition thereof is SET ASIDE. The subject properties are declared exclusively owned by Co Bon Fieng, and now by his legal heirs, herein appellants.

SO ORDERED.[9]

Petitioners filed a motion for reconsideration which the CA denied in a Resolution dated 10 September 2008.

Hence, this petition.

The Issue

The main issue is whether the CA erred in holding that no co-ownership existed between Lun and Fieng over the Gubat and Barcelona properties and in declaring Fieng as the exclusive owner of both properties.

The Court's Ruling

The petition lacks merit.

The original complaint filed by Lun involves an action for partition and damages. A division of property cannot be ordered by the court unless the existence of co-ownership is first established. In *Ocampo v. Ocampo*,[10] we held that an action for partition will not lie if the claimant has no rightful interest over the property. Basic is the rule that the party making an allegation in a civil case has the burden of proving it by a preponderance of evidence.

Article 484 of the Civil Code which defines co-ownership, states:

Art. 484. There is co-ownership whenever the ownership of an undivided thing or right belongs to different persons. x x x

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[9] *Id.* at 22.

[10] 471 Phil. 519 (2004).

In the present case, petitioners insist that their predecessor-in-interest Lun co-owned the Gubat and Barcelona properties with his brother Fieng. To prove co-ownership over the Gubat property, petitioners presented: (1) tax declarations from 1929 to 1983 under the name of Fieng but paid by Lun; (2) the renewal certificate from Malayan Insurance Company Inc.; (3) the insurance contract; and (4) the statements of account from Supreme Insurance Underwriters which named Lun as administrator of the property. Likewise, to prove their right over the Barcelona property as legal heirs under intestate succession, petitioners presented a Deed of Sale dated 24 August 1923 between Chaco, as buyer, and Gabriel Gredona and Engracia Legata, as sellers, involving a price consideration of ₱1,200.

On the other hand, respondents presented notarized documents: (1) Deed of Sale dated 13 October 1935, and (2) Sale of Real Property dated 6 August 1936 showing that the former owners of the Gubat property entered into a sale transaction with Fieng, as buyer and Lun, as a witness to the sale. They also presented tax declarations in the name of Fieng from 1937 to 1958. After Fieng's death, Co declared the Gubat property in his name in the succeeding tax declarations. Likewise, the respondents presented documents proving the declaration of the Barcelona property in the name of Co.

After a careful scrutiny of the records, we hold that the evidence of petitioners were insufficient or immaterial to warrant a positive finding of co-ownership over the Gubat and Barcelona properties. The CA correctly observed that petitioners failed to substantiate with reasonable certainty that (1) Chaco gave Fieng a start-up capital of ₱8,000 to be used by Lun and Fieng in setting up a business, (2) that the Philippine Honest and Company was a partnership between Lun and Fieng, and (3) that the Deed of Sale dated 24 August 1923 involving the Barcelona property is sufficient to establish co-ownership. Also, petitioners were not able to prove the existence of the alleged Chinese custom of placing properties in the name of the eldest child as provided under Article 12[11] of the Civil Code.

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[11] Art. 12. A custom must be proved as a fact, according to the rules of evidence.

In contrast, respondents were able to show documents of sale from the original owners of the Gubat property rendering the claim of custom as immaterial.[12] Also, respondents sufficiently established that Fieng was the registered owner of the Gubat and Barcelona properties while Lun was merely an administrator.

The relevant portions of the CA decision provide:

x x x As to the Gubat property, **appellee (petitioner Co Giok Lun in this case) failed to establish the following with reasonable certainty: a) that Co Chaco gave Co Bon Fieng ₱8,000.00 as business capital for him and his brother; and b) that Philippine Honest and Company is a partnership between him and Co Bon Fieng.** Appellee's testimony is that his father told him that the latter gave Co Bon Fieng ₱8,000.00 is hearsay since he had no personal knowledge of the fact that Co Chaco gave Co Bon Fieng said amount. Even if the trial court admitted said testimony, it remains without probative value. x x x Allegedly, this amount was the contribution of appellee and Co Bon Fieng to the capital of their partnership — Philippine Honest and Company. Nevertheless, by reason of appellee's failure to prove the existence of this amount, the existence of the partnership remains doubtful. Appellee present[ed] the certification of registration of the Philippine Honest and Company to prove the existence of the partnership but the registration indicates only the name of Co Bon Fieng as the owner thereof. Without the capital contribution and the partnership, appellee's claim of co-ownership over the Gubat property does not have any basis.

To further prove his claim of co-ownership over the Gubat property, appellee presents Tax Declarations pertaining to the subject property from 1929 to 1983, renewal certificate from Malayan Insurance Company, Inc., insurance contract and statements of accounts from Supreme Insurance Underwriters. These documents, however, uniformly indicate Co Bon Fieng as the owner of the subject property and appellee as mere administrator thereof. Too, appellee proffers utility bills and receipts indicating payment to Erquiaga, Inc., a creditor of Co Bon Fieng, in support of his claim of co-ownership. These documents however, find no relevance in this case. Appellee's assumption of Co Bon Fieng's liabilities and his payment of utilities without getting any contribution from appellants are kind acts but

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[12] *Supra* note 10.

certainly do not prove his claim of co-ownership. Neither do the court declarations in Civil Case No. 210 prove appellee's claim of co-ownership, for only issues concerning possession were resolved in said unlawful detainer suit. Lastly, contrary to the claim of appellee, the affidavit of Co Che Bee, which recognizes appellee as a co-owner of the subject property, cannot bind Co Bon Fieng, for well-settled is the rule that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. Hence, appellee's claim of co-ownership over the Gubat property must fail.

Concerning the Barcelona property, appellee proffers a deed of sale dated 24 August 1923 to support his claim that he and Co Bon Fieng are co-owners thereof. Under said deed, the subject property was sold to Co Chaco. Nevertheless, the deed proves just that — Co Chaco purchased the subject property. It does not establish subsequent events or validly dispute the transfer of the subject property by Co Chaco to Co Bon Fieng. Moreover, said document does not have any probative value to refute the real property tax declarations of the subject property in the name of appellant Jose Co. This document is inadequate to establish co-ownership between appellee and Co Bon Fieng over the Barcelona property.

In fine, appellee's evidence in support of his claim is either insufficient or immaterial to warrant the finding that the subject properties fall under the purview of co-ownership. **Appellee failed to prove that he is a co-owner of the subject properties.**

In contrast, appellants offer convincing evidence that their father, Co Bon Fieng owns the subject properties exclusively. In the "Deed of Sale" dated 13 October 1935 and the "Sale of Real Property" dated 6 August 1936, the former owners of the Gubat property sold the same to Co Bon Fieng only. Although appellee's signature appears in the first document as a witness to its execution, there is no indication in said document or in the other that he was purchasing the subject property together with Co Bon Fieng. Appellee interjects that the foregoing deeds indicate Co Bon Fieng as the owner of the subject property because of the Chinese custom that in similar transactions, the eldest son of the family is normally placed as the purchaser of a property. Appellee, however, failed to prove this custom as a fact; hence cannot be given weight.

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After purchasing the Gubat property, Co Bon Fieng declared the same in tax declarations from 1937 to 1958 as his property. After the death of Co Bon Fieng, appellant Jose Co declared the Gubat property in his name in ensuing tax declarations over the same. As well, the Barcelona property is declared in the name of Jose Co. The Barcelona property was even surveyed for the benefit of appellants, as heirs of Co Bon Fieng.

x x x x x x x x x

x x x Here, we find compelling reasons to reverse the findings of the trial court and hold that the subject properties were owned exclusively by Co Bon Fieng, and now by his legal heirs.[13]

We see no reason to disturb the findings of the CA. Petitioners failed to substantiate their claim of co-ownership over the Gubat and Barcelona properties. The action for partition cannot be acted upon since petitioners failed to establish any rightful interest in the properties. Petitioners also failed to prove that co-ownership existed between the parties' predecessors-in-interest. Thus, respondents, as legal heirs of Fieng, are entitled to the exclusive ownership of the Gubat and Barcelona properties.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 23 April 2008 and Resolution dated 10 September 2008 of the Court of Appeals in CA-G.R. CV. No. 85920.

SO ORDERED.

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

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[13] *Rollo,* pp. 18-22.

[*] Designated Acting Member per Special Order No. 1006 dated 10 June 2011.

SECOND DIVISION

[G.R. No. 188086. August 3, 2011]

FRANCIS BELLO, represented herein by his daughter and attorney-in-fact, Geraldine Bello-Ona, *petitioner, vs.* **BONIFACIO SECURITY SERVICES, INC. and SAMUEL TOMAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICES; VERIFICATION; THE REQUIREMENT IS DEEMED SUBSTANTIALLY COMPLIED WITH WHEN ONE WHO HAS AMPLE KNOWLEDGE TO SWEAR TO THE TRUTH OF THE ALLEGATIONS IN THE PETITION SIGNS THE VERIFICATION, AND WHEN MATTERS ALLEGED IN THE PETITION HAVE BEEN MADE IN GOOD FAITH OR ARE TRUE AND CORRECT.— Verification of a pleading is a formal, not jurisdictional, requirement intended to secure the assurance that the matters alleged in a pleading are true and correct. Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules. It is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct. In this case, we find that the petition's verification substantially complied with the requirements of the rules. The SPA authorized Bello-Ona to represent Bello in the case entitled "*Francis Bello v. Bonifacio Security Services, Inc. and/or Samuel Tomas, (CA) Case No. 047829-06; NLRC-N[CR] Case No. 00-11-09529-2002*" — the case from which the present petition originated. As the daughter of Bello, Bello-Ona is deemed to have sufficient knowledge to swear to the truth of the allegations in the petition, which are matters of record in the tribunals and the appellate court below.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; DEFINED.— [W]e find no reason to disturb the CA conclusion that there was no constructive dismissal. Case law defines constructive dismissal as a cessation of work because continued employment has been rendered impossible, unreasonable, or unlikely, as when there is a demotion in rank or diminution in pay, or both, or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.

3. ID.; ID.; ID.; THE MANAGEMENT'S PREROGATIVE OF TRANSFERRING AND REASSIGNING EMPLOYEES FROM ONE AREA OF OPERATION TO ANOTHER IN ORDER TO MEET THE REQUIREMENTS OF THE BUSINESS IS GENERALLY NOT CONSTITUTIVE OF CONSTRUCTIVE DISMISSAL.— [O]ther than his bare and self-serving allegations, Bello has not offered any evidence that he was promoted in a span of four months since his employment as traffic marshal in July 2001 to a detachment commander in November 2001. During his six-month probationary period of employment, it is highly improbable that Bello would be promoted after just a month of employment, from a traffic marshal in July 2001 to supervisor in August 2001, and three months later to assistant detachment commander and to detachment commander in November 2001. At most, the BSSI merely changed his assignment or transferred him to the post where his service would be most beneficial to its clients. The management's prerogative of transferring and reassigning employees from one area of operation to another in order to meet the requirements of the business is generally not constitutive of constructive dismissal. We see this to be the case in the present dispute so that the consequent reassignment of Bello to a traffic marshal post was well within the scope of the BSSI's management prerogative.

APPEARANCES OF COUNSEL

Manuel M. Maramba for petitioner.
Rigoroso and Galindez Law Offices for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*,[1] filed by petitioner Francis Bello, to challenge the decision[2] and the resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP. No. 105402.[4]

The Factual Background

Respondent Bonifacio Security Services, Inc. (*BSSI*) is a domestic private corporation engaged in the business of providing security services. In July 2001, the BSSI hired Bello as a roving traffic marshal to manage traffic and to conduct security and safety-related operations in the Bonifacio Global City (*BGC*). In August 2001, Bello was posted at the Negros Navigation Company in Pier 2, North Harbor, to supervise sectoral operations. In November 2001, he was assigned at BGC as assistant detachment commander. After a week, he was transferred to Pacific Plaza Towers as assistant detachment commander and later as detachment commander. In June 2002, he was assigned at Pier 2, North Harbor as assistant detachment commander, but later reassigned to BGC. In August 2002, the BSSI hired a new operations manager, resulting in the reorganization of posts. In October 2002, Bello was assigned as roving traffic marshal at the BGC. On October 25, 2002, he filed an indefinite leave of absence when his new assignment took effect.

On November 5, 2002, Bello filed a complaint against the BSSI and its General Manager, respondent Samuel Tomas, with

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[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 8-26.

[2] Dated March 6, 2009; penned by Associate Justice Andres B. Reyes, Jr., and concurred in by Associate Justices Jose C. Reyes, Jr. and Normandie B. Pizarro; *id.* at 34-47.

[3] Dated June 1, 2009; *id.* at 31-32.

[4] Entitled "*Bonifacio Security Services, Inc. v. National Labor Relations Commission, National Capital Region Second Division, and Francis Bello.*"

the National Labor Relations Commission (*NLRC*),[5] claiming that he had been constructively dismissed when he was demoted from a detachment commander to a mere traffic marshal. He alleged that he received a series of promotions from 2001 to 2002, from traffic marshal to supervisor, to assistant detachment commander, and to detachment commander.[6]

The BSSI denied Bello's claim of constructive dismissal, arguing that no promotion took place; Bello's designation as assistant detachment commander or detachment commander was not an employment position but a duty-related assignment; Bello abandoned his job when he went on an indefinite leave of absence and did not report for work.[7]

The Labor Arbiter's Ruling

In his December 29, 2005 decision,[8] Labor Arbiter Cresencio G. Ramos, Jr. found that Bello was illegally dismissed, noting that the BSSI failed to adduce evidence that Bello abandoned his employment. Thus, he ordered Bello's reinstatement and awarded him backwages amounting to ₱391,474.25.

After the NLRC dismissed the BSSI's belated appeal and subsequent motion for reconsideration,[9] the latter filed a petition for *certiorari* with the CA. The CA granted the petition,[10] thus reinstating BSSI's appeal with the NLRC.

In its March 26, 2008 resolution, the NLRC affirmed the labor arbiter's decision, finding that Bello had been constructively

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[5] Docketed as NLRC NCR Case No. 00-11-09529-2002; NLRC records, p. 2.

[6] *Id.* at 10-20.

[7] *Id.* at 43-47.

[8] *Id.* at 81-87.

[9] Resolutions dated July 10, 2006 and September 27, 2006 in NLRC CA No. 047829-06; *id.* at 249-251 and 316-317.

[10] Decision dated August 23, 2007 in CA-G.R. SP No. 96696, entitled "*Bonifacio Security Services, Inc., petitioner v. NLRC, National Capital Region – Second Division and Francis Bello*"; *id.* at 323-332.

dismissed when he was demoted to the rank-and-file position of traffic marshal after occupying the supervisory position of assistant detachment commander and detachment commander.[11] The denial of BSSI's subsequent motion for reconsideration led it back to the CA on a petition for *certiorari* under Rule 65 of the Rules of Court.[12]

The CA Ruling

The CA nullified the NLRC resolutions, finding the records bereft of evidence substantiating the labor arbiter's and the NLRC's conclusions that Bello had been constructively dismissed.[13] It noted that Bello offered no evidence to prove that there was a series of promotions that would justify his claim of subsequent demotion. The CA denied the BSSI's motion for reconsideration,[14] paving the way for the present petition.

The Petition

Bello insists that he was constructively dismissed when he was demoted to a mere traffic marshal after having been promoted to the positions of supervisor, assistant detachment commander, and detachment commander.

The Case for the BSSI

The BSSI prays for the petition's outright dismissal due to a defective verification, arguing that the special power of attorney (*SPA*) of Bello's attorney-in-fact, Geraldine Bello-Ona, was limited to representing him in the NLRC case only and not to the present petition; and that Bello-Ona has no personal knowledge of the allegations in the petition. On the merits of the case, the BSSI contends that the CA correctly ruled that there was no evidence to substantiate the NLRC's finding of constructive dismissal.

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[11] *Id.* at 335-350.

[12] CA *rollo*, pp. 2-28.

[13] *Supra* note 2.

[14] *Supra* note 3.

The Issues

The core issues boil down to: whether the petition should be dismissed outright for defective verification; and whether the CA erred in annulling the NLRC's resolutions.

The Court's Ruling

The petition lacks merit.

Verification of a pleading is a formal, not jurisdictional, requirement intended to secure the assurance that the matters alleged in a pleading are true and correct.[15] Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules.[16] It is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.[17]

In this case, we find that the petition's verification substantially complied with the requirements of the rules. The SPA authorized Bello-Ona to represent Bello in the case entitled "*Francis Bello v. Bonifacio Security Services, Inc. and/or Samuel Tomas, (CA) Case No. 047829-06; NLRC-N[CR] Case No. 00-11-09529-2002*"[18] — the case from which the present petition originated. As the daughter of Bello, Bello-Ona is deemed to have sufficient knowledge to swear to the truth of the allegations in the petition, which are matters of record in the tribunals and the appellate court below.

On the merits of the case, we find no reason to disturb the CA conclusion that there was no constructive dismissal. Case law defines constructive dismissal as a cessation of work because

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[15] *Ramirez v. Court of Appeals*, G.R. No. 182626, December 4, 2009, 607 SCRA 752, 766.

[16] *Altres v. Empleo,* G.R. No. 180986, December 10, 2008, 573 SCRA 583, 596.

[17] *Id.* at 597.

[18] *Rollo,* p. 48.

continued employment has been rendered impossible, unreasonable, or unlikely, as when there is a demotion in rank or diminution in pay, or both, or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.[19]

We note that, other than his bare and self-serving allegations, Bello has not offered any evidence that he was promoted in a span of four months since his employment as traffic marshal in July 2001 to a detachment commander in November 2001. During his six-month probationary period of employment,[20] it is highly improbable that Bello would be promoted after just a month of employment, from a traffic marshal in July 2001 to supervisor in August 2001, and three months later to assistant detachment commander and to detachment commander in November 2001. At most, the BSSI merely changed his assignment or transferred him to the post where his service would be most beneficial to its clients. The management's prerogative of transferring and reassigning employees from one area of operation to another in order to meet the requirements of the business is generally not constitutive of constructive dismissal.[21] We see this to be the case in the present dispute so that the consequent reassignment of Bello to a traffic marshal post was well within the scope of the BSSI's management prerogative.

WHEREFORE, we hereby *DENY* the petition and *AFFIRM* the assailed CA decision and resolution in CA-G.R. SP. No. 105402. Costs against the petitioner.

SO ORDERED.

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

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[19] *La Rosa v. Ambassador Hotel,* G.R. No. 177059, March 13, 2009, 581 SCRA 340, 346-347.

[20] LABOR CODE, Article 282.

[21] *Bisig Manggagawa sa Tryco v. NLRC*, G.R. No. 151309, October 15, 2008, 569 SCRA 122, 130.

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

SECOND DIVISION

[G.R. No. 191995. August 3, 2011]

PHILIPPINE VETERANS BANK, *petitioner, vs.* **JUSTINA CALLANGAN, in her capacity as Director of the Corporation Finance Department of the Securities and Exchange Commission and/or the SECURITIES AND EXCHANGE COMMISSION,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; SECURITIES AND EXCHANGE COMMISSION; SECURITIES REGULATION CODE; PUBLIC COMPANY, DEFINED; THE PHILIPPINE VETERANS BANK IS CONSIDERED A PUBLIC COMPANY THAT MUST COMPLY WITH THE REPORTORIAL REQUIREMENTS SET FORTH IN 17.1 OF THE SECURITIES REGULATION CODE.— To determine whether the Bank is a "public company" burdened with the reportorial requirements ordered by the SEC, [S]ubsections 17.1 and 17.2 of the SRC [P]rovide x x x. 17.2. The reportorial requirements of Subsection 17.1 shall apply to the following: x x x c) An issuer with **assets of at least Fifty million pesos (₱50,000,000.00)** or such other amount as the Commission shall prescribe, and having **two hundred (200) or more holders each holding at least one hundred (100) shares of a class of its equity securities**: Provided, however, That the obligation of such issuer to file reports shall be terminated ninety (90) days after notification to the Commission by the issuer that the number of its holders holding at least one hundred (100) shares is reduced to less than one hundred (100). We also cite Rule 3(1)(m) of the Amended Implementing Rules and Regulations of the SRC, which defines a "public company" as "any corporation with a class of equity securities listed on an Exchange **or** with **assets in excess of Fifty Million Pesos** (**₱50,000,000.00)** and having **two hundred (200) or more holders**, **at least two hundred (200) of which are holding at least one hundred (100) shares** of a class of its equity securities." From these provisions, it is clear that a "public company," as contemplated by the SRC, is

not limited to a company whose shares of stock are publicly listed; even companies like the Bank, whose shares are offered only to a specific group of people, are considered a public company, provided they meet the requirements enumerated above. The records establish, and the Bank does not dispute, that the Bank has assets exceeding ₱50,000,000.00 and has 395,998 shareholders. It is thus considered a public company that must comply with the reportorial requirements set forth in Section 17.1 of the SRC.

2. ID.; ID.; ID.; REPORTORIAL REQUIREMENTS FOR PUBLIC COMPANY; THE OBLIGATION OF THE BANK TO PROVIDE ITS STOCKHOLDERS WITH COPIES OF ITS ANNUAL REPORT IS FOR THE BENEFIT OF THE STOCKHOLDERS, TO GIVE THEM ACCESS TO INFORMATION ON THE BANK'S FINANCIAL STATUS AND OPERATIONS.— Additionally, and contrary to the Bank's claim, the Bank's obligation to provide its stockholders with copies of its annual report is actually for the benefit of the veterans-stockholders, as it gives these stockholders access to information on the Bank's financial status and operations, resulting in greater transparency on the part of the Bank. While compliance with this requirement will undoubtedly cost the Bank money, the benefit provided to the shareholders clearly outweighs the expense. For many stockholders, these annual reports are the only means of keeping in touch with the state of health of their investments; to them, these are invaluable and continuing links with the Bank that immeasurably contribute to the transparency in public companies that the law envisions.

3. STATUTORY CONSTRUCTION; STATUTES; NO ROOM EXISTS FOR CONSTRUCTION OR INTERPRETATION WHERE THE LAW IS VERY CLEAR AND FREE FROM ANY DOUBT OR AMBIGUITY.— [T]he Bank ignores the fact that the first and fundamental duty of the Court is to apply the law. Construction and interpretation come only after a demonstration that the application of the law is impossible or inadequate unless interpretation is resorted to. In this case, we see the law to be very clear and free from any doubt or ambiguity; thus, no room exists for construction or interpretation.

APPEARANCES OF COUNSEL

Adeline Cambri-Cortez for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

BRION, *J.*:

We resolve the motion for reconsideration[1] filed by petitioner Philippine Veterans Bank (*the Bank*) dated August 5, 2010, addressing our June 16, 2010 Resolution that denied the Bank's petition for review on *certiorari*.

Factual Antecedents

On March 17, 2004, respondent Justina F. Callangan, the Director of the Corporation Finance Department of the Securities and Exchange Commission (*SEC*), sent the Bank a letter, informing it that it qualifies as a "public company" under Section 17.2 of the Securities Regulation Code (*SRC*) in relation with Rule 3(1)(m) of the Amended Implementing Rules and Regulations of the SRC. The Bank is thus required to comply with the reportorial requirements set forth in Section 17.1 of the SRC.[2]

The Bank responded by explaining that it should not be considered a "public company" because it is a private company whose shares of stock are available only to a limited class or sector, *i.e.*, to World War II veterans, and not to the general public.[3]

In a letter dated April 20, 2004, Director Callangan rejected the Bank's explanation and assessed it a total penalty of One Million Nine Hundred Thirty-Seven Thousand Two Hundred Sixty-Two and 80/100 Pesos (₱1,937,262.80) for failing to comply

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[1] *Rollo*, pp. 172-183.

[2] *Id.* at 32.

[3] *Ibid.*

with the SRC reportorial requirements from 2001 to 2003. The Bank moved for the reconsideration of the assessment, but Director Callangan denied the motion in SEC-CFD Order No. 085, Series of 2005 dated July 26, 2005.[4] When the SEC *En Banc* also dismissed the Bank's appeal for lack of merit in its Order dated August 31, 2006, prompting the Bank to file a petition for review with the Court of Appeals (*CA*).[5]

On March 6, 2008, the CA dismissed the petition and affirmed the assailed SEC ruling, with the modification that the assessment of the penalty be recomputed from May 31, 2004.[6]

The CA also denied the Bank's motion for reconsideration,[7] opening the way for the Bank's petition for review on *certiorari* filed with this Court.[8]

On June 16, 2010, the Court denied the Bank's petition for failure to show any reversible error in the assailed CA decision and resolution.[9]

The Motion for Reconsideration

The Bank reiterates that it is not a "public company" subject to the reportorial requirements under Section 17.1 of the SRC because its shares can be owned only by a specific group of people, namely, World War II veterans and their widows, orphans and compulsory heirs, and is not open to the investing public in general. The Bank also asks the Court to take into consideration the financial impact to the cause of "veteranism"; compliance with the reportorial requirements under the SRC, if the Bank

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[4] *Id.* at 33.

[5] *Id.* at 40-47.

[6] Penned by Associate Justice Magdangal M. de Leon, and concurred in by Associate Justices Rebecca de Guia-Salvador and Ricardo R. Rosario; *id.* at 31-37.

[7] *Id.* at 38-39.

[8] *Id.* at 3-26.

[9] *Id.* at 167.

would be considered a "public company," would compel the Bank to spend approximately ₱40 million just to reproduce and mail the "Information Statement" to its 400,000 shareholders nationwide.

The Court's Ruling

We DENY the motion for reconsideration for lack of merit.

To determine whether the Bank is a "public company" burdened with the reportorial requirements ordered by the SEC, we look to Subsections 17.1 and 17.2 of the SRC, which provide:

> Section 17. Periodic and Other Reports of Issuers. —
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> 17.1. Every issuer satisfying the requirements in Subsection 17.2 hereof shall file with the Commission:
>
> a) Within one hundred thirty-five (135) days, after the end of the issuer's fiscal year, or such other time as the Commission may prescribe, an annual report which shall include, among others, a balance sheet, profit and loss statement and statement of cash flows, for such last fiscal year, certified by an independent certified public accountant, and a management discussion and analysis of results of operations; and
>
> b) Such other periodical reports for interim fiscal periods and current reports on significant developments of the issuer as the Commission may prescribe as necessary to keep current information on the operation of the business and financial condition of the issuer.
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> 17.2. The reportorial requirements of Subsection 17.1 shall apply to the following:
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> x x x x x x x x x
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> c) An issuer with **assets of at least Fifty million pesos (₱50,000,000.00)** or such other amount as the Commission shall prescribe, and having **two hundred (200) or more holders each holding at least one hundred (100) shares of a class of its equity securities**: Provided, however, That the obligation of such issuer to file reports shall be terminated ninety (90) days after notification to the Commission by the issuer that the number of its holders holding at least one hundred (100) shares is reduced to less than one hundred (100). (emphases supplied)

We also cite Rule 3(1)(m) of the Amended Implementing Rules and Regulations of the SRC, which defines a "public company" as "any corporation with a class of equity securities listed on an Exchange **or** with **assets in excess of Fifty Million Pesos (₱50,000,000.00)** and having **two hundred (200) or more holders**, **at least two hundred (200) of which are holding at least one hundred (100) shares** of a class of its equity securities."

From these provisions, it is clear that a "public company," as contemplated by the SRC, is not limited to a company whose shares of stock are publicly listed; even companies like the Bank, whose shares are offered only to a specific group of people, are considered a public company, provided they meet the requirements enumerated above.

The records establish, and the Bank does not dispute, that the Bank has assets exceeding ₱50,000,000.00 and has 395,998 shareholders.[10] It is thus considered a public company that must comply with the reportorial requirements set forth in Section 17.1 of the SRC.

The Bank also argues that even assuming it is considered a "public company" pursuant to Section 17 of the SRC, the Court should interpret the pertinent SRC provisions in such a way that no financial prejudice is done to the thousands of veterans who are stockholders of the Bank. Given that the legislature intended the SRC to apply only to publicly traded companies, the Court should exempt the Bank from complying with the reportorial requirements.

On this point, the Bank is apparently referring to the obligation set forth in Subsections 17.5 and 17.6 of the SRC, which provide:

> Section 17.5. Every issuer which has a class of equity securities satisfying any of the requirements in Subsection 17.2 shall **furnish to each holder of such equity security an annual report** in such form and containing such information as the Commission shall prescribe.

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[10] *Id.* at 36.

Section 17.6. Within such period as the Commission may prescribe preceding the annual meeting of the holders of any equity security of a class entitled to vote at such meeting, the issuer shall transmit to such holders an annual report in conformity with Subsection 17.5. (emphases supplied)

In making this argument, the Bank ignores the fact that the first and fundamental duty of the Court is to apply the law.[11] Construction and interpretation come only after a demonstration that the application of the law is impossible or inadequate unless interpretation is resorted to.[12] In this case, we see the law to be very clear and free from any doubt or ambiguity; thus, no room exists for construction or interpretation.

Additionally, and contrary to the Bank's claim, the Bank's obligation to provide its stockholders with copies of its annual report is actually for the benefit of the veterans-stockholders, as it gives these stockholders access to information on the Bank's financial status and operations, resulting in greater transparency on the part of the Bank. While compliance with this requirement will undoubtedly cost the Bank money, the benefit provided to the shareholders clearly outweighs the expense. For many stockholders, these annual reports are the only means of keeping in touch with the state of health of their investments; to them, these are invaluable and continuing links with the Bank that immeasurably contribute to the transparency in public companies that the law envisions.

WHEREFORE, premises considered, petitioner Philippine Veterans Bank's motion for reconsideration is hereby *DENIED* with finality.

SO ORDERED.

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

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[11] *People v. Mapa*, G.R. No. L-22301, August 30, 1967, 20 SCRA 11.

[12] *Lizarraga Hermanos v. Yap Tico*, 24 Phil. 504 (1913).

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

THIRD DIVISION

[G.R. No. 152141. August 8, 2011]

CORNELIO DEL FIERRO, GREGORIO DEL FIERRO, ILDEFONSO DEL FIERRO, ASUNCION DEL FIERRO, CIPRIANO DEL FIERRO, MANUELA DEL FIERRO, and FRANCISCO DEL FIERRO, *petitioners, vs.* **RENE SEGUIRAN,** *respondent.*

SYLLABUS

1. CIVIL LAW; OWNERSHIP; *ACCION REINVINDICATORIA*; REQUISITES TO PROSPER; NOT PROVED.— Article 434 of the Civil Code provides that 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.* Anent the second requisite, *i.e.*, the claimant's title over the disputed area, the rule is *that a party can claim a right of ownership only over the parcel of land that was the object of the deed.* In this case, petitioners failed to prove the identity of the parcels of land sought to be recovered and their title thereto.

2. ID.; ID.; ID.; 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.— Petitioners filed an action for reconveyance and cancellation of titles. Hence, it was incumbent on petitioners to prove the requisites of reconveyance, one of which is to establish the identity of the parcels of land petitioners are claiming. To reiterate, 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. Petitioners' failure to present sufficient evidence on the identity of the properties

sought to be recovered and their title thereto resulted in the dismissal of their complaint.

3. ID.; ID.; ID.; DISMISSAL OF THE COMPLAINT PROPER WHERE THE CLAIMANTS FAILED TO PROVE THE IDENTITY OF THE PROPERTIES SOUGHT TO BE RECOVERED AND THEIR TITLE THERETO.— [P]etitioners failed to prove the identity of the properties over which they claimed ownership and sought to be reconveyed to them, and they also failed to prove their title over Lot Nos. 1625 and 1626; hence, the Court of Appeals did not err in affirming the decision of the trial court, which dismissed petitioners' Complaint.

APPEARANCES OF COUNSEL

People's Law Office for petitioners.
Lourdes I. De Dios for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* of the Decision of the Court of Appeals dated October 2, 2001, and its Resolution dated February 11, 2002 in CA-G.R. CV No. 60520.

The Court of Appeals affirmed the decision of the Regional Trial Court (RTC) of Iba, Zambales, Branch 71, in Civil Case No. RTC-233-1, dismissing petitioners' complaint for reconveyance of property and cancellation of titles for insufficiency of evidence as to the identity of the properties sought to be recovered.

The factual background of this case, as stated by the Court of Appeals, is as follows:

The subject of this case are two parcels of agricultural land, Lot Nos. 1625 and 1626 with an area of 72,326 square meters and 116,598 square meters, respectively. Both lots are situated in Locloc, Palauig, Zambales. The cadastral survey of these lots were conducted sometime in December 1962 (Cad. 364-

D, Palauiag Cadastre, Zambales).[1] The records of the Lands Management Bureau, RLO III, San Fernando, Pampanga show that the claimants of Lot No. 1625 was *Lodelfo Marcial*[2] *versus Miguel del Fierro*, while the claimants of Lot No. 1626 were *Lodelfo Marcial versus Francisco Santos and Narciso Marcial*.[3]

On April 29, 1965, Francisco Santos filed an application for free patent over Lot No. 1626 with the Bureau of Lands, District Land Office No. 40 at Olongapo, Zambales. The application remained pending until the commencement of this litigation in 1985.[4] Francisco Santos died on December 9, 1978.

Meanwhile, on August 21, 1964, the heirs of Miguel del Fierro, led by his widow Generosa Jimenez *Vda*. del Fierro, filed an ejectment case (forcible entry) against Lodelfo Marcial and Narciso Marcial before the Municipal Trial Court of Palauig, Zambales.[5] On October 31, 1972, the municipal court rendered a decision in favor of the Del Fierros.[6] On appeal, the Court of First Instance (CFI) of Zambales, Branch II-Iba, in a Decision[7] dated August 1, 1973, sustained the right of the Del Fierros to the possession of the subject premises and ordered the Marcials to vacate the premises.

On June 29, 1964, Lodelfo Marcial mortgaged to the Rural Bank of San Marcelino, Inc. a parcel of land covered by Tax Declaration No. 21492 with an area of 140,000 square meters.[8] The property is more particularly described as:

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[1] Exhibit "O", (Intervenors), records, Vol. I, pp. 290-293.

[2] Also referred to as Leodolfo.

[3] Records, Vol. I, p. 290-A.

[4] Exhibits "J" to "M", (Intervenors), records, Vol. I, pp. 283-286.

[5] Docketed as Civil Case No. 365 (Forcible entry with preliminary mandatory injunction).

[6] Exhibit "R", (Plaintiffs), records, Vol. II, p. 434.

[7] Exhibit "F", records, Vol. I, p. 57.

[8] Exhibits "5" and "6", (Defendant), records, Vol. II, pp. 620-622.

A parcel of land suitable for cultivation, upland rice, riceland and nipa land, situated in Marala, Palauig, Zambales, containing an area of 140,000, sq. m., the improvements consists of mango trees in the possession of the mortgagor; bounded on the North by River; on the South by China Sea; on the East by heirs of Miguel del Fierro and on the West by River; this property has been declared under Tax Declaration No. 21492 and assessed at ₱1,550.00 in the name of the mortgagor; the visible limits at simple sight on the North and East are Rivers; on the South by China Sea and fence on the East.[9]

On December 26, 1972, the bank extrajudicially foreclosed the real estate mortgage and was the highest bidder in the sale of the property per the Certificate of Sale issued by the Provincial Sheriff.[10] On April 22, 1982, the Rural Bank of San Marcelino, Inc. consolidated its ownership over the property.[11]

On October 28, 1981, Lodelfo Marcial executed in favor of respondent Rene Seguiran a Deed of Absolute Sale over a parcel of swampland designated as Lot Nos. 1625 and 1626, Palauig Cadastre with Free Patent Application No. L-4-201 applied for by Marcial in 1967 and covered by Tax Declaration No. 3250 for the year 1974.[12] Marcial had Lot Nos. 1625 and 1626 surveyed by a private surveyor on October 19, 1969.[13] On November 9, 1981, respondent Rene Seguiran purchased Marcial's foreclosed property from the Rural Bank of San Marcelino Inc.[14] Respondent then filed an application for free patent over Lot Nos. 1625 and 1626, which was approved by the Bureau of Lands. On July 11, 1983, Free Patent Nos. 598462 (Lot No. 1625) and 598461 (Lot No. 1626) were issued in respondent's name. On July 29, 1983, the Register of Deeds of Zambales issued in the name of respondent Original Certificate of Title (OCT) Nos. P-7013 and P-7014 covering Lot Nos. 1625 and 1626,

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[9] Exhibit "10", records, Vol. II, p. 626.

[10] Exhibit "9" (Defendant), records, Vol. II, pp. 624-627.

[11] Exhibit "8" (Defendant), records, Vol. II, p. 632.

[12] Exhibits "7" and "11", records, Vol. II, pp. 623, 628-629.

[13] Exhibit "21-A" (Defendant), records, Vol. II, p. 633.

[14] Exhibit "7", (Defendant), records, Vol. II, p. 630.

respectively.[15] On September 21, 1983, respondent had Lot Nos. 1625 and 1626 surveyed by a private surveyor.[16] He also paid the real property taxes and declared the property in his name beginning the year 1985.[17] On August 26, 1983, petitioner petitioned the RTC of Iba, Zambales to conduct a relocation survey of Lot Nos. 1625 and 1626, which petition was approved by the court. However, on February 16, 1985, the heirs of Miguel and Generosa del Fierro filed a Motion to Quash Order of Execution,[18] claiming they are in actual physical possession of Lot Nos. 1625 and 1626, and that prior to the sale of the said lots to respondent, the vendor, Lodelfo Marcial no longer had any right over the property, since he lost in Civil Case No. 706-1 for ejectment filed by the Del Fierros. In an Order[19] dated March 20, 1985, the RTC of lba, Zambales, Branch LXX held in abeyance the implementation of its earlier orders regarding the relocation survey of the lots subject of the petition filed by petitioners.

On September 13, 1985, the heirs of Miguel and Generosa del Fierro, namely, Cornelio, Gregorio, Ildefonso, Asuncion, Cipriano, Manuela and Francisco, all surnamed Del Fierro, petitioners herein, filed a Complaint for reconveyance and cancellation of titles against defendant Rene Seguiran, respondent herein, before the RTC of Iba, Zambales, Branch 71 (trial court).

The Complaint[20] alleged that plaintiffs (petitioners) were the owners and possessors of a parcel of land identified as Lot Nos. 1625 and 1626, formerly part of Lot No. 1197, situated at Barangay Locloc, Palauig, Zambales. On July 26, 1964, Lodelfo and Narciso Marcial unlawfully entered the land occupied by

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[15] Exhibits "3", "4", "20" to "24" (Defendant), records, Vol. II, pp. 616-619, 636-641.

[16] Exhibit "25" (Defendant), records, Vol. II, p. 642.

[17] Exhibits "15", and "16", (Defendant), records, Vol. II, pp. 634-635.

[18] Exhibit "V" (Plaintiffs), records, Vol. II, p. 455.

[19] Exhibit "W", (Plaintiffs), records, Vol. II, p. 458.

[20] Records, Vol. I, p. 2.

plaintiffs. Plaintiffs sued them for forcible entry[21] before the Municipal Court of Palauig. The municipal court ruled in favor of plaintiffs, which decision was affirmed on appeal by the CFI of Iba, Zambales, Branch II on August 1, 1973. Consequently, Lodelfo and Narciso Marcial were ejected from the premises. Meanwhile, on June 29, 1964, Marcial had mortgaged the lots to the Rural Bank of San Marcelino, Inc., which foreclosed the real estate mortgage on December 26, 1972, and consolidated ownership over the lots on April 22, 1982. On October 28, 1981, defendant Rene S. Seguiran purchased from Lodelfo Marcial (deceased) the subject lots. On November 9, 1981, defendant purchased the subject lots again from the Rural Bank of San Marcelino, Inc.

Moreover, plaintiffs alleged that Lodelfo Marcial, predecessor-in-interest of defendant, had no legal right to convey the said lots to plaintiffs, since he was merely a deforciant in the said lots. Further, defendant, with evident bad faith, fraudulently applied with the Bureau of Lands for a free patent over the said lots, alleging that he was the actual possessor thereof, which constitutes a false statement, since the plaintiffs were the ones in actual possession. Despite knowing that the said lots were the subject of legal controversy before the CFI of Iba, Zambales, Branch II, defendant fraudulently secured a certification from the Court of Olongapo to prove that the said parcels of land were not subject of any court action. As a consequence of the foregoing illegal and fraudulent acts, defendant was able to secure OCT Nos. P-7013 and P-7014 for Lot Nos. 1625 and 1626, respectively.

Plaintiffs prayed that after trial, judgment be rendered: (1) ordering defendant to reconvey the parcels of land covered by OCT Nos. P-7013 and P-7014 to them (plaintiffs); (2) ordering the Register of Deeds of lba, Zambales to cancel the said titles and issue a new one in favor of plaintiffs; and (3) ordering defendant to pay plaintiffs ₱40,000.00 as actual and consequential

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[21] Civil Case No. 365, entitled *Generosa Jimenez Vda. de Del Fierro, et al. v. Leodolfo Marcial, et al.*

damages; ₱50,000.00 as moral damages; and ₱10,000.00 as exemplary damages.[22]

Defendant was declared in default for failure to file an Answer, and plaintiffs were allowed to present evidence *ex parte*.[23] On October 13, 1986, after the completion of the testimonial evidence of the plaintiffs, the case was submitted for decision.[24]

Meanwhile, on December 9, 1986, the heirs of Francisco Santos, who intervened in the case, filed a protest[25] with the Bureau of Lands, questioning the award of free patent in favor of respondent Rene Seguiran over Lot No. 1626 when they were the actual owners and possessors of the said lot, since their father was the registered claimant and applicant of the said lot, while respondent had never set foot on the lot. The Director of Lands directed Land Investigator Alfredo S. Mendoza of the Bureau of Lands District Office in Iba, Zambales to investigate the matter.[26]

On February 26, 1981, the heirs of Francisco Santos, represented by their attorney-in-fact Olivia C. Olaivar, filed a Motion for Leave to File a Complaint-in-Intervention, which was granted by the trial court.[27] Intervenors claimed ownership and possession of Lot No. 1626, being the heirs of the late Francisco Santos who was the registered claimant of the said lot under the Cadastral Survey Notification Card in 1962. The intervenors prayed that after hearing, the trial court render judgment (1) annulling the Free Patent Application No. (III-4) (1) 467-A (Patent No. 598461) issued to defendant Rene Seguiran; (2) declaring the intervenors the true and lawful owners of Lot No. 1626, since they are the legal heirs of the late Francisco

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[22] Records, Vol. I, p. 5.

[23] *Id.* at 42.

[24] *Id.* at 43.

[25] Exhibit "D", *id.* at 122.

[26] Exhibit "E", (Intervenors), *id.* at 124.

[27] Records, Vol. I, pp. 104-105, 118-119.

Santos; and (3) requiring defendant to pay to the intervenors ₱5,000.00 as attorney's fees.[28]

In their Answer to [the] Complaint-in-Intervention,[29] plaintiffs denied that the intervenors were the owners and possessors of Lot No. 1626; hence, the intervenors had no cause of action against them. Plaintiffs prayed that the complaint-in-intervention be dismissed.

On May 20, 1988, defendant filed his Answer,[30] claiming that when he bought the land in dispute on October 28, 1981, Lodelfo Marcial was no longer its owner, but the Rural Bank of San Marcelino, Inc., since Marcial failed to redeem the land within the one-year period of redemption. His only purpose for buying the land from the mortgagor, Lodelfo Marcial in November 1981 was for the peaceful turn-over of the property to him by Marcial. Defendant denied any fraud, illegality or bad faith in securing OCT Nos. P-7013 and P-7014. He asserted that when he secured a certification from the RTC on June 6, 1983, there was in truth no pending case involving the subject properties in any court in Zambales; hence, no bad faith could be attributed to him. Defendant prayed that judgment be rendered by the trial court dismissing the complaint and ordering plaintiffs to pay him actual, moral and exemplary damages as well as attorney's fees and the expenses of litigation.

On August 2, 1988, defendant also filed his Answer to the Complaint-in-Intervention[31] with the same defenses and counterclaim. On motion of defendant, the earlier order declaring him in default was set aside, and the trial court granted defendant's counsel the right to cross-examine the witnesses who had testified during the proceedings already conducted.[32]

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[28] *Id.* at 106-108.

[29] *Id.* at 141.

[30] *Id.* at 185.

[31] *Id.* at 201.

[32] *Id.* at 206.

At the pre-trial conference held on October 20, 1988, only the plaintiffs and intervenors admitted that Lot No. 1625 was actually being occupied by the plaintiffs (Del Fierros), while Lot No. 1626 was being occupied by the intervenors (the heirs of Francisco Santos). Defendant did not admit the said facts.[33]

On October 13, 1995, intervenors filed a Motion to Hold the Proceedings in Abeyance,[34] since their pending administrative protest, which involved the same lots, had been scheduled for pre-trial conference on October 3, 1995 by the Bureau of Lands.

In an Order[35] dated January 8, 1996, the trial court directed that the proceedings be held in abeyance until after the resolution of the administrative case. However, after plaintiffs sought reconsideration of the Order, the trial court continued the proceedings in the interest of justice because the administrative case for cancellation of title had yet to commence the reception of evidence, while in this case, the intervenors (the complainants in the administrative case) had already presented witnesses and marked evidences on their behalf; and the suspension of this case would prove to be more expensive for all party litigants.[36] The intervenors' motion for whole or partial reconsideration of the said order of reversal was denied by the trial court for lack of merit.[37]

On April 23, 1998, the trial court rendered judgment in favor of defendant, respondent herein, the dispositive portion of which reads:

WHEREFORE, premises considered, the complaint dated September 12, 1985 is dismissed for insufficiency of evidence as to the identity of the properties sought to be recovered. The

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[33] *Id.* at 278.

[34] Records, Vol. II, p. 765.

[35] *Id.* at 783.

[36] *Id.* at 795-797.

[37] *Id.* at 815-816.

complaint-in-intervention dated February 24, 1987 is dismissed for prematurity and insufficiency of evidence.[38]

The trial court held that plaintiffs (petitioners) failed to prove the identity of the property sought to be recovered. The numerous documents they presented to prove ownership of Lot Nos. 1625 and 1626 showed that the properties covered by sale or *pacto de retro* are located at Liozon,[39] Palauig, Zambales, while Lot Nos. 1625 and 1626 are located at Locloc, Palauig, Zambales; and there is no clear showing that parts of Liozon became Locloc. Moreover, although the Del Fierros were declared as the possessors of the property in the ejectment case (forcible entry)[40] filed by Generosa del Fierro against Lodelfo and Narciso Marcial, the property concerned in the said case is Lot No. 1197. There was no evidence as to the original size of Lot No. 1197 and no proof that Lot Nos. 1625 and 1626 formed part of Lot No. 1197. Based on the foregoing, the trial court dismissed plaintiffs' complaint.

The trial court also dismissed the complaint of intervenors on the ground of non-exhaustion of administrative remedies as the protest filed earlier by them against defendant (respondent) with the Bureau of Lands was still pending.

Both plaintiffs (petitioners) and intervenors appealed the decision of the trial court to the Court of Appeals.

On October 2, 2001, the Court of Appeals upheld the decision of the trial court. The dispositive portion of the appellate court's decision reads:

WHEREFORE, premises considered, the present appeals are hereby DISMISSED and the appealed Decision in Civil case No. RTC-233-1 is hereby AFFIRMED and UPHELD.[41]

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[38] *Rollo,* pp. 87-88.

[39] Also spelled as "Lioson."

[40] Exhibit "R", records, Vol. II, p. 434; exhibit "F", records, Vol. I, p. 57.

[41] *Rollo,* p. 43.

The Court of Appeals held that petitioners are not entitled to reconveyance of Lot Nos. 1625 and 1626, since they failed to prove the identity of the parcels of land over which they claim ownership. The evidence they adduced to prove their ownership of the said lots showed that the Spanish deeds of conveyance involved properties that were located in Barrio Liozon and not in Locloc, Palauig, Zambales, which is the actual location of Lot Nos. 1625 and 1626.

Moreover, the Court of Appeals stated that the fact that Lodelfo Marcial was defeated in the forcible entry case filed by petitioners prior to the purchase by respondent of the foreclosed property from Marcial and from the mortgagee bank in 1973 could not serve as the basis for petitioners' right of ownership or title over Lot Nos. 1625 and 1626 as only Lot No. 1197 was involved in the ejectment case and only the issues of possession thereof was adjudicated therein. The appellate court stated that the said court decision could have buttressed petitioners' claim of ownership over Lot Nos. 1625 and 1626 if petitioners were able to establish in this case that the said lots indeed formed part of Lot No. 1197.

In addition, the Court of Appeals held that petitioners failed to prove by clear and convincing evidence that the issuance of the certificates of title in favor of respondent was attended by fraud.

The Court of Appeals declared as unmeritorious the argument of intervenors that this case is not covered by the rule on exhaustion of administrative remedies. It cited ***Garcia v. Aportadera***,[42] wherein it was held that where a party seeks for the cancellation of a free patent with the Bureau of Lands, he must pursue his action in the proper Department and a review by the court will not be permitted unless the administrative remedies are first exhausted. Further, an *applicant* for a free patent may not file an action for reconveyance for that is the remedy of an *owner* whose land has been erroneously registered in the name of another.[43]

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[42] No. L-34122, August 29, 1988, 164 SCRA 705.

[43] *Id*.

Petitioners' motion for reconsideration was denied for lack of merit by the Court of Appeals in a Resolution[44] dated February 11, 2002.

Petitioners filed this petition, raising the following issues:

I

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT ON THE BASIS OF ISSUES NOT RAISED BY RESPONDENT IN THE TRIAL COURT.

II

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT *VIS-À-VIS* THE JUDICIAL ADMISSION OF RESPONDENT ON THE RIGHT OF THE PETITIONERS TO THE PROPERTY.

III

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT DESPITE THE FACT THAT THE CONCLUSIONS OF LAW RUN COUNTER AND ARE DIAMETRICALLY OPPOSED TO (THE) SUMMARY OF THE EVIDENCE GIVEN BY THE REGIONAL TRIAL COURT.

The main issues are whether petitioners are entitled to reconveyance of Lot Nos. 1625 and 1626, and whether the certificates of title of respondent to the said lots should be cancelled.

The requisites of reconveyance are provided for in Article 434 of the Civil Code, 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.

Article 434 of the Civil Code provides that 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)

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[44] *Rollo,* p. 52.

things: *first*, the identity of the land claimed; and *second*, his title thereto.[45]

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*.[46] Anent the second requisite, *i.e.*, the claimant's title over the disputed area, the rule is *that a party can claim a right of ownership only over the parcel of land that was the object of the deed*.[47]

In this case, petitioners failed to prove the identity of the parcels of land sought to be recovered and their title thereto. Petitioners contend that they are the owners of Lot Nos. 1625 and 1626 by virtue of the decision of the Municipal Court of Palauig, Zambales in the ejectment case (forcible entry)[48] against Lodelfo and Narciso Marcial, declaring them (petitioners) as the ones in possession of the property, which decision was affirmed on appeal. However, as stated by the trial court and the Court of Appeals, the property involved in the ejectment case was Lot No. 1197, and it was never mentioned in the respective decisions[49] of the Municipal Court of Palauig, Zambales and the CFI of Zambales, Branch II-Iba that the portion intruded upon was Lot Nos. 1625 and 1626. Moreover, petitioners failed to adduce in evidence the technical description of Lot No. 1197 and failed to prove that Lot Nos. 1625 and 1626 were part of or used to be part of Lot No. 1197.

Further, the documents presented by petitioners to prove their title over Lot Nos. 1625 and 1626 showed that the properties covered therein were located in *Barrio Liozon*, Palauig, Zambales, while Lot Nos. 1625 and 1626 are located in *Barrio Locloc*, Palauig, Zambales. In addition, petitioners failed to establish

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[45] *Hutchinson v. Buscas*, 498 Phil. 257, 262 (2005).

[46] *Id.* at 220.

[47] *Id*.

[48] Civil Case No. 365, records, Vol. II, p. 434.

[49] Records, Vol. II, p. 434; Exhibit "F", records, Vol. I, p. 57.

which of the deeds of sale, donation or documents evidencing transfer of properties to their father, Miguel del Fierro, which were adduced in evidence, covered Lot Nos. 1625 and 1626. The Court of Appeals stated:

In support of their claim of ownership over Lot Nos. 1625 and 1626, plaintiffs-appellants (petitioners) submitted in evidence various Spanish documents or deeds of purchase: (1) a Spanish document dated June 1927, "*Venta Real de Terreno*" executed by J.L. Faranal in favor of Miguel del Fierro, over a parcel of land situated in Marala, Barrio Liozon, Palauig, Zambales; (2) a Spanish document dated December 18, 1939 executed by Justo Apostol in favor of Miguel del Fierro, for the sale of a riceland situated in Barrio Liozon, Palauig, Zambales (1,350 sq.m.); (3) "*Escritura de Compra Venta*" dated June 1, 1918 executed by Alejandro Abaga in favor of Feliciana Frase over a parcel of land situated in Marala, Barrio Lioson, Palauig, Zambales; (4) "*Renuncia De Derecho*" (Waiver of Rights) dated September 6, 1928 executed by Juan Saclolo in favor of Miguel del Fierro over a riceland situated in Marala, Barrio Lioson, Palauig, Zambales; (5) "*Venta Con Pacto de Retro de Terrenos* dated April 8, 1927 executed by Faustino Barrentos in favor of Don Miguel del Fierro over a coconut plantation located at Sitio Sasa, Barrio Liozon, Palauig, Zambales; (6) "*Venta Real de Terrenos*" dated July 24, 1926 executed by Jose Trinidad and Ursula Villanueva in favor of Miguel de1 Fierro over a riceland situated in Barrio Liozon, Palauig, Zambales (25,610 sq. ms.); (7) "*Escritura de Cancelacion de Hipoteca de Bienes Inmuebles*" (Contract of Cancellation of Mortgage of Real Estate Property) executed by Pedro Redona in favor of Ursula Villanueva over a riceland situated in Barrio Lioson, Palauig, Zambales; (8) "*Declaracion Jurada*" (Sworn Statement) dated January 11, 1928 executed by Demetrio Sison, Aurea Sison and Severino Anguac affirming the contract of sale dated September 25, 1925 signed by their deceased mother in favor of Miguel del Fierro over a riceland situated in Barrio Lioson, Palauig, Zambales (15,660 sq. ms.); (9) "*Escritura de Compra Venta*" dated September 25, 1925 executed by Justa Romero and Aurea Sison in favor of Don Miguel del Fierro over a piece of land situated in [Sitio] Sasa, Barrio Lioson, Palauig, Zambales (1 hectare, 56 ares and 60 centares); (10) "*Escritura de Compra Venta*" dated August 29, 1921 executed by Juan Sison in favor of Miguel del Fierro over a parcel of coconut land (83 ares and 70 centares) situated in Barrio Lioson, Palauig, Zambales; (11) "*Venta Real de Terrenos*" dated

September 16, 1925 executed by Agustin Abaga in favor of Miguel del Fierro over a parcel of land situated in [Sitio] Sasa, Barrio Lioson, Palauig, Zambales (7,200 sq. ms.); and (12) "*Escritura de Donacion*" (Deed of Gift or Pure Donation) executed by Eugenio del Fierro in favor of his son, Miguel del Fierro of a land situated in Marala, Barrio Lioson, Paiauig, Zambales (12 hectares, 77 ares and 90 centares). In addition to the foregoing documents, plaintiffs-appellants presented various tax declarations for the years 1944 (Miguel del Fierro), 1952, 1968, 1974, 1977, 1980, 1985 and 1987 (Heirs of Miguel del Fierro). These tax declarations pertain to lots situated in Locloc, Palauig, Zambales but the designation of Lots 1625 and 1626 (as part of Lot 1197) was made only in TD Nos. 11-0099 and 11-0100 for 1984 and 1987, respectively.

A perusal of these documents would readily show that the lots indicated in the Spanish deeds of conveyence (sic) were located in Barrio Lioson and not in Locloc, Palauig, Zambales, the actual location of the Lot Nos. 1625 and 1626. As to the tax declarations, the real properties declared therein, although situated in Locloc, Palauig, Zambales were not designated as Lot Nos. 1625 and 1626 until the year 1985, the same year the said lots were titled in the name of defendant-appellee. And even without such designation of Lot Nos. 1625 and 1626, plaintiffs-appellants failed to show that the separate lots which their predecessor-in-interest, Don Miguel del Fierro, had acquired in the 1920's, were the very same land (or included therein) which have been designated as Lot Nos. 1625 and 1626, or which was covered by the land supposedly donated by their grandfather to Don Miguel del Fierro. In other words, the identity of the land being claimed by plaintiffs-appellants could not be clearly established on the basis of either the Spanish deeds of purchase and donation or the old tax declarations presented by plaintiffs-appellants.[50]

Based on the foregoing, petitioners failed to prove the identity of the properties sought to be recovered and their title thereto.

Petitioners argue that the issue of identity of the subject parcels of lands was not among those raised during pre-trial or even during the trial. They contend that the findings of the trial court, which were affirmed by the Court of Appeals, on the issue of supposed insufficiency of evidence as to the identity of the

[50] *Rollo*, pp. 40-41.

properties not only surprised them, but caused them manifest injustice. They assert that issues not raised in the trial court cannot be raised for the first time on appeal.

Petitioners' argument is unmeritorious.

Petitioners filed an action for reconveyance and cancellation of titles. Hence, it was incumbent on petitioners to prove the requisites of reconveyance, one of which is to establish the identity of the parcels of land petitioners are claiming. To reiterate, 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.[51] Petitioners' failure to present sufficient evidence on the identity of the properties sought to be recovered and their title thereto resulted in the dismissal of their complaint.

As regards the second issue raised, petitioners contend that the Partial Pre-Trial Order stated that during the pre-trial conference the following facts were stipulated on:

> 1) By the plaintiffs and intervenor — that Lot 1625 is actually occupied by the Del Fierros, while Lot 1626, Cad. Lot 364-D of the Palauig is occupied by the heirs of Francisco Santos, who is already deceased. The defendant did not admit this fact.
>
> 2) The plaintiffs and defendants — that there exists a decision rendered by the then Court of First Instance of Zambales thru Honorable Judge Pedro Cenzon in favor of the plaintiffs in this case, affirming the decision of the Municipal Trial Court of Palauig, Zambales where it was stated that the plaintiffs are the ones in possession of Lots 1625 and 1626, which is docketed as Civil Case No. 706-I entitled "*Generosa Jimenez Vda. de Del Fierro, et al. versus Leodolfo Marcial, et al*." The intervenor did not admit this fact.[52]

Petitioners contend that the said judicial admission is binding and conclusive on the respondent and it cannot just be ignored

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[51] *Hutchinson v. Buscas, supra* note 45, at 220.

[52] Records, Vol. I, p. 278.

by the trial court without doing violence to Section 4, Rule 129 of the Rules of Evidence.[53] Petitioners also contend that the decision of the appellate court in the ejectment case (Civil Case No. 706-I), filed by petitioners against Lodelfo Marcial, respondent's predecessor-in-interest, is conclusive as to petitioners' possession of Lot Nos. 1625 and 1626. Since petitioners are in possession, respondent fraudulently applied for and procured free patents, as the consideration in qualifying as a patentee is that the applicant is in actual possession of the land applied for. Moreover, the undisputed possession of petitioners and their predecessors of the land as early as 1920s had long converted the parcels of land to private land and no longer part of the public domain.

Petitioners' contention does not persuade.

As stated by the trial court and the Court of Appeals, the ejectment case entitled *Generosa Jimenez Vda. de Del Fierro, et al. v. Leodolfo Marcial, et al.* involved Lot No. 1197, and there was no mention of Lot Nos. 1625 and 1626 therein. The land involved in the ejectment case was described by the plaintiffs (petitioners) in their Complaint[54] as follows:

> Consisting of 21.3196 hectares, more or less, and bounded on the North by Leoncia Apostol, Heirs of P. Lesaca, Justa Ponce and P. Artiquera; East by Hrs. of Potenciano Lesaca, M. Abdon, P. Artiquera, David Abdon and D. Abdon; South by P. Garcia, Barrio Road and Maximo Abdon and West by River and Beach. **It is designated as Lot No. 1197 of the Palauig Cadastre** and declared for taxation purposes in the name of the Heirs of Miguel del Fierro under Tax Declaration No. 18324 and assessed at ₱5,330.00.[55]

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[53] Sec. 4. *Judicial admissions*.—An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[54] Records, Vol. II, p. 422.

[55] RTC Decision, records, Vol. III, p. 970 (Emphasis supplied.); Complaint, *id.* at 422.

Moreover, in this case, petitioners failed to prove that Lot Nos. 1625 and 1626 were part of Lot No. 1197. The Survey Map[56] of Lot 1626 showed that Lot Nos. 1197, 1625, and 1626 are distinct lots. The cadastral survey of Lot Nos. 1625 and 1626 was conducted sometime in 1962.[57] The ejectment case was filed in 1964, after the cadastral survey of Lot Nos. 1625 and 1626, yet petitioners did not mention in their complaint that the ejectment case involved Lot Nos. 1625 and 1626.

In view of the foregoing, the Partial Pre-trial Order[58] mistakenly stated that petitioners were declared as the ones in possession of Lot Nos. 1625 and 1626 in the ejectment case. Even the trial court stated during the pre-trial conference held on October 28, 1988 that there was no mention of Lot Nos. 1625 and 1626 in the decision[59] of the CFI of Zambales, Branch II-Iba in the ejectment case (Civil Case No. 706-I).[60] Moreover, contrary to the contention of petitioners, respondent did not admit that petitioners and the intervenors were in possession of Lot Nos. 1625 and 1626, respectively, which fact was clearly stated in the Partial Pre-trial Order.

As regards the third issue raised, petitioners cited their testimonial evidence as narrated by the trial court, and contend that the identity of the land and their possession thereof were established as shown by the decision of the trial court. They contend that they seek reconveyance because the free patent titles were issued to respondent on false representation as they (petitioners) were in possession of the land.

The contention lacks merit.

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[56] Exhibit "I", records, Vol. III, p. 887.

[57] *Supra* note 1.

[58] Records, Vol. I, p. 278.

[59] Exhibit "F", *id.* at. 57.

[60] TSN, October 28, 1988, *id.* at 322-323.

The testimonial evidence of petitioners showed that they did not know the land area of Lot Nos. 1625 and 1626;[61] they had no tax declaration specifically for Lot Nos. 1625 and 1626;[62] they did not know who was residing in Lot No. 1626; they could not identify which of the documents evidencing transfer of properties to their father, Miguel del Fierro, covered Lot Nos. 1625 and 1626;[63] and they had no survey plan of the property over which they were claiming ownership. However, Ildefonso del Fierro testified that he has a fishpond and an approximately two-hectare riceland in Lot No. 1625;[64] hence, he did not allow the relocation survey by respondent of Lot Nos. 1625 and 1626, because it would pass through his fishpond and it would be disturbed.[65] Nevertheless, petitioners failed to identify the specific area of Lot No. 1625 or of Lot No. 1626 where the fishpond, riceland or houses of petitioners are located. Instead, they claim possession of the entire area of Lot Nos. 1625 and 1626, but not one of their documents showing transfer of properties in the name of their father, Miguel del Fierro, specifically states that it covers Lot No. 1625 or Lot No. 1626, and petitioner could not identify which documents referred to Lot Nos. 1625 and 1626. Thus, petitioners erred in claiming that their testimonial evidence established the identity of the parcels of land sought to be recovered and their title thereto.

The Court notes that the trial court did not discuss the merits of the testimonial evidence of petitioners, but the Court of Appeals did, stating thus:

x x x [T]he testimonies of plaintiffs' witnesses did not serve to clarify the matter of identity of the subject properties as they even failed to indicate the precise boundaries or areas of Lot Nos. 1625

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[61] TSN, October 13, 1986, p. 35 (Moises Leal); TSN, November 25, 1988, p. 27 (Gregorio del Fierro).

[62] TSN, October 13, 1986, p. 35.

[63] TSN, February 27, 1989, p. 35.

[64] TSN, March 16, 1990, p. 19.

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

and 1626, and likewise admitted they have no tax declaration specifically for Lot Nos. 1625 and 1526 even after the cadastral survey in 1962. Failing in their duty to clearly identify the lands sought to be recovered by them, plaintiffs-appellants' action for reconveyance must necessarily fail. To reiterate, in order that an action to recover ownership of real property may prosper, the person who claims he has a better right to it must prove not only his ownership of the same but also satisfactorily prove the identity thereof. x x x[66]

In fine, petitioners failed to prove the identity of the properties over which they claimed ownership and sought to be reconveyed to them, and they also failed to prove their title over Lot Nos. 1625 and 1626; hence, the Court of Appeals did not err in affirming the decision of the trial court, which dismissed petitioners' Complaint.

WHEREFORE, the petition is *DENIED*. The Court of Appeals' Decision dated October 2, 2001 and its Resolution dated February 11, 2002 in CA-G.R. CV No. 60520 are hereby *AFFIRMED*.

No costs.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Brion,*[**] and *Sereno,*[***] *JJ.,* concur.

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[66] *Rollo,* p. 42.

[*] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1059 dated August 1, 2011.

[**] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1056, dated July 27, 2011.

[***] Designated as an additional member, per Special Order No. 1028 dated June 21, 2011.

THIRD DIVISION

[G.R. No. 167398. August 8, 2011]

AUGUSTUS GONZALES and SPOUSES NESTOR VICTOR and MA. LOURDES RODRIGUEZ, *petitioners, vs.* **QUIRICO PE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; COURT DOCKET AND OTHER LAWFUL FEES; NON-PAYMENT THEREOF WITHIN THE 15-DAY REGLEMENTARY PERIOD RENDERED THE APPEAL WITH THE COURT OF APPEALS DISMISSIBLE; RULING IN YAMBAO CASE (G.R. NO. 140894, NOV. 27, 2000), INAPPLICABLE.— In cases of ordinary appeal, Section 2, Rule 41 of the Rules of Court provides that the appeal to the CA in cases decided by the RTC in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the RTC (the court which rendered the judgment or final order appealed from) and serving a copy thereof upon the adverse party. Section 3 thereof states that the appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Concomitant with the filing of a notice of appeal is the payment of the required appeal fees within the 15-day reglementary period set forth in Section 4 of the said Rule. x x x In reversing the ruling of the trial court, the CA cited *Yambao v. Court of Appeals* as justification for giving due course to respondent's petition and ordering the belated payment of docket and other legal fees. x x x. The ruling in *Yambao* is not applicable to the present case as herein respondent never made any payment of the docket and other lawful fees, not even an attempt to do so, simultaneous with his filing of the Notice of Appeal. Although respondent was able to file a timely Notice of Appeal, however, he failed to pay the docket and other legal fees, claiming that the Branch Clerk of Court did not issue any assessment. This procedural lapse on the part of the respondent rendered his appeal with the CA to be dismissible and, therefore, the RTC Decision, dated June 28, 2002, to be final and executory.

2. ID.; ID.; ID.; PAYMENT THEREOF WITHIN THE PRESCRIBED PERIOD IS BOTH MANDATORY AND JURISDICTIONAL; ELABORATED.— In *Far Corporation v. Magdaluyo*, as with other subsequent cases of the same ruling, the Court explained that the procedural requirement under Section 4 of Rule 41 is not merely directory, as the payment of the docket and other legal fees within the prescribed period is both mandatory and jurisdictional. It bears stressing that an appeal is not a right, but a mere statutory privilege. An ordinary appeal from a decision or final order of the RTC to the CA must be made within 15 days from notice. And within this period, the full amount of the appellate court docket and other lawful fees must be paid to the clerk of the court which rendered the judgment or final order appealed from. The requirement of paying the full amount of the appellate docket fees within the prescribed period is not a mere technicality of law or procedure. The payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appeal is not perfected. The appellate court does not acquire jurisdiction over the subject matter of the action and the Decision sought to be appealed from becomes final and executory. Further, under Section 1 (c), Rule 50, an appeal may be dismissed by the CA, on its own motion or on that of the appellee, on the ground of the non-payment of the docket and other lawful fees within the reglementary period as provided under Section 4 of Rule 41. The payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal. In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees.

3. ID.; ID.; ID.; THE COUNSEL'S FILING OF A NOTICE OF APPEAL WITHOUT PAYING THE APPELLATE DOCKET FEES DOES NOT AMOUNT TO EXCUSABLE NEGLIGENCE; THE COUNSEL'S IGNORANCE OF THE PROCEDURAL REQUIREMENTS SHALL BIND THE CLIENT.— Respondent's claim that his non-payment of docket and other lawful fees should be treated as mistake and excusable negligence, attributable to the RTC Branch Clerk of Court, is too superficial to warrant consideration. This is clearly negligence of respondent's counsel, which is not excusable. Negligence to be excusable must be one which ordinary

diligence and prudence could not have guarded against. Respondent's counsel filed a notice of appeal within the reglementary period for filing the same without, however, paying the appellate docket fees. He simply ignored the basic procedure of taking an appeal by filing a notice of appeal, coupled with the payment of the full amount of docket and other lawful fees. Respondent's counsel should keep abreast of procedural laws and his ignorance of the procedural requirements shall bind the respondent. In *National Power Corporation v. Laohoo*, we ruled that therein counsel's failure to file the appeal in due time does not amount to excusable negligence. The non-perfection of the appeal on time is not a mere technicality. Besides, to grant therein petitioner's plea for the relaxation of the rules on technicality would disturb a well-entrenched ruling that could make uncertain when a judgment attains finality, leaving the same to depend upon the resourcefulness of a party in concocting implausible excuses to justify an unwarranted departure from the time-honored policy of the law that the period for the perfection of an appeal is mandatory and jurisdictional.

4. ID.; ID.; THE TRIAL COURT MAY, PRIOR TO THE TRANSMITTAL OF THE ORIGINAL RECORDS OF THE CASE TO THE COURT OF APPEALS, ISSUE ORDERS FOR THE PROTECTION AND PRESERVATION OF THE RIGHTS OF THE PREVAILING PARTY.— The CA took cognizance over the case, based on the wrong premise that when the RTC issued the Order dated August 5, 2002 giving due course to respondent's Notice of Appeal and directing the Branch Clerk of Court to transmit the entire records of the case to the CA, it *ipso facto* lost jurisdiction over the case. Section 9, Rule 41 of the Rules explains that the court of origin loses jurisdiction over the case only upon the perfection of the appeal filed in due time by the appellant and the expiration of the time to appeal of the other parties. Withal, prior to the transmittal of the original records of the case to the CA, the RTC may issue orders for the protection and preservation of the rights of the prevailing party, as in this case, the issuance of the writ of execution because the respondent's appeal was not perfected.

5. ID.; ID.; THE REGIONAL TRIAL COURT RETAINS JURISDICTION TO RULE ON PENDING INCIDENTS

LODGED BEFORE IT WHERE THE PARTY FAILED TO PERFECT AN APPEAL WITHIN THE 15-DAY REGLEMENTARY PERIOD.— [S]ection 13, Rule 41 of the Rules states that the CA may dismiss an appeal taken from the RTC on the ground of non-payment of the docket and other lawful fees within the 15-day reglementary period x x x. SEC 13. *Dismissal of appeal*. — Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may *motu proprio* or on motion dismiss the appeal for having been taken out of time, or for non-payment of the docket and other lawful fees within the reglementary period. (*As amended by A.M. No. 00-2-10-SC, May 1, 2000*.) Since respondent's appeal was not perfected within the 15-day reglementary period, it was as if no appeal was actually taken. Therefore, the RTC retains jurisdiction to rule on pending incidents lodged before it, such as the petitioner's Motion for Reconsideration, to Dismiss Appeal, and for Issuance of Writ of Execution, filed on August 26, 2002, which sought to set aside its Order dated August 5, 2002 that gave due course to respondent's Notice of Appeal, and directed the issuance of a writ of execution. Having no jurisdiction over the case, the prudent thing that the CA should have done was to dismiss the respondent's appeal for failure to pay the appeal fees, and declare that the RTC Decision dated June 28, 2002 has now become final and executory.

6. ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI*; PROPER AND ADEQUATE REMEDY TO CHALLENGE THE DECISION OF THE COURT OF APPEALS.— The proper remedy of a party aggrieved by a decision of the CA is a petition for review on *certiorari* under Rule 45, which is not identical to a petition for *certiorari* under Rule 65. Rule 45 provides that decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to Us by filing a petition for review on *certiorari*, which would be but a continuation of the appellate process over the original case. Therefore, petitioners' filing of the present petition for review on *certiorari* under Rule 45 is the proper and adequate remedy to challenge the Decision dated June 24, 2004 and Resolution dated February 23, 2005 of the CA.

7. ID.; ID.; ONE WHO SEEKS TO AVAIL OF THE RIGHT TO APPEAL MUST STRICTLY COMPLY WITH THE REQUIREMENTS OF THE RULES, AND FAILURE TO DO SO LEADS TO THE LOSS OF THE RIGHT TO APPEAL.— One who seeks to avail of the right to appeal must strictly comply with the requirements of the rules, and failure to do so leads to the loss of the right to appeal. The rules require that from the date of receipt of the assailed RTC order denying one's motion for reconsideration, an appellant may take an appeal to the CA by filing a notice of appeal with the RTC and paying the required docket and other lawful fees with the RTC Branch Clerk of Court, within the 15-day reglementary period for the perfection of an appeal. Otherwise, the appellant's appeal is not perfected, and the CA may dismiss the appeal on the ground of non-payment of docket and other lawful fees. As a consequence, the assailed RTC decision shall become final and executory and, therefore, the prevailing parties can move for the issuance of a writ of execution.

8. ID.; ID.; JUST AS A LOSING PARTY HAS THE RIGHT TO APPEAL WITHIN THE PRESCRIBED PERIOD, THE WINNING PARTY HAS THE CORRELATIVE RIGHT TO ENJOY THE FINALITY OF THE DECISION OF THE CASE.— Since the CA erroneously took cognizance over the case, its Decision dated June 23, 2004 and Resolution dated February 23, 2005 should be overturned, and the Writ of Preliminary Injunction issued on August 20, 2003 should likewise be lifted. Thus, the RTC Decision dated June 28, 2002 is reinstated and, as the said decision having become final and executory, the case is remanded for its prompt execution. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises jurisdictional problem, as it deprives the appellate court of its jurisdiction over the appeal. After a decision is declared final and executory, vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case.

APPEARANCES OF COUNSEL

Gepty & Jose Law Offices for petitioners.
Alentajan Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to set aside the Decision[1] dated June 23, 2004 and Resolution[2] dated February 23, 2005 of the Court of Appeals (CA), Twentieth Division, in CA-G.R. SP No. 73171, entitled *Quirico Pe v. Honorable Judge Rene Hortillo, in his capacity as Presiding Judge of the Regional Trial Court of Iloilo City, Branch 31, Augustus Gonzales and Spouses Engr. Nestor Victor and Dr. Ma. Lourdes Rodriguez,* which granted the petition of respondent Quirico Pe. The CA Decision reversed and set aside the Order[3] dated September 23, 2002 of the Regional Trial Court (RTC) of Iloilo City, Branch 31, which dismissed respondent's appeal for non-payment of docket and other lawful fees, and directing the issuance of the writ of execution for the implementation of its Decision[4] dated June 28, 2002 in favor of the petitioners and against the respondent. The CA Decision also directed the RTC to assess the appellate docket fees to be paid by the respondent, if it has not done so, and allow him to pay such fees and give due course to his appeal.

The antecedents are as follows:

Respondent Quirico Pe was engaged in the business of construction materials, and had been transacting business with petitioner Spouses Nestor Victor Rodriguez and Ma. Lourdes Rodriguez. The Department of Public Works and Highways

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[1] Penned by Associate Justice Vicente L. Yap, with Associate Justices Arsenio J. Magpale and Ramon M. Bato, Jr., concurring; *rollo*, pp. 30-38.

[2] *Id.* at 39-40.

[3] Per Presiding Judge Rene S. Hortillo, records, Vol. 1, p. 347.

[4] *Id.* at 312-340.

(DPWH) awarded two contracts in favor of petitioner Nestor Rodriguez for the following projects, namely, construction of "Lanot-Banga Road (Kalibo Highway) km. 39 + 200 to km. 40 + 275 Section IV (Aklan side)" and concreting of "Laua-an Pandan Road (Tibial-Culasi Section), Province of Antique." In 1998, respondent agreed to supply cement for the construction projects of petitioner Spouses Rodriguez. Petitioner Nestor Rodriguez availed of the DPWH's pre-payment program for cement requirement regarding the Lanot-Banga Road, Kalibo Highway project (Kalibo project), wherein the DPWH would give an advance payment even before project completion upon his presentment, among others, of an official receipt for the amount advanced. Petitioner Nestor Rodriguez gave Land Bank of the Philippines (LBP) Check No. 6563066 to respondent, which was signed by co-petitioners (his wife Ma. Lourdes Rodriguez and his business partner Augustus Gonzales), but leaving the amount and date in blank. The blank LBP check was delivered to respondent to guarantee the payment of 15,698 bags of Portland cement valued at ₱1,507,008.00, covered by Official Receipt No. 1175,[5] issued by respondent (as owner of Antique Commercial), in favor of petitioner Nestor Rodriguez (as owner of Greenland Builders). However, a year later, respondent filled up blank LBP Check No. 6563066, by placing ₱2,062,000.00 and June 30, 1999, corresponding to the amount and date.

On December 9, 1999, petitioners filed an Amended Complaint[6] for Declaration of Payment, Cancellation of Documents and Damages against respondent with the RTC, Branch 31, Iloilo City, docketed as Civil Case No. 25945. The amended complaint alleged that they entrusted blank LBP Check No. 6563066 to respondent so as to facilitate the approval of the pre-payment application of petitioner Nestor Rodriguez with the DPWH. They stated that the blank LBP check would "serve as collateral" to guarantee the payment for 15,698 bags to be used for the Kalibo

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[5] *Id.* at 28.

[6] *Id.* at 58-63.

project, amounting to ₱1,507,008.00, and that after payment of the said amount, respondent would return the LBP check. According to them, after having paid respondent the amount of ₱2,306,500.00, which is ₱139,160.00 more than the amount of ₱2,167,340.00 (representing the value for 23,360 bags of cement taken for the Kalibo project), they were cleared of any liability.

On January 6, 2000, respondent filed an Answer to Amended Complaint,[7] averring that he had so far delivered 40,360 bags of cement to petitioners who remitted ₱2,306,500.00, thereby leaving an outstanding amount of ₱2,062,000.00. He countered that when petitioners stopped the bank-to-bank online payments to him, he filled up the amount of ₱2,062,000.00 and made the LBP check payable on June 30, 1999. The LBP check was dishonored for being "drawn against insufficient funds (DAIF)." By way of compulsory counterclaim, he sought recovery of the balance of ₱2,062,000.00, with interest at 24% from January 29, 1999 until fully paid as actual damages.

In the Pre-trial Order[8] dated January 28, 2000, the trial court determined the following to be the delimited issues, to wit:

(1) whether plaintiffs' [herein petitioners] liability to defendant [herein respondent] for 15,698 bags priced at ₱1,507,008.00 subject of the earlier-mentioned pre-payment program and covered by the "blank" LBP Check No. 6563066 has already been paid, hence, plaintiffs are no longer liable to the defendant for this amount;

(2) whether this LBP Check No. 6563066 should not be returned by defendant to plaintiffs, or failing in which, should now be declared as cancelled, null and void;

(3) whether plaintiffs have completely paid to the defendant the price of the cement used for the Kalibo project which specifically is the amount of 23,360 bags of cement valued in the total amount of ₱2,167,340.00;

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[7] *Id.* at 74-88.

[8] *Id.* at 129-131.

(4) whether plaintiffs are entitled to damages and attorney's fees; and

(5) whether this case be dismissed and with the dismissal of the complaint to proceed with the counterclaim.[9]

In a Decision dated June 28, 2002, the trial court, applying Section 14[10] of the Negotiable Instruments Law, found that respondent's subsequent filling up of LBP Check No. 6563066 in the amount of ₱2,062,000.00 was not made strictly in accordance with the authority given to him by petitioner Nestor Rodriguez, and that since one year had already lapsed, the same was not done within a reasonable time. As to the 23,360 bags of cement for the Kalibo project, valued at ₱2,167,340.00 which was subject of previous transactions, the trial court ruled that the same had been fully paid and considered a settled issue. Consequently, the RTC rendered judgment in favor of the petitioners and against the respondent, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant, as follows:

1. Declaring plaintiffs' obligation to the defendant for the cement supplied for the Kalibo (Lanot-Banga) Road Construction Project in the amount of ₱2,167,340.00 as already and fully paid, hence, plaintiffs are no longer liable to the defendant;

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[9] *Id.* at 130-131.

[10] Sec. 14. *Blanks; when may be filled.* — Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereon prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

2. Declaring Land Bank Check No. 6563066 dated June 30, 1999 for ₱2,062,000.00 as null and void and without any legal effect;

3. Ordering defendant to pay each plaintiff the sums of ₱100,000.00 as actual damages; ₱500,000.00 as moral damages; ₱200,000.00 as attorney's fees and ₱2,000.00 per hearing as appearance fee; ₱50,000.00 as miscellaneous actual and necessary litigation expenses; and

4. To pay the costs.

Defendant's counterclaim is hereby DISMISSED.

SO ORDERED.[11]

After receipt of a copy of the said RTC Decision on July 26, 2002, respondent filed a Notice of Appeal on July 30, 2002.

In an Order[12] dated August 5, 2002, the trial court gave due course to respondent's appeal, and directed the Branch Clerk of Court to transmit the entire records of the case to the CA.

On August 26, 2002, petitioners filed a Motion for Reconsideration, to Dismiss Appeal, and for Issuance of Writ of Execution,[13] stating that respondent's appeal should be dismissed as the same was not perfected due to non-payment of docket and other lawful fees as required under Section 4, Rule 41 of the Rules of Court. Claiming that since the respondent's appeal was not perfected and, as a consequence, the RTC Decision dated June 28, 2002 became final and executory, petitioners sought the issuance of a writ of execution for the implementation of the said RTC Decision. To buttress their motion, petitioners also appended a Certification[14] dated August 19, 2002, issued by the Clerk of Court of the Office of the Clerk of Court (OCC) of the RTC, Iloilo City, certifying that no appeal fees in the case had been paid and received by the OCC.

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[11] Records, Vol. I, p. 340.

[12] *Id.* at 342.

[13] *Id.* at 343-345.

[14] *Id.* at 346.

In the Order dated September 23, 2002, the trial court dismissed respondent's appeal and directed the issuance of a writ of execution to implement the RTC Decision dated June 28, 2002.

On October 2, 2002, the Clerk of Court and *Ex-officio* Provincial Sheriff of Iloilo issued the Writ of Execution[15] directing the execution of the RTC Decision dated June 28, 2002.

On October 7, 2002, respondent filed a Petition for *Certiorari* and Prohibition with Application for Writ of Preliminary Injunction and Prayer for Temporary Restraining Order,[16] seeking to set aside the RTC Order dated September 23, 2002 (which dismissed his appeal and directed the issuance of a writ of execution to implement the RTC Decision dated June 28, 2002), and to enjoin the implementation of the Writ of Execution dated October 2, 2002.

In a Resolution[17] dated October 9, 2002, the CA granted the respondents' prayer for Temporary Restraining Order and, in the Resolution[18] dated August 20, 2003, approved the respondent's injunction bond and directed the Division Clerk of Court to issue the writ of preliminary injunction.

On August 20, 2003, the Division Clerk of Court issued the Writ of Preliminary Injunction,[19] thereby enjoining the implementation of the Writ of Execution dated October 2, 2002.

On June 23, 2004, the CA rendered a Decision in favor of the respondent, the dispositive portion of which reads:

WHEREFORE, the petition is granted. The assailed order and writ of execution of the Regional Trial Court must be, as it is hereby, SET ASIDE. The trial court is hereby ordered to assess the appellate

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[15] *Rollo*, pp. 67-68.

[16] *Id.* at 41-65.

[17] CA *rollo*, pp. 95-97.

[18] *Id.* at 256-257.

[19] *Id.* at 258-259.

docket fees, if it has not done so, and allow the petitioner to pay such fees and give due course to the petitioner's appeal. No costs.

SO ORDERED.[20]

Aggrieved, petitioners filed a Motion for Reconsideration[21] on August 24, 2004, which, however, was denied by the CA in a Resolution[22] dated February 23, 2005.

Hence, petitioner filed this present petition raising the sole issue that:

THE COURT OF APPEALS PATENTLY ERRED IN REVERSING THE DECISION OF THE LOWER COURT AND ALLOWING RESPONDENT TO BELATEDLY PAY THE REQUIRED APPELLATE DOCKET AND OTHER LEGAL FEES.

Petitioners allege that since respondent failed to pay the docket and other legal fees at the time he filed the Notice of Appeal, his appeal was deemed not perfected in contemplation of the law. Thus, petitioners pray that the CA decision be set aside and a new one be rendered dismissing the respondent's appeal and ordering the execution of the RTC Decision dated June 28, 2002.

On the other hand, respondent, citing Section 9, Rule 41 of the Rules of Court, maintains that his appeal has been perfected by the mere filing of the notice of appeal. Respondent theorizes that with the perfection of his appeal, the trial court is now divested of jurisdiction to dismiss his appeal and, therefore, only the CA has jurisdiction to determine and rule on the propriety of his appeal. He raises the defense that his failure to pay the required docket and other legal fees was because the RTC Branch Clerk of Court did not make an assessment of the appeal fees to be paid when he filed the notice of appeal.

The petition is meritorious.

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[20] *Rollo,* pp. 30-38.

[21] CA *rollo,* pp. 336-350.

[22] *Rollo,* pp. 39-40.

In cases of ordinary appeal, Section 2, Rule 41 of the Rules of Court provides that the appeal to the CA in cases decided by the RTC in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the RTC (the court which rendered the judgment or final order appealed from) and serving a copy thereof upon the adverse party. Section 3 thereof states that the appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Concomitant with the filing of a notice of appeal is the payment of the required appeal fees within the 15-day reglementary period set forth in Section 4 of the said Rule. Thus,

> SEC. 4. *Appellate court docket and other lawful fees*.— Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

In reversing the ruling of the trial court, the CA cited *Yambao v. Court of Appeals*[23] as justification for giving due course to respondent's petition and ordering the belated payment of docket and other legal fees. In *Yambao*, the CA dismissed therein petitioners' appeal from the RTC decision for failure to pay the full amount of the required docket fee. Upon elevation of the case, the Court, however, ordered the CA to give due course to their appeal, and ruled that their subsequent payment of the ₱20.00 deficiency, even before the CA had passed upon their motion for reconsideration, was indicative of their good faith and willingness to comply with the Rules.

The ruling in *Yambao* is not applicable to the present case as herein respondent never made any payment of the docket and other lawful fees, not even an attempt to do so, simultaneous with his filing of the Notice of Appeal. Although respondent was able to file a timely Notice of Appeal, however, he failed to pay the docket and other legal fees, claiming that the Branch

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[23] G.R. No. 140894, November 27, 2000, 346 SCRA 141.

Clerk of Court did not issue any assessment. This procedural lapse on the part of the respondent rendered his appeal with the CA to be dismissible and, therefore, the RTC Decision, dated June 28, 2002, to be final and executory.

In *Far Corporation v. Magdaluyo*,[24] as with other subsequent cases[25] of the same ruling, the Court explained that the procedural requirement under Section 4 of Rule 41 is not merely directory, as the payment of the docket and other legal fees within the prescribed period is both mandatory and jurisdictional. It bears stressing that an appeal is not a right, but a mere statutory privilege. An ordinary appeal from a decision or final order of the RTC to the CA must be made within 15 days from notice. And within this period, the full amount of the appellate court docket and other lawful fees must be paid to the clerk of the court which rendered the judgment or final order appealed from. The requirement of paying the full amount of the appellate docket fees within the prescribed period is not a mere technicality of law or procedure. The payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appeal is not perfected. The appellate court does not acquire jurisdiction over the subject matter of the action and the Decision sought to be appealed from becomes final and executory. Further, under Section 1 (c), Rule 50, an appeal may be dismissed by the CA, on its own motion or on that of the appellee, on the ground of the non-payment of the docket and other lawful fees within the reglementary period as provided under Section 4 of Rule 41. The payment of the full amount of the docket fee is an indispensable step for the perfection

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[24] G.R. No. 148739, November 19, 2004, 443 SCRA 218, 226-227, 229. (Citations omitted.)

[25] *Rural Bank of the Seven Lakes (S.P.C.), Inc. v. Dan,* G.R. No. 174109, December 24, 2008, 575 SCRA 476, 488-489; *KLT Fruits, Inc. v. WSR Fruits, Inc.*, G.R. No. 174219, November 23, 2007, 538 SCRA 713, 727-728; *Fil-Estate Properties, Inc. v. Homena-Valencia*, G.R. No. 173942, October 15, 2007, 536 SCRA 252, 259-260; *Cu-Unjieng v. Court of Appeals*, G.R. No. 139596, January 24, 2006, 470 SCRA 594, 603-604; *Bacarra v. National Labor Relations Commission*, G.R. No. 162445, October 20, 2005, 473 SCRA 581, 586.

of an appeal. In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees.

Respondent's claim that his non-payment of docket and other lawful fees should be treated as mistake and excusable negligence, attributable to the RTC Branch Clerk of Court, is too superficial to warrant consideration. This is clearly negligence of respondent's counsel, which is not excusable. Negligence to be excusable must be one which ordinary diligence and prudence could not have guarded against.[26] Respondent's counsel filed a notice of appeal within the reglementary period for filing the same without, however, paying the appellate docket fees. He simply ignored the basic procedure of taking an appeal by filing a notice of appeal, coupled with the payment of the full amount of docket and other lawful fees. Respondent's counsel should keep abreast of procedural laws and his ignorance of the procedural requirements shall bind the respondent. In *National Power Corporation v. Laohoo*,[27] we ruled that therein counsel's failure to file the appeal in due time does not amount to excusable negligence. The non-perfection of the appeal on time is not a mere technicality. Besides, to grant therein petitioner's plea for the relaxation of the rules on technicality would disturb a well-entrenched ruling that could make uncertain when a judgment attains finality, leaving the same to depend upon the resourcefulness of a party in concocting implausible excuses to justify an unwarranted departure from the time-honored policy of the law that the period for the perfection of an appeal is mandatory and jurisdictional.

The CA took cognizance over the case, based on the wrong premise that when the RTC issued the Order dated August 5, 2002 giving due course to respondent's Notice of Appeal and directing the Branch Clerk of Court to transmit the entire records of the case to the CA, it *ipso facto* lost jurisdiction over the

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[26] *Ruiz v. Delos Santos*, G.R. No. 166386, January 27, 2009, 577 SCRA 29, 44. (Citations omitted.)

[27] G.R. No. 151973, July 23, 2009, 593 SCRA 564, 591.

case. Section 9,[28] Rule 41 of the Rules explains that the court of origin loses jurisdiction over the case only upon the perfection of the appeal filed in due time by the appellant and the expiration of the time to appeal of the other parties. Withal, prior to the transmittal of the original records of the case to the CA, the RTC may issue orders for the protection and preservation of the rights of the prevailing party, as in this case, the issuance of the writ of execution because the respondent's appeal was not perfected.

Moreover, Section 13, Rule 41 of the Rules states that the CA may dismiss an appeal taken from the RTC on the ground of non-payment of the docket and other lawful fees within the 15-day reglementary period:

> SEC 13. *Dismissal of appeal*. — Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may *motu proprio* or on motion dismiss the appeal for having been taken out of time, or for non-payment of the docket and other lawful fees within the reglementary period. (*As amended by A.M. No. 00-2-10-SC, May 1, 2000*.)

Since respondent's appeal was not perfected within the 15-day reglementary period, it was as if no appeal was actually taken. Therefore, the RTC retains jurisdiction to rule on pending incidents lodged before it, such as the petitioner's Motion for Reconsideration, to Dismiss Appeal, and for Issuance of Writ

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[28] SEC. 9. *Perfection of appeal, effect thereof.* — A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

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In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

x x x x x x x x x

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal.

of Execution, filed on August 26, 2002, which sought to set aside its Order dated August 5, 2002 that gave due course to respondent's Notice of Appeal, and directed the issuance of a writ of execution. Having no jurisdiction over the case, the prudent thing that the CA should have done was to dismiss the respondent's appeal for failure to pay the appeal fees, and declare that the RTC Decision dated June 28, 2002 has now become final and executory.

As an incidental matter on the propriety of petitioners' petition for review on *certiorari* under Rule 45 of the Rules, respondent raises the argument that since the subject of the present petition is the writ of preliminary injunction granted by the CA (in favor of the respondent enjoining the execution of the RTC Decision dated June 28, 2002), in CA-G.R. SP No. 73171, which is interlocutory in nature, petitioners' petition should be denied for being the wrong remedy. In other words, respondent advances the theory that since the assailed CA Decision dated June 23, 2004 partakes of an interlocutory order, *i.e.*, enjoining the finality of the RTC Decision dated June 28, 2002, petitioners should have availed of the remedy of a petition for *certiorari* under Rule 65, not a petition for review on *certiorari* under Rule 45.

Respondent's argument is unfounded. The proper remedy of a party aggrieved by a decision of the CA is a petition for review on *certiorari* under Rule 45, which is not identical to a petition for *certiorari* under Rule 65. Rule 45 provides that decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to Us by filing a petition for review on *certiorari*, which would be but a continuation of the appellate process over the original case.[29] Therefore, petitioners' filing of the present petition for review on *certiorari* under Rule 45 is the proper and adequate remedy to challenge the Decision dated

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[29] *Emcor Incorporated v. Sienes*, G.R. No. 152101, September 8, 2009, 598 SCRA 617, 626-627, citing *Mercado v. Court of Appeals*, G.R. No. 150241, November 4, 2004, 441 SCRA 463, 469; *Hanjin Engineering and Construction Co., Ltd. v. Court of Appeals*, G.R. No. 165910, April 10, 2006, 487 SCRA 78, 99.

June 24, 2004 and Resolution dated February 23, 2005 of the CA.

To recapitulate, one who seeks to avail of the right to appeal must strictly comply with the requirements of the rules, and failure to do so leads to the loss of the right to appeal.[30] The rules require that from the date of receipt of the assailed RTC order denying one's motion for reconsideration, an appellant may take an appeal to the CA by filing a notice of appeal with the RTC and paying the required docket and other lawful fees with the RTC Branch Clerk of Court, within the 15-day reglementary period for the perfection of an appeal. Otherwise, the appellant's appeal is not perfected, and the CA may dismiss the appeal on the ground of non-payment of docket and other lawful fees. As a consequence, the assailed RTC decision shall become final and executory and, therefore, the prevailing parties can move for the issuance of a writ of execution.

Since the CA erroneously took cognizance over the case, its Decision dated June 23, 2004 and Resolution dated February 23, 2005 should be overturned, and the Writ of Preliminary Injunction issued on August 20, 2003 should likewise be lifted. Thus, the RTC Decision dated June 28, 2002 is reinstated and, as the said decision having become final and executory, the case is remanded for its prompt execution.

While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises jurisdictional problem, as it deprives the appellate court of its jurisdiction over the appeal. After a decision is declared final and executory, vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case.[31]

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[30] *M.A. Santander Construction, Inc. v. Villanueva,* G.R. No. 136477, November 10, 2004, 441 SCRA 525, 528.

[31] *National Power Corporation v. Laohoo, supra* note 27.

WHEREFORE, the petition is *GRANTED*. The Decision dated June 23, 2004 and Resolution dated February 23, 2005 of the Court of Appeals, in CA-G.R. SP No. 73171, are *REVERSED and SET ASIDE*. The Writ of Preliminary Injunction, issued by the Court of Appeals on August 20, 2003, is *LIFTED*.

The Decision dated June 28, 2002 of the Regional Trial Court, Branch 31, Iloilo City is *REINSTATED* and, in view of its finality, the case is *REMANDED* for its prompt execution.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Brion,*[**] and *Sereno,*[***] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 169510. August 8, 2011]

ATOK BIG WEDGE COMPANY, INC., *petitioner, vs.* **JESUS P. GISON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS; PROPER VEHICLE FOR JUDICIAL REVIEW OF THE

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[*] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1059 dated August 1, 2011.

[**] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1056 dated July 27, 2011.

[***] Designated as an additional member, per Special Order No. 1028 dated June 21, 2011.

DECISIONS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC); NO APPEAL FROM THE DECISION OF THE NLRC.— [R]espondent's recourse to the CA was the proper remedy to question the resolution of the NLRC. It bears stressing that there is no appeal from the decision or resolution of the NLRC. As this Court enunciated in the case of *St. Martin Funeral Home v. NLRC*, the special civil action of *certiorari* under Rule 65 of the Rules of Civil Procedure, which is filed before the CA, is the proper vehicle for judicial review of decisions of the NLRC. The petition should be initially filed before the Court of Appeals in strict observance of the doctrine on hierarchy of courts as the appropriate forum for the relief desired. This Court not being a trier of facts, the resolution of unclear or ambiguous factual findings should be left to the CA as it is procedurally equipped for that purpose. From the decision of the Court of Appeals, an ordinary appeal under Rule 45 of the Rules of Civil Procedure before the Supreme Court may be resorted to by the parties. Hence, respondent's resort to the CA was appropriate under the circumstances.

2. LABOR AND SOCIAL LEGISLATION; EMPLOYER AND EMPLOYEE RELATIONSHIP; THE DETERMINATION OF THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIPS BETWEEN THE PARTIES IS WELL WITHIN THE PROVINCE OF THE LABOR ARBITER AND THE NLRC.— Well-entrenched is the doctrine that the existence of an employer-employee relationship is ultimately a question of fact and that the findings thereon by the Labor Arbiter and the NLRC shall be accorded not only respect but even finality when supported by substantial evidence. Being a question of fact, the determination whether such a relationship exists between petitioner and respondent was well within the province of the Labor Arbiter and the NLRC. Being supported by substantial evidence, such determination should have been accorded great weight by the CA in resolving the issue.

3. ID.; ID.; FOUR-FOLD TEST; CONTROL TEST, EXPLAINED.— To ascertain the existence of an employer-employee relationship jurisprudence has invariably adhered to the four-fold test, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power

of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test." Of these four, the last one is the most important. The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.

4. ID.; ID.; ID.; THE ABSENCE OF THE ELEMENT OF CONTROL ON THE PART OF THE EMPLOYER ENGENDERS A CONCLUSION THAT NO EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS BETWEEN THE PARTIES.— Applying the test, an employer-employee relationship is apparently absent in the case at bar. Among other things, respondent was not required to report everyday during regular office hours of petitioner. Respondent's monthly retainer fees were paid to him either at his residence or a local restaurant. More importantly, petitioner did not prescribe the manner in which respondent would accomplish any of the tasks in which his expertise as a liaison officer was needed; respondent was left alone and given the freedom to accomplish the tasks using his own means and method. Respondent was assigned tasks to perform, but petitioner did not control the manner and methods by which respondent performed these tasks. Verily, the absence of the element of control on the part of the petitioner engenders a conclusion that he is not an employee of the petitioner.

5. ID.; ID.; ID.; THE RESPONDENT'S LENGTH OF SERVICE AND THE COMPANY'S REPEATED ACT OF ASSIGNING HIM SOME TASKS TO BE PERFORMED DID NOT RESULT TO HIS ENTITLEMENT TO THE RIGHTS AND PRIVILEGES OF A REGULAR EMPLOYEE.— Contrary to the conclusion of the CA, respondent is not an employee, much more a regular employee of petitioner. The appellate court's premise that regular employees are those who perform activities which are desirable and necessary for the business of the employer is not determinative in this case. In fact, any agreement may provide that one party shall render services

for and in behalf of another, no matter how necessary for the latter's business, even without being hired as an employee. Hence, respondent's length of service and petitioner's repeated act of assigning respondent some tasks to be performed did not result to respondent's entitlement to the rights and privileges of a regular employee.

6. ID.; ID.; ID.; ARTICLE 280 OF THE LABOR CODE IS NOT THE YARDSTICK FOR DETERMINING THE EXISTENCE OF AN EMPLOYMENT RELATIONSHIP.— Furthermore, despite the fact that petitioner made use of the services of respondent for eleven years, he still cannot be considered as a regular employee of petitioner. Article 280 of the Labor Code, in which the lower court used to buttress its findings that respondent became a regular employee of the petitioner, is not applicable in the case at bar. Indeed, the Court has ruled that said provision is not the yardstick for determining the existence of an employment relationship because it merely distinguishes between two kinds of employees, *i.e.*, regular employees and casual employees, for purposes of determining the right of an employee to certain benefits, to join or form a union, or to security of tenure; it does not apply where the existence of an employment relationship is in dispute. It is, therefore, erroneous on the part of the Court of Appeals to rely on Article 280 in determining whether an employer-employee relationship exists between respondent and the petitioner.

7. ID.; ID.; ID.; ABSENT EMPLOYER-EMPLOYEE RELATIONSHIP, THE TERMINATION OF THE PARTY'S SERVICES AFTER DUE NOTICE WILL NOT CONSTITUTE ILLEGAL DISMISSAL.— Considering that there is no employer-employee relationship between the parties, the termination of respondent's services by the petitioner after due notice did not constitute illegal dismissal warranting his reinstatement and the payment of full backwages, allowances and other benefits.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.

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 May 31, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 87846, and the Resolution[2] dated August 23, 2005 denying petitioner's motion for reconsideration.

The procedural and factual antecedents are as follows:

Sometime in February 1992, respondent Jesus P. Gison was engaged as part-time consultant on retainer basis by petitioner Atok Big Wedge Company, Inc. through its then Asst. Vice-President and Acting Resident Manager, Rutillo A. Torres. As a consultant on retainer basis, respondent assisted petitioner's retained legal counsel with matters pertaining to the prosecution of cases against illegal surface occupants within the area covered by the company's mineral claims. Respondent was likewise tasked to perform liaison work with several government agencies, which he said was his expertise.

Petitioner did not require respondent to report to its office on a regular basis, except when occasionally requested by the management to discuss matters needing his expertise as a consultant. As payment for his services, respondent received a retainer fee of ₱3,000.00 a month,[3] which was delivered to him either at his residence or in a local restaurant. The parties executed a retainer agreement, but such agreement was misplaced and can no longer be found.

The said arrangement continued for the next eleven years.

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[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Salvador J. Valdez, Jr. and Mariano C. del Castillo (now a member of this Court), concurring; *rollo*, pp. 195-204.

[2] *Id.* at 215-216.

[3] *Rollo,* pp. 37-43.

Sometime thereafter, since respondent was getting old, he requested that petitioner cause his registration with the Social Security System (SSS), but petitioner did not accede to his request. He later reiterated his request but it was ignored by respondent considering that he was only a retainer/consultant. On February 4, 2003, respondent filed a Complaint[4] with the SSS against petitioner for the latter's refusal to cause his registration with the SSS.

On the same date, Mario D. Cera, in his capacity as resident manager of petitioner, issued a Memorandum[5] advising respondent that within 30 days from receipt thereof, petitioner is terminating his retainer contract with the company since his services are no longer necessary.

On February 21, 2003, respondent filed a Complaint[6] for illegal dismissal, unfair labor practice, underpayment of wages, non-payment of 13th month pay, vacation pay, and sick leave pay with the National Labor Relations Commission (NLRC), Regional Arbitration Branch (RAB), Cordillera Administrative Region, against petitioner, Mario D. Cera, and Teofilo R. Asuncion, Jr. The case was docketed as NLRC Case No. RAB-CAR-02-0098-03.

Respondent alleged that:

x x x [S]ometime in January 1992, Rutillo A. Torres, then the resident manager of respondent Atok Big Wedge Co., Inc., or Atok for brevity, approached him and asked him if he can help the company's problem involving the 700 million pesos crop damage claims of the residents living at the minesite of Atok. He participated in a series of dialogues conducted with the residents. Mr. Torres offered to pay him ₱3,000.00 per month plus representation expenses. It was also agreed upon by him and Torres that his participation in resolving the problem was temporary and there will be no employer-employee relationship between him and Atok. It was also agreed upon that his compensation,

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[4] CA *rollo*, p. 19.

[5] *Id.* at 72.

[6] *Rollo*, pp. 46-47.

allowances and other expenses will be paid through disbursement vouchers.

On February 1, 1992 he joined Atok. One week thereafter, the aggrieved crop damage claimants barricaded the only passage to and from the minesite. In the early morning of February 1, 1992, a dialogue was made by Atok and the crop damage claimants. Unfortunately, Atok's representatives, including him, were virtually held hostage by the irate claimants who demanded on the spot payment of their claims. He was able to convince the claimants to release the company representatives pending referral of the issue to higher management.

A case was filed in court for the lifting of the barricades and the court ordered the lifting of the barricade. While Atok was prosecuting its case with the claimants, another case erupted involving its partner, Benguet Corporation. After Atok parted ways with Benguet Corporation, some properties acquired by the partnership and some receivables by Benguet Corporation was the problem. He was again entangled with documentation, conferences, meetings, planning, execution and clerical works. After two years, the controversy was resolved and Atok received its share of the properties of the partnership, which is about 5 million pesos worth of equipment and condonation of Atok's accountabilities with Benguet Corporation in the amount of ₱900,000.00.

In the meantime, crop damage claimants lost interest in pursuing their claims against Atok and Atok was relieved of the burden of paying 700 million pesos. In between attending the problems of the crop damage issue, he was also assigned to do liaison works with the SEC, Bureau of Mines, municipal government of Itogon, Benguet, the Courts and other government offices.

After the crop damage claims and the controversy were resolved, he was permanently assigned by Atok to take charge of some liaison matters and public relations in Baguio and Benguet Province, and to report regularly to Atok's office in Manila to attend meetings and so he had to stay in Manila at least one week a month.

Because of his length of service, he invited the attention of the top officers of the company that he is already entitled to the benefits due an employee under the law, but management ignored his requests. However, he continued to avail of his representation expenses and reimbursement of company-related expenses. He also enjoyed the privilege of securing interest free salary loans payable in one year through salary deduction.

In the succeeding years of his employment, he was designated as liaison officer, public relation officer and legal assistant, and to assist in the ejection of illegal occupants in the mining claims of Atok.

Since he was getting older, being already 56 years old, he reiterated his request to the company to cause his registration with the SSS. His request was again ignored and so he filed a complaint with the SSS. After filing his complaint with the SSS, respondents terminated his services.[7]

On September 26, 2003, after the parties have submitted their respective pleadings, Labor Arbiter Rolando D. Gambito rendered a Decision[8] ruling in favor of the petitioner. Finding no employer-employee relationship between petitioner and respondent, the Labor Arbiter dismissed the complaint for lack of merit.

Respondent then appealed the decision to the NLRC.

On July 30, 2004, the NLRC, Second Division, issued a Resolution[9] affirming the decision of the Labor Arbiter. Respondent filed a Motion for Reconsideration, but it was denied in the Resolution[10] dated September 30, 2004.

Aggrieved, respondent filed a petition for review under Rule 65 of the Rules of Court before the CA questioning the decision and resolution of the NLRC, which was later docketed as CA-G.R. SP No. 87846. In support of his petition, respondent raised the following issues:

a) Whether or not the Decision of the Honorable Labor Arbiter and the subsequent Resolutions of the Honorable Public Respondent affirming the same, are in harmony with the law and the facts of the case;

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[7] CA *rollo*, pp. 101-102.

[8] *Id.* at 101-106.

[9] *Id.* at 149-157.

[10] *Rollo*, pp. 162-163.

b) Whether or not the Honorable Labor Arbiter Committed a Grave Abuse of Discretion in Dismissing the Complaint of Petitioner and whether or not the Honorable Public Respondent Committed a Grave Abuse of Discretion when it affirmed the said Decision.[11]

On May 31, 2005, the CA rendered the assailed Decision annulling and setting aside the decision of the NLRC, the decretal portion of which reads:

WHEREFORE, the petition is **GRANTED**. The assailed *Resolution* of the National Labor Relations Commission dismissing petitioner's complaint for illegal dismissal is **ANNULLED** and **SET ASIDE**. Private respondent Atok Big Wedge Company Incorporated is **ORDERED** to reinstate petitioner Jesus P. Gison to his former or equivalent position without loss of seniority rights and to pay him full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time these were withheld from him up to the time of his actual and effective reinstatement. This case is ordered **REMANDED** to the Labor Arbiter for the proper computation of backwages, allowances and other benefits due to petitioner. Costs against private respondent Atok Big Wedge Company Incorporated.

SO ORDERED.[12]

In ruling in favor of the respondent, the CA opined, among other things, that both the Labor Arbiter and the NLRC may have overlooked Article 280 of the Labor Code,[13] or the provision

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[11] *Id.* at 169.

[12] *Id.* at 203.

[13] ART. 280. *Regular and casual employment.* — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

which distinguishes between two kinds of employees, *i.e.*, regular and casual employees. Applying the provision to the respondent's case, he is deemed a regular employee of the petitioner after the lapse of one year from his employment. Considering also that respondent had been performing services for the petitioner for eleven years, respondent is entitled to the rights and privileges of a regular employee.

The CA added that although there was an agreement between the parties that respondent's employment would only be temporary, it clearly appears that petitioner disregarded the same by repeatedly giving petitioner several tasks to perform. Moreover, although respondent may have waived his right to attain a regular status of employment when he agreed to perform these tasks on a temporary employment status, still, it was the law that recognized and considered him a regular employee after his first year of rendering service to petitioner. As such, the waiver was ineffective.

Hence, the petition assigning the following errors:

I. WHETHER OR NOT THE COURT OF APPEALS DECIDED QUESTIONS OF SUBSTANCE CONTRARY TO LAW AND APPLICABLE RULINGS OF THIS HONORABLE COURT WHEN IT GAVE DUE COURSE TO THE PETITION FOR *CERTIORARI* DESPITE THE FACT THAT THERE WAS NO SHOWING THAT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION.

II. WHETHER OR NOT THE COURT OF APPEALS DECIDED QUESTIONS OF SUBSTANCE CONTRARY TO THE LAW AND APPLICABLE RULINGS OF THIS HONORABLE COURT WHEN IT BASED ITS FINDING THAT RESPONDENT IS ENTITLED TO REGULAR EMPLOYMENT ON A PROVISION OF LAW THAT THIS HONORABLE COURT HAS DECLARED TO BE INAPPLICABLE IN CASE THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP IS IN DISPUTE OR IS THE FACT IN ISSUE.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

III. WHETHER OR NOT THE COURT OF APPEALS DECIDED QUESTIONS OF SUBSTANCE CONTRARY TO LAW AND APPLICABLE RULINGS OF THIS HONORABLE COURT WHEN IT ERRONEOUSLY FOUND THAT RESPONDENT IS A REGULAR EMPLOYEE OF THE COMPANY.

IV. WHETHER OR NOT THE COURT OF APPEALS DECIDED QUESTIONS OF SUBSTANCE CONTRARY TO LAW AND APPLICABLE RULINGS OF THIS HONORABLE COURT WHEN IT ERRONEOUSLY DIRECTED RESPONDENT'S REINSTATEMENT DESPITE THE FACT THAT THE NATURE OF THE SERVICES HE PROVIDED TO THE COMPANY WAS SENSITIVE AND CONFIDENTIAL.[14]

Petitioner argues that since the petition filed by the respondent before the CA was a petition for *certiorari* under Rule 65 of the Rules of Court, the CA should have limited the issue on whether or not there was grave abuse of discretion on the part of the NLRC in rendering the resolution affirming the decision of the Labor Arbiter.

Petitioner also posits that the CA erred in applying Article 280 of the Labor Code in determining whether there was an employer-employee relationship between the petitioner and the respondent. Petitioner contends that where the existence of an employer-employee relationship is in dispute, Article 280 of the Labor Code is inapplicable. The said article only set the distinction between a casual employee from a regular employee for purposes of determining the rights of an employee to be entitled to certain benefits.

Petitioner insists that respondent is not a regular employee and not entitled to reinstatement.

On his part, respondent maintains that he is an employee of the petitioner and that the CA did not err in ruling in his favor.

The petition is meritorious.

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[14] *Rollo*, p. 292.

At the outset, respondent's recourse to the CA was the proper remedy to question the resolution of the NLRC. It bears stressing that there is no appeal from the decision or resolution of the NLRC. As this Court enunciated in the case of *St. Martin Funeral Home v. NLRC*,[15] the special civil action of *certiorari* under Rule 65 of the Rules of Civil Procedure, which is filed before the CA, is the proper vehicle for judicial review of decisions of the NLRC. The petition should be initially filed before the Court of Appeals in strict observance of the doctrine on hierarchy of courts as the appropriate forum for the relief desired.[16] This Court not being a trier of facts, the resolution of unclear or ambiguous factual findings should be left to the CA as it is procedurally equipped for that purpose. From the decision of the Court of Appeals, an ordinary appeal under Rule 45 of the Rules of Civil Procedure before the Supreme Court may be resorted to by the parties. Hence, respondent's resort to the CA was appropriate under the circumstances.

Anent the primordial issue of whether or not an employer-employee relationship exists between petitioner and respondent.

Well-entrenched is the doctrine that the existence of an employer-employee relationship is ultimately a question of fact and that the findings thereon by the Labor Arbiter and the NLRC shall be accorded not only respect but even finality when supported by substantial evidence.[17] Being a question of fact, the determination whether such a relationship exists between petitioner and respondent was well within the province of the Labor Arbiter and the NLRC. Being supported by substantial evidence, such determination should have been accorded great weight by the CA in resolving the issue.

To ascertain the existence of an employer-employee relationship jurisprudence has invariably adhered to the four-

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[15] 356 Phil. 811 (1998).

[16] *Id.* at 824.

[17] *Abante, Jr. v. Lamadrid Bearing & Parts Corp.*, G.R. No. 159890, May 28, 2004, 430 SCRA 368, 378.

fold test, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test."[18] Of these four, the last one is the most important.[19] The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.[20]

Applying the aforementioned test, an employer-employee relationship is apparently absent in the case at bar. Among other things, respondent was not required to report everyday during regular office hours of petitioner. Respondent's monthly retainer fees were paid to him either at his residence or a local restaurant. More importantly, petitioner did not prescribe the manner in which respondent would accomplish any of the tasks in which his expertise as a liaison officer was needed; respondent was left alone and given the freedom to accomplish the tasks using his own means and method. Respondent was assigned tasks to perform, but petitioner did not control the manner and methods by which respondent performed these tasks. Verily, the absence of the element of control on the part of the petitioner engenders a conclusion that he is not an employee of the petitioner.

Moreover, the absence of the parties' retainership agreement notwithstanding, respondent clearly admitted that petitioner hired him in a limited capacity only and that there will be no employer-

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[18] *Philippine Global Communication, Inc. v. De Vera*, G.R. No. 157214, June 7, 2005, 459 SCRA 260, 268.

[19] *Ushio Marketing v. NLRC*, G.R. No. 124551, 28 August 1998, 294 SCRA 673; *Insular Life Assurance Co., Ltd. v. NLRC*, G.R. No. 119930, March 12, 1998, 287 SCRA 476.

[20] *Abante, Jr. v. Lamadrid Bearing & Parts Corp.*, *supra* note 17, at 379.

employee relationship between them. As averred in respondent's Position Paper:[21]

> 2. For the participation of complainant regarding this particular problem of Atok, Mr. Torres offered him a pay in the amount of Php3,000.00 per month plus representation expenses. *It was also agreed by Mr. Torres and the complainant that his participation on this particular problem of Atok will be temporary since the problem was then contemplated to be limited in nature, hence, there will be no employer-employee relationship between him and Atok.* Complainant agreed on this arrangement. It was also agreed that complainant's compensations, allowances, representation expenses and reimbursement of company- related expenses will be processed and paid through disbursement vouchers;[22]

Respondent was well aware of the agreement that he was hired merely as a liaison or consultant of the petitioner and he agreed to perform tasks for the petitioner on a temporary employment status only. However, respondent anchors his claim that he became a regular employee of the petitioner based on his contention that the "temporary" aspect of his job and its "limited" nature could not have lasted for eleven years unless some time during that period, he became a regular employee of the petitioner by continually performing services for the company.

Contrary to the conclusion of the CA, respondent is not an employee, much more a regular employee of petitioner. The appellate court's premise that regular employees are those who perform activities which are desirable and necessary for the business of the employer is not determinative in this case. In fact, any agreement may provide that one party shall render services for and in behalf of another, no matter how necessary for the latter's business, even without being hired as an employee.[23]

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[21] *Rollo*, pp. 48-70. (Italics supplied.)

[22] *Id.* at 50.

[23] *Philippine Global Communications, Inc. v. De Vera*, *supra* note 18, at 274.

Hence, respondent's length of service and petitioner's repeated act of assigning respondent some tasks to be performed did not result to respondent's entitlement to the rights and privileges of a regular employee.

Furthermore, despite the fact that petitioner made use of the services of respondent for eleven years, he still cannot be considered as a regular employee of petitioner. Article 280 of the Labor Code, in which the lower court used to buttress its findings that respondent became a regular employee of the petitioner, is not applicable in the case at bar. Indeed, the Court has ruled that said provision is not the yardstick for determining the existence of an employment relationship because it merely distinguishes between two kinds of employees, *i.e.*, regular employees and casual employees, for purposes of determining the right of an employee to certain benefits, to join or form a union, or to security of tenure; it does not apply where the existence of an employment relationship is in dispute.[24] It is, therefore, erroneous on the part of the Court of Appeals to rely on Article 280 in determining whether an employer-employee relationship exists between respondent and the petitioner.

Considering that there is no employer-employee relationship between the parties, the termination of respondent's services by the petitioner after due notice did not constitute illegal dismissal warranting his reinstatement and the payment of full backwages, allowances and other benefits.

WHEREFORE, premises considered, the petition is *GRANTED*. The Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 87846, are *REVERSED* and *SET ASIDE*. The Resolutions dated July 30, 2004 and September 30, 2004 of the National Labor Relations Commission are *REINSTATED*.

SO ORDERED.

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[24] *Purefoods Corporation (now San Miguel Purefoods Company, Inc.) v. National Labor Relations Commission*, G.R. No. 172241, November 20, 2008, 571 SCRA 406, 412; *Philippine Global Communications, Inc. v. De Vera*, *supra* note 18, at 274.

Carpio,[*] *Velasco, Jr. (Chairperson), Brion,*[**] and *Sereno,*[***] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 194031. August 8, 2011]

JOBEL ENTERPRISES and/or MR. BENEDICT LIM, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION (Seventh Division, Quezon City) and ERIC MARTINEZ, SR.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; BOND REQUIREMENT; COMPLIED WITH.— [T]he company complied with the NLRC directive by posting a surety bond in the required amount within the 10-day period; it received a copy of the NLRC resolution directing it to post an additional cash or surety bond on October 13, 2008 and posted the bond on October 23, 2008. The company likewise submitted a joint declaration between the company representative and the surety company on the period of effectivity of the bond, and the documents on the legal status of the surety company. The NLRC grossly erred, therefore, in declaring that the company failed to address the issue of its failure to post the required bond. The CA grossly failed to consider this lapse.

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[*] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1059 dated August 1, 2011.

[**] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1028 dated June 21, 2011.

[***] Designated as an additional member, per Special Order No. 1056 dated July 27, 2011.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ATTACHMENT OF THE CERTIFIED TRUE COPY OF THE ASSAILED DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION ON THE MOTION FOR RECONSIDERATION CONSIDERED SUBSTANTIAL COMPLIANCE WITH THE RULES.— [T]he CA's refusal to consider the petition was the absence of a duplicate original or certified true copy of the assailed NLRC decision, in violation of Section 3, Rule 46 of the Rules of Court (in relation to Section 1, Rule 65). The company though corrected the procedural lapse by attaching a certified copy of the NLRC decision to its motion for reconsideration. At this point, the CA should have at least considered the merits of the petitioners' case as we did in *Gutierrez v. Secretary of the Department of Labor and Employment*. We held in that case that while "what [were] submitted were mere photocopies[,] there was substantial compliance with the Rules since petitioner attached to her Supplemental Motion for Reconsideration certified true copies of the questioned DOLE Orders."

3. ID.; ID.; ID.; DENIAL THEREOF BASED ON AN OVERLY RIGID APPLICATION OF THE RULES OF PROCEDURE, NOT PROPER.— Our own examination of the records shows that the company's case is not, on its face, unmeritorious and should have been considered further to determine what really transpired between the parties. For instance, the company argued that it did not dismiss Martinez. It claimed that Martinez refused to return to work and, during conciliation, demanded outright that he be paid ₱300,000.00, manifesting at the same time that he no longer wanted to work for the company. Before the labor arbiter, the company even manifested its willingness to accept Martinez back to work as no dismissal actually took place. Thus, the concrete issue posed was whether Martinez had been dismissed or had simply walked out of his job. Under these circumstances, we find that the CA precipitately denied the petition for *certiorari* based on an overly rigid application of the rules of procedure. In effect, it sacrificed substance to form in a situation where the petitioners' recourse was not patently frivolous or meritless. This is a matter of substantial justice — in fact, a lack of it — that we should not allow to remain uncorrected.

APPEARANCES OF COUNSEL

Jose Manolo V. Garcia and Orlie A. Elauria for petitioners.
The Solicitor General for public respondent.
Napoleon C. Banzuela, Jr. for private respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] before us, seeking the reversal of the resolutions dated June 9, 2010[2] and October 5, 2010[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 113980.

The Antecedents

The petitioner Jobel Enterprises (*the company*) hired respondent Eric Martinez, Sr. as driver in 2004. Martinez allegedly performed well during the first few months of his employment, but later became stubborn, sluggish and often came late to work.

On January 27, 2005, Martinez had a fight with one of his co-employees and nephew, Roderick Briones. The company's proprietor, Benedict Lim, pacified the two and instructed Martinez to come early the next day for an important delivery. Martinez allegedly did not report for work the following day. The company's efforts to contact Martinez, through Briones, failed.

On March 6, 2006, the company received a notice of hearing from the Department of Labor and Employment in Region IV-A (*DOLE-RO-IV-A*) in relation to an illegal dismissal complaint filed by Martinez. The DOLE-RO-IV-A failed to effect an amicable settlement between the parties; Martinez allegedly asked

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[1] *Rollo,* pp. 8-19; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 25-26; penned by Associate Justice Jane Aurora C. Lantion, and concurred in by Associate Justices Portia Aliño-Hormachuelos and Japar B. Dimaampao.

[3] *Id.* at 22-23.

for ₱300,000.00 as settlement and manifested that he did not want to work anymore. Thereafter, Martinez formally filed an illegal dismissal complaint, with money claims, against the company and Lim.

The Compulsory Arbitration Rulings and Related Incidents

On compulsory arbitration, Labor Arbiter Danna M. Castillon ruled that Martinez had been illegally dismissed.[4] She awarded him backwages and separation pay amounting to ₱479,529.49, and wage differentials and 13th month pay in the combined amount of ₱53,363.44.

On May 16, 2008, the petitioners appealed to the National Labor Relations Commission (*NLRC*), filing a notice of appeal, a memorandum of appeal and a motion to reduce bond. They likewise deposited a Rizal Commercial Banking Corporation manager's check for ₱100,000.00.[5] In its order of September 15, 2008,[6] the NLRC denied the company's motion to reduce bond and directed the posting of an additional cash or surety bond for ₱432,892.93 within ten (10) days.

The company complied by posting a surety bond in the required amount,[7] but Martinez moved for the immediate dismissal of the appeal; he questioned the effectivity of the surety bond and the legal standing of the surety company.[8] In answer, the company asked for a denial of the motion and submitted a copy of the joint declaration by the company's authorized representative and the Executive Vice-President of the surety company[9] that the posted surety bond is genuine and shall be effective until

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[4] Decision dated March 12, 2008; CA *rollo*, pp. 36-43.

[5] *Id.* at 66.

[6] *Id.* at 106-108.

[7] *Id.* at 111.

[8] *Id.* at 130-134.

[9] *Id.* at 113.

final disposition of the case. It also submitted a copy of a certificate of authority issued by the Insurance Commission,[10] and a certificate of accreditation and authority issued by this Court.[11]

The NLRC dismissed the appeal[12] and denied the company's subsequent motion for reconsideration.[13] The company, thereafter, elevated the case to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Decision

The CA issued a resolution dismissing the petition on June 9, 2010 for the petitioners' failure to attach to the petition a duplicate original or certified true copy of the assailed NLRC decision;[14] the submitted copy was a mere photocopy, in violation of Section 3, Rule 46, in relation to Section 1, Rule 65 of the Rules of Court. The CA also denied the petitioners' plea for a liberal interpretation of the rules in their motion for reconsideration,[15] to which the petitioners attached a certified true copy of the assailed NLRC decision.

The Petition

The company now asks the Court to set aside the CA rulings on the ground that the dismissal of the petition was for purely technical reason, which it rectified when it attached a certified true copy of the assailed NLRC decision to its motion for reconsideration. The company pleads for understanding, claiming that its failure to initially comply with the rules was unintentional and was due purely to the oversight of its counsel who was then rushing the preparation of the final print of the petition and its attachments, while also working on other cases.

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[10] *Id.* at 117.

[11] *Id.* at 116.

[12] Decision dated October 7, 2009; *id.* at 27-31.

[13] *Rollo*, pp. 61-62.

[14] *Supra* note 2.

[15] *Supra* note 3.

The Case for Martinez

In his comment dated April 1, 2011,[16] Martinez prays for a dismissal of the petition. He submits that the filing of an appeal is a privilege and not a right; the appealing party must comply with the requirements of the law, specifically the submission of a cash or surety bond to answer for the monetary award. He points out that the award in the present case is more than ₱500,000.00, but the company posted a cash bond of only ₱100,000.00. He adds that although the company filed a motion to reduce bond, it must be approved by the NLRC within the same period to perfect an appeal or ten (10) days from receipt of a copy of the labor arbiter's decision. He argues that the company already lost the right to appeal, *since the NLRC's denial of the motion came after the 10-day appeal period*. He stresses that the filing of a motion to reduce bond does not suspend the running of the period to appeal.

Martinez did not comment on the CA resolutions dismissing the petition for *certiorari*.

The Court's Ruling

We find merit in the petition.

We note that this case was dismissed on purely technical grounds at both the NLRC and the CA levels, in total disregard of the merits of the case. The NLRC dismissed the company's appeal for non-perfection for its failure "to substantially address the issue of failure to post the required appeal bond pursuant to Section 6, Rule VI of the 2005 Revised Rules of Procedure of the NLRC."[17] In summarily throwing out the appeal, the NLRC apparently forgot that earlier, or on September 15, 2008, it gave the company "ten (10) unextendible days xxx within which to file an additional cash or surety bond in the amount of FOUR HUNDRED THIRTY TWO THOUSAND EIGHT HUNDRED NINETY TWO PESOS and 93/100 (₱432,892.93)"[18] when it

[16] *Rollo*, pp. 71-78.

[17] CA *rollo*, p. 154.

[18] *Id.* at 107.

denied the company's motion to reduce bond. The NLRC even warned that "[t]heir failure to post the required bond shall result in the dismissal of the appeal for non-perfection."[19]

As earlier mentioned, the company complied with the NLRC directive by posting a surety bond in the required amount[20] within the 10-day period; it received a copy of the NLRC resolution directing it to post an additional cash or surety bond on October 13, 2008 and posted the bond on October 23, 2008. The company likewise submitted a joint declaration between the company representative and the surety company on the period of effectivity of the bond,[21] and the documents on the legal status of the surety company.[22] The NLRC grossly erred, therefore, in declaring that the company failed to address the issue of its failure to post the required bond. The CA grossly failed to consider this lapse.

We note, too, that the CA's refusal to consider the petition was the absence of a duplicate original or certified true copy of the assailed NLRC decision, in violation of Section 3, Rule 46 of the Rules of Court (in relation to Section 1, Rule 65). The company though corrected the procedural lapse by attaching a certified copy of the NLRC decision to its motion for reconsideration. At this point, the CA should have at least considered the merits of the petitioners' case as we did in *Gutierrez v. Secretary of the Department of Labor and Employment*.[23] We held in that case that while "what [were] submitted were mere photocopies[,] there was substantial compliance with the Rules since petitioner attached to her Supplemental Motion for Reconsideration certified true copies of the questioned DOLE Orders."[24]

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[19] *Id.* at 107.

[20] *Supra* note 7.

[21] *Supra* note 9.

[22] CA *rollo*, p. 14, pars. 5.5, 5.6 & 5.7.

[23] 488 Phil. 110 (2004).

[24] *Id.* at 123.

Our own examination of the records shows that the company's case is not, on its face, unmeritorious and should have been considered further to determine what really transpired between the parties. For instance, the company argued that it did not dismiss Martinez. It claimed that Martinez refused to return to work and, during conciliation, demanded outright that he be paid ₱300,000.00, manifesting at the same time that he no longer wanted to work for the company. Before the labor arbiter, the company even manifested its willingness to accept Martinez back to work as no dismissal actually took place.[25] Thus, the concrete issue posed was whether Martinez had been dismissed or had simply walked out of his job.

Under these circumstances, we find that the CA precipitately denied the petition for *certiorari* based on an overly rigid application of the rules of procedure. In effect, it sacrificed substance to form in a situation where the petitioners' recourse was not patently frivolous or meritless. This is a matter of substantial justice — in fact, a lack of it — that we should not allow to remain uncorrected.

WHEREFORE, premises considered, the petition is granted. The assailed resolutions of the Court of Appeals are *SET ASIDE*. The case is *REMANDED* to the National Labor Relations Commission for its resolution of the petitioners' appeal with utmost dispatch. Costs against respondent Eric Martinez, Sr.

SO ORDERED.

Carpio (Chairperson), Bersamin,[*] *Perez,* and *Sereno, JJ.,* concur.

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[25] *Rollo,* p. 32.

[*] Designated as Additional Member of the Second Division per Special Order No. 1053 dated July 29, 2011.

EN BANC

[G.R. No. 187858. August 9, 2011]

THE CIVIL SERVICE COMMISSION, *petitioner, vs.* **RICHARD G. CRUZ,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GENERAL RULE; PUBLIC OFFICIALS AND EMPLOYEES ARE ONLY ENTITLED TO COMPENSATION IF THEY RENDER SERVICE; EXCEPTION; BACK SALARIES MAY BE AWARDED EVEN FOR UNWORKED DAYS TO ILLEGALLY DISMISSED OR UNJUSTLY SUSPENDED EMPLOYEES.— The issue of entitlement to back salaries, for the period of suspension pending appeal, of a government employee who had been dismissed but was subsequently exonerated is settled in our jurisdiction. The Court's starting point for this outcome is the "no work-no pay" principle — public officials are only entitled to compensation if they render service. We have excepted from this general principle and awarded back salaries even for unworked days to illegally dismissed or unjustly suspended employees based on the constitutional provision that "no officer or employee in the civil service shall be removed or suspended except for cause provided by law"; to deny these employees their back salaries amounts to unwarranted punishment after they have been exonerated from the charge that led to their dismissal or suspension.

2. ID.; ID.; ID.; TERMINATION OF EMPLOYMENT; CONDITIONS FOR THE AWARD OF BACK SALARIES; THE GOVERNMENT EMPLOYEE MUST NOT ONLY BE FOUND INNOCENT OF THE CHARGES; HIS SUSPENSION MUST LIKEWISE BE SHOWN TO BE UNJUSTIFIED; RATIONALE.— [T]he Court crafted two conditions before an employee may be entitled to back salaries: a) the employee must be found innocent of the charges ***and*** b) his suspension must be unjustified. The reasoning behind these

conditions runs this way: although an employee is considered under preventive suspension during the pendency of a successful appeal, the law itself only authorizes preventive suspension for a fixed period; hence, his suspension beyond this fixed period is unjustified and must be compensated.

3. ID.; ID.; ID.; ID.; ID.; THE CONDITION THAT THE SUSPENSION/DISMISSAL MUST BE UNJUSTIFIED IS MET UPON A SHOWING THAT THE SEPARATION FROM OFFICE IS NOT WARRANTED UNDER THE CIRCUMSTANCES BECAUSE THE GOVERNMENT EMPLOYEE GAVE NO CAUSE FOR SUSPENSION OR DISMISSAL.— On the suspension/dismissal aspect, this second condition is met upon a showing that the separation from office is not warranted under the circumstances because the government employee gave no cause for suspension or dismissal. This squarely applies in cases where the government employee did not commit the offense charged, punishable by suspension or dismissal (total exoneration); or the government employee is found guilty of another offense for an act different from that for which he was charged.

4. ID.; ID.; ID.; ID.; CONDITIONS FOR THE AWARD OF BACK SALARIES MET IN CASE AT BAR; AWARD OF BACK SALARIES TO RESPONDENT FOR THE PERIOD OF HIS PREVENTIVE SUSPENSION PENDING APPEAL, PROPER.— We find that the CA was correct in awarding the respondent his back salaries during the period he was suspended from work, following his dismissal until his reinstatement to his former position. The records show that the charges of grave misconduct and dishonesty against him were not substantiated. As the CSC found, there was no corrupt motive showing malice on the part of the respondent in making the complained utterance. Likewise, the CSC found that the charge of dishonesty was well refuted by the respondent's evidence showing that he rendered overtime work on the days in question. We fully respect the factual findings of the CSC especially since the CA affirmed these factual findings. However, on the legal issue of the respondent's entitlement to back salaries, we are fully in accord with the CA's conclusion that the two conditions to justify the award of back salaries exist in the present case. The first condition was met since the offense which the

respondent was found guilty of (violation of reasonable rules and regulations) stemmed from an act (failure to log in and log out) different from the act of dishonesty (*claiming* overtime pay despite his *failure* to render overtime work) that he was charged with. The second condition was met as the respondent's committed offense merits neither dismissal from the service nor suspension (for more than one month), but only reprimand. In sum, the respondent is entitled to back salaries from the time he was dismissed by the CMWD until his reinstatement to his former position — *i.e.*, for the period of his preventive suspension pending appeal. For the period of his preventive suspension pending investigation, the respondent is not entitled to any back salaries per our ruling in *Hon. Gloria*.

5. ID.; ID.; ID.; ID.; TERM "EXONERATION" DEFINED AND EXPLAINED; RULING IN BANGALISAN CASE (342 PHIL. 586), CITED.— The Court had the occasion to explain what constitutes "exoneration" in *Bangalisan v. Hon. CA*, the respondent's cited case. x x x *Bangalisan* clearly laid down the principle that if the exoneration of the employee is relative (as distinguished from complete exoneration), an inquiry into the factual premise of the offense charged and of the offense committed must be made. If the administrative offense found to have been actually committed is of lesser gravity than the offense charged, the employee cannot be considered exonerated if the factual premise for the imposition of the lesser penalty remains the same. The employee found guilty of a lesser offense may only be entitled to back salaries when the offense actually committed does not carry the penalty of more than one month suspension or dismissal. *Bangalisan* reiterated that the payment of back salaries, during the period of suspension of a member of the civil service who is subsequently ordered reinstated, may be decreed only if the employee is found innocent of the charges which caused the suspension ***and*** when the suspension is unjustified.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Pineda Law Office for respondent.

D E C I S I O N

BRION, *J.*:

This petition for review on *certiorari* assails the decision[1] and the resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 105410. These assailed CA rulings reversed and set aside the ruling of the Civil Service Commission (*CSC*) in Resolution No. 080305[3] that denied respondent Richard G. Cruz's prayer for the award of back salaries as a result of his reinstatement to his former position.

THE FACTS

The respondent, Storekeeper A of the City of Malolos Water District (*CMWD*), was charged with grave misconduct and dishonesty by CMWD General Manager (*GM*) Nicasio Reyes. He allegedly uttered a false, malicious and damaging statement (*Masasamang tao ang mga BOD at General Manager*) against GM Reyes and the rest of the CMWD Board of Directors (*Board*); four of the respondent's subordinates allegedly witnessed the utterance. The dishonesty charge, in turn, stemmed from the respondent's act of claiming overtime pay despite his failure to log in and out in the computerized daily time record for three working days.

The respondent denied the charges against him. On the charge of grave misconduct, he stressed that three of the four witnesses already retracted their statements against him. On the charge of dishonesty, he asserted that he never failed to log in and log out. He reasoned that the lack of record was caused by technical

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[1] Penned by Associate Justice (now Supreme Court Associate Justice) Mariano C. del Castillo, and concurred in by Associate Justices Monina Arevalo-Zenarosa (ret.) and Apolinario D. Bruselas, Jr.; dated February 20, 2009. *Rollo*, pp. 32-43.

[2] Dated May 8, 2009; *id.* at 44-45.

[3] Penned by Commissioner Mary Ann Z. Fernandez-Mendoza; *id.* at 250-258.

computer problems. The respondent submitted documents showing that he rendered overtime work on the three days that the CMWD questioned.

GM Reyes preventively suspended the respondent for 15 days. Before the expiration of his preventive suspension, however, GM Reyes, with the approval of the CMWD Board, found the respondent guilty of grave misconduct and dishonesty, and dismissed him from the service.[4]

CSC RULING

The respondent elevated the findings of the CMWD and his dismissal to the CSC, which absolved him of the two charges and ordered his reinstatement. In CSC Resolution No. 080305, the CSC found no factual basis to support the charges of grave misconduct and dishonesty.

In ruling that the respondent was not liable for grave misconduct, the CSC held:

> Cruz was adjudged guilty of grave misconduct for his alleged utterance of such maligning statements, "*MASASAMANG TAO ANG MGA BOD AT GENERAL MANAGER*". However, such utterance, even if it were true, does not constitute a flagrant disregard of rule or was actuated by corrupt motive. To the mind of the Commission, it was a mere expression of disgust over the management style of the GM and the Board of Directors, especially when due notice is taken of the fact that the latter officials were charged with the Ombudsman for various anomalous transactions.[5]

In ruling that the charge of dishonesty had no factual basis, the CSC declared:

> Based on the records of the case, the Commission is not swayed that the failure of Cruz to record his attendance on April 21 and 22, 2007 and May 5, 2007, while claiming overtime pay therefor, amounts to dishonesty. Cruz duly submitted evidence showing his actual

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[4] CMWD Memorandum No. 31-07 dated June 6, 2007; *id.* at 60.

[5] *Id.* at 72-73.

rendition of work on those days. The residents of the place where he worked attested to his presence thereat on the days in question.[6]

The CSC, however, found the respondent liable for violation of reasonable office rules for his failure to log in and log out. It imposed on him the penalty of reprimand but did not order the payment of back salaries.

The CMWD and the respondent separately filed motions for reconsideration against the CSC ruling. CMWD questioned the CSC's findings and the respondent's reinstatement. The respondent, for his part, claimed that he is entitled to back salaries in light of his exoneration from the charges of grave misconduct and dishonesty. The CSC denied both motions.

Both the CMWD and the respondent elevated the CSC ruling to the CA *via* separate petitions for review under Rule 43 of the Rules of Court. The CA dismissed the CMWD's petition and this ruling has lapsed to finality.[7] Hence, the issue of reinstatement is now a settled matter. As outlined below, the CA ruled in the respondent's favor on the issue of back salaries. This ruling is the subject of the present petition with us.

CA RULING

Applying the ruling in *Bangalisan v. Hon. CA*,[8] the CA found merit in the respondent's appeal and awarded him back salaries from the time he was dismissed up to his actual reinstatement. The CA reasoned out that CSC Resolution No. 080305 totally exonerated the respondent from the charges laid against him. The CA considered the charge of dishonesty successfully refuted as the respondent showed that he performed overtime service. The CA thereby rejected the CSC's contention that the charge

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[6] *Id.* at 73.

[7] Docketed as CA-G.R. SP No. 104704, entitled "*The City of Malolos Water District v. Civil Service Commission and Richard G. Cruz*." The CA Decision promulgated on June 25, 2010 became final and executory on July 29, 2010, per Entry of Judgment dated January 10, 2011.

[8] 342 Phil. 586 (1997).

of dishonesty had been merely downgraded to a lesser offense; the CA saw the finding in CSC Resolution No. 080305 to be for an offense (failing to properly record his attendance) entirely different from the dishonesty charge because their factual bases are different. Thus, to the CA, CSC Resolution No. 080305 did not wholly restore the respondent's rights as an exonerated employee as it failed to order the payment of his back salaries. The CA denied the CSC's motion for reconsideration.

ISSUE

WHETHER OR NOT [THE] RESPONDENT IS ENTITLED TO BACK SALARIES AFTER THE CSC ORDERED HIS REINSTATEMENT TO HIS FORMER POSITION, CONSONANT WITH THE CSC RULING THAT HE WAS GUILTY ONLY OF VIOLATION OF REASONABLE OFFICE RULES AND REGULATIONS.[9]

CSC's position

The CSC submits that the CA erred in applying the ruling in *Bangalisan*, requiring as a condition for entitlement to back salaries that the government employee be found innocent of the charge ***and*** that the suspension be unjustified. CSC Resolution No. 080305 did not fully exculpate the respondent but found him liable for a lesser offense. Likewise, the respondent's preventive suspension pending appeal was justified because he was not exonerated.

The CSC also submits that the factual considerations in *Bangalisan* are entirely different from the circumstances of the present case. In *Bangalisan*, the employee, Rodolfo Mariano, a public school teacher, was charged with grave misconduct for allegedly participating, together with his fellow teachers, in an illegal mass action. He was ordered exonerated from the misconduct charge because of proof that he did not actually participate in the mass action, but was absent from work for another reason. Although the employee was found liable for violation of office rules and regulations, he was considered totally

[9] *Rollo,* p. 21.

exonerated because his infraction stemmed from an act entirely different (his failure to file a leave of absence) from the act that was the basis of the grave misconduct charge (the unjustified abandonment of classes to the prejudice of the students).

The CSC argues that in the present case, the charge of dishonesty and the infraction committed by the respondent *stemmed from a single act* — his failure to properly record his attendance. Thus, the respondent cannot be considered totally exonerated; the charge of dishonesty was merely downgraded to a violation of reasonable office rules and regulations.

Accordingly, the CSC posits that the case should have been decided according to our rulings in *Jacinto v. CA*[10] and *De la Cruz v. CA*[11] where we held the award of back salaries to be inappropriate because the teachers involved were not fully exonerated from the charges laid against them.

The respondent's position

The respondent maintains that he is entitled to reinstatement and back salaries because CSC Resolution No. 080305 exonerated him from the charges laid against him; for the purpose of entitlement to back salaries, what should control is his exoneration from the charges leveled against him by the CMWD. That the respondent was found liable for a violation different from that originally charged is immaterial for purposes of the back salary issue.

The respondent also asserts that the *Bangalisan* ruling squarely applies since the CSC formally admitted in its Comment to CMWD's petition for review before the CA that the penalty of reprimand is not a reduced penalty for the penalty of dismissal imposable for grave misconduct and dishonesty.[12]

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[10] 346 Phil. 656 (1997).

[11] 364 Phil. 786 (1999).

[12] *Rollo*, p. 282.

THE COURT'S RULING

We deny the petition for lack of merit.

The issue of entitlement to back salaries, for the period of suspension pending appeal,[13] of a government employee who had been dismissed but was subsequently exonerated is settled in our jurisdiction. The Court's starting point for this outcome is the "no work-no pay" principle — public officials are only entitled to compensation if they render service. We have excepted from this general principle and awarded back salaries even for unworked days to illegally dismissed or unjustly suspended employees based on the constitutional provision that "no officer or employee in the civil service shall be removed or suspended except for cause provided by law";[14] to deny these employees their back salaries amounts to unwarranted punishment after they have been exonerated from the charge that led to their dismissal or suspension.[15]

The present legal basis for an award of back salaries is Section 47, Book V of the Administrative Code of 1987.

Section 47. *Disciplinary Jurisdiction.* — x x x.

(4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be *considered as having been under preventive suspension* during the pendency of the appeal in the event he wins an appeal. (italics ours)

This provision, however, on its face, does not support a claim for back salaries since it does not expressly provide for back salaries during this period; our established rulings hold that back salaries may not be awarded for the period of **preventive suspension**[16] as the law itself authorizes its imposition so that its legality is beyond question.

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[13] *Hon. Gloria v. CA*, 365 Phil. 744 (1999).

[14] This provision uniformly exists in the 1935, 1973 and 1987 Constitutions.

[15] *Tan v. Gimenez, etc., and Aguilar, etc.*, 107 Phil. 17 (1960).

[16] *Hon. Gloria v. CA*, *supra* note 13.

To resolve the seeming conflict, the Court crafted two conditions before an employee may be entitled to back salaries: a) the employee must be found innocent of the charges ***and*** b) his suspension must be unjustified.[17] The reasoning behind these conditions runs this way: although an employee is considered under preventive suspension during the pendency of a successful appeal, the law itself only authorizes preventive suspension for a fixed period; hence, his suspension beyond this fixed period is unjustified and must be compensated.

The CSC's rigid and mechanical application of these two conditions may have resulted from a misreading of our rulings on the matter; hence, a look at our jurisprudence appears in order.

Basis for award of back salaries

The Court had the occasion to rule on the issue of entitlement to back salaries as early as 1941,[18] when Section 260 of the Revised Administrative Code of 1917 (*RAC*)[19] was the governing law. The Court held that a government employee, who was suspended from work pending final action on his administrative case, is not entitled to back salaries where he was ultimately removed due to the valid appointment of his successor. No exoneration or reinstatement, of course, was directly involved in this case; thus, the question of back salaries after exoneration and reinstatement did not directly arise. The Court, however, made the general statement that:

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[17] *Bangalisan v. CA*, *supra* note 8.

[18] *Reyes v. Hernandez*, 71 Phil. 397 (1941).

[19] Section 260 of the RAC reads:

Payment of salary accruing pending suspension. — When the chief of a Bureau or Office suspends a subordinate officer or employee from duty, the person suspended shall not receive pay during suspension unless the Department Head shall so order; but upon subsequent reinstatement of the suspended person or upon his exoneration, if death should render reinstatement impossible, any salary so withheld shall be paid, but without prejudice to the application of the disciplinary provisions of section six hundred and ninety-five hereof.

As a general proposition, a public official is not entitled to any compensation if he has not rendered any service, and the justification for the payment of salary during the period of suspension is that the suspension was unjustified or that the official was innocent. Hence, the requirement that, to entitle to payment of salary during suspension, there must be either reinstatement of the suspended person or exoneration if death should render reinstatement impossible.[20] (emphasis and underscoring ours)

In *Austria v. Auditor General*,[21] a high school principal, who was penalized with demotion, claimed payment of back salaries from the time of his suspension until his appointment to the lower position to which he was demoted. He argued that his later appointment even if only to a lower position of classroom teacher amounted to a reinstatement under Section 260 of the RAC. The Court denied his claim, explaining that the reinstatement under Section 260 of the RAC refers to the same position from which the subordinate officer or employee was suspended and, therefore, does not include demotional appointments. The word "reinstatement" was apparently equated to exoneration.

In the 1961 case of *Gonzales v. Hon. Hernandez, etc. and Fojas*[22] interpreting the same provision, the Court first laid down the requisites for entitlement to back salaries. Said the Court:

A perusal of the decisions of this Court[23] x x x show[s] that **back salaries are ordered paid to an officer or an employee only if he is exonerated of the charge against him and his suspension or dismissal is found and declared to be illegal**. In the case at

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[20] *Reyes v. Hernandez, supra* note 18, at 398.

[21] No. L-21918, January 24, 1967, 19 SCRA 79.

[22] 112 Phil. 160, 166 (1961).

[23] *Gonzales v. Hernandez, ibid.,* did not specify the cases it relied upon for its pronouncement. A survey of prior jurisprudence, however, reveals the following as bases: *Reyes v. Hernandez, supra* note 18*; Batungbakal v. National Development Company,* 93 Phil. 182 (1953)*; National Rice and Corn Corp. v. NARIC Workers' Union*, 98 Phil. 563 (1956); *Tabora v. Montelibano, et al.,* 98 Phil. 800 (1956); and *Tan v. Gimenez, etc., and Aguilar, etc., supra* note 15.

bar, [the employee] was not completely exonerated, because although the decision of the Commissioner of Civil Service [ordering separation from service] was modified and [the employee] was allowed to be reinstated, the decision [imposed upon the employee the penalty of two months suspension without pay]. [emphasis and underscoring ours]

Obviously, no exoneration actually resulted and no back salary was due; the liability for the offense charged remained, but a lesser penalty was imposed.

In *Villamor, et al. v. Hon. Lacson, et al.*,[24] the City Mayor ordered the dismissal from the service of city employees after finding them guilty as charged. On appeal, however, the decision was modified by considering "the suspension of over one year x x x, already suffered x x x [to be] sufficient punishment"[25] and by ordering their immediate reinstatement to the service. The employees thereupon claimed that under Section 695 of the RAC, the punishment of suspension without pay cannot exceed two (2) months. Since the period they were not allowed to work until their reinstatement exceeded two months, they should be entitled to back salaries corresponding to the period in excess of two months. In denying the employees' claim for back salaries, the Court held:

The fallacy of [the employees'] argument springs from their assumption that the modified decision had converted the penalty to that of suspension. The modified decision connotes that although dismissal or resignation would be the proper penalty, the separation from work for the period until their reinstatement, would be deemed sufficient. Said decision did not, in the least, insinuate that suspension should have been the penalty.

x x x [T]**he modified decision did not exonerate the petitioners**. x x x And even if we consider the punishment as suspension, before a public official or employee is entitled to payment of salaries withheld, it should be shown that the suspension was unjustified **or**

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[24] 120 Phil. 1213 (1964).

[25] *Id.* at 1215.

that the employee was innocent of the charges proffered against him.[26]

On the whole, these rulings left the application of the conditions for the award of back salaries far from clear. Jurisprudence did not strictly observe the requirements earlier enunciated in *Gonzales* as under subsequent rulings, the innocence of the employee alone served as basis for the award of back salaries.

The innocence of the employee as sole basis for an award of back salaries

In *Tan v. Gimenez, etc., and Aguilar, etc.*,[27] we ruled that the payment of back salary to a government employee, who was illegally removed from office because of his eventual exoneration on appeal, is merely incidental to the ordered reinstatement.

Tan was subsequently reiterated in *Tañala v. Legaspi, et al.*,[28] a case involving an employee who was administratively dismissed from the service following his conviction in the criminal case arising from the same facts as in the administrative case. On appeal, however, he was acquitted of the criminal charge and was ultimately ordered reinstated by the Office of the President. Failing to secure his actual reinstatement, he filed a *mandamus* petition to compel his superiors to reinstate him and to pay his back salaries from the date of his suspension to the date of his actual reinstatement. We found merit in his plea and held:

> [The employee] had been acquitted of the criminal charges x x x, and the President had reversed the decision x x x in the administrative case which ordered his separation from the service, and the President had ordered his reinstatement to his position, it results that the suspension and the separation from the service of the [employee] were thereby considered illegal. x x x.

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[26] *Id.* at 1218-1219.

[27] *Supra* note 15.

[28] 121 Phil. 541 (1965).

x x x [In this case,] by virtue of [the President's order of reinstatement], [the employee's] suspension and separation from the service x x x was thereby declared illegal, so that for all intents and purposes he must be considered as not having been separated from his office. The lower court has correctly held that the [employee] is entitled to back salaries.[29]

The *Tañala* ruling was reiterated in *Cristobal v. Melchor*,[30] *Tan, Jr. v. Office of the President*,[31] *De Guzman v. CSC*[32] and *Del Castillo v. CSC*[33] — cases involving government employees who were dismissed after being found administratively liable, but who were subsequently exonerated on appeal.

In *Garcia v. Chairman Commission on Audit*,[34] the Court held that — where the employee, who was dismissed after being found administratively liable for dishonesty, was acquitted on a finding of innocence in the criminal case (for qualified theft) based on the same acts for which he was dismissed — the executive pardon granted him in the administrative case (*in light of* his prior acquittal) entitled him to back salaries from the time of his illegal dismissal up to his actual reinstatement.

The above situation should be distinguished from the case of an employee who was dismissed from the service after conviction of a crime and who was ordered reinstated after being granted pardon. We held that he was not entitled to back salaries since he was not illegally dismissed nor acquitted of the charge against him.[35]

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[29] *Id.* at 551-553.

[30] 189 Phil. 658 (1980).

[31] G.R. No. 110936, February 4, 1994, 229 SCRA 677.

[32] G.R. No. 101105, March 11, 1994, 231 SCRA 169. The illegality of the dismissal in this case resulted from the invalidity of the reorganization that authorized the employee's dismissal.

[33] 343 Phil. 734 (1997).

[34] G.R. No. 75025, September 14, 1993, 226 SCRA 356, 362-363.

[35] *Sabello v. Department of Education, Culture and Sports*, 259 Phil. 1109, 1114 (1989).

Incidentally, under the Anti-Graft and Corrupt Practices Act,[36] if the public official or employee is acquitted of the criminal charge/s specified in the law, he is entitled to reinstatement and the back salaries withheld during his suspension, *unless* in the meantime administrative proceedings have been filed against him.

In *Tan, Jr. v. Office of the President*,[37] the Court clarified that the silence of Section 42 (Lifting of Preventive Suspension Pending Administrative Investigation) of the Civil Service Decree[38] on the payment of back salaries, unlike its predecessor,[39] is no reason to deny back salaries to a dismissed civil servant who was ultimately exonerated.

Section 42 of P.D. No. 807, however, is really not in point x x x [as] it does not cover dismissed civil servants who are ultimately

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[36] Section 13 of Republic Act (R.A.) No. 3019 reads:

Suspension and loss of benefits. — Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

[37] *Supra* note 31.

[38] Section 42 of Presidential Decree (P.D.) No. 807 reads:

Lifting of Preventive Suspension Pending Administrative Investigation. When the administrative case against the officer of employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

[39] R.A. No. 2260 or Civil Service Act of 1959. Section 35 of R.A. No. 2260 reads:

exonerated and ordered reinstated to their former or equivalent positions. The rule in the latter instance, just as we have said starting with the case of *Cristobal vs. Melchor* is that when "a government official or employee in the classified civil service had been illegally dismissed, and his reinstatement had later been ordered, for all legal purposes he is considered as not having left his office, so that he is entitled to all the rights and privileges that accrue to him by virtue of the office that he held."[40]

These cited cases illustrate that a black and white observance of the requisites in *Gonzales* is not required at all times. The common thread in these cases is either the employee's **complete exoneration** of the administrative charge against him (*i.e.*, the employee is not found guilty of *any* other offense), *or* the employee's acquittal of the criminal charge based on his innocence. If the case presented falls on either of these instances, the conditions laid down in *Gonzales* become the two sides of the same coin; the requirement that the suspension must be unjustified is automatically subsumed in the other requirement of exoneration.

Illegal suspension as sole basis for an award of back salaries

By requiring the concurrence of the two conditions, *Gonzales* apparently made a distinction between exoneration and unjustified suspension/dismissal. This distinction runs counter to the notion that if an employee is exonerated, the exoneration automatically makes an employee's suspension unjustified. However, in *Abellera v. City of Baguio, et al.*,[41] the Court had the occasion to illustrate

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Lifting of Preventive Suspension Pending Administrative Investigation. When the administrative case against the officer or employee under preventive suspension is not finally decided by the Commissioner of Civil Service within the period of sixty (60) days after the date of suspension of the respondent, the respondent shall be reinstated in the service. *If the respondent officer or employee is exonerated, he shall be restored to his position with full pay for the period of suspension.* (italics ours)

[40] *Tan, Jr. v. Office of the President*, *supra* note 31, at 679.

[41] No. L-23957, March 18, 1967, 19 SCRA 600.

the independent character of these two conditions so that the mere illegality of an employee's suspension could serve as basis for an award of back salaries.

Abellera, a cashier in the Baguio City Treasurer's Office, was ordered dismissed from the service after being found guilty of dishonesty and gross negligence. *Even before the period to appeal expired*, the City of Baguio dismissed him from the service. On appeal, however, the penalty imposed on him was reduced "to two months suspension, without pay" although the appealed decision was affirmed "in all other respects."

When the issue of Abellera's entitlement to back salaries reached the Court, we considered the illegality of Abellera's suspension — *i.e.*, from the time he was dismissed up to the time of his actual reinstatement — to be a sufficient ground to award him back salaries.

> The rule on payment of back salaries during the period of suspension of a member of the civil service who is subsequently ordered reinstated, is already settled in this jurisdiction. Such payment of salaries corresponding to the period when an employee is not allowed to work may be decreed not only if he is found innocent of the charges which caused his suspension (Sec. 35, RA 2260), but also when the suspension is unjustified.
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> In the present case, upon receipt of the [Civil Service Commissioner's] decision x x x finding [Abellera] guilty, but even before the period to appeal had expired, [the Baguio City officials] dismissed [Abellera] from the service and another one was appointed to replace him. **[Abellera's] separation x x x before the decision of the Civil Service Commissioner had become final was evidently premature.** [The Baguio City officials] should have realized that [Abellera] still had the right to appeal the Commissioner's decision to the Civil Service Board of Appeals within a specified period, and the possibility of that decision being reversed or modified.[42] As it

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[42] Under Section 28 of the Civil Service Rules implementing R.A. No. 2260 (Civil Service Act of 1959), the Commissioner of Civil Service has the discretion to order the immediate execution of his decision in administrative cases (J. Barredo's Dissent in *Yarcia v. City of Baguio, etc.*, 144 Phil. 351 [1970]).

did happen on such appeal x x x the penalty imposed by the Commissioner was reduced x x x to only 2 months suspension. And yet, by [the Baguio City officials'] action, [Abellera] was deprived of work for more than 2 years. **Clearly, Abellera's second suspension from office** [*i.e.*, from the time he was dismissed up to his actual reinstatement] **was unjustified, and the payment of the salaries corresponding to said period is, consequently, proper**.[43] (emphases and underscoring ours)

The import of the *Abellera* ruling was explained by the Court in the subsequent case of *Yarcia v. City of Baguio*[44] that involved substantially similar facts. The Court clarified that the award of back salaries in *Abellera* was based on the premature execution of the decision (ordering the employee's dismissal from the service), resulting in the employee's unjustified "second suspension." Under the then Civil Service Rules, the Commissioner of Civil Service had the discretion to order the immediate execution of his decision in administrative cases "in the interest of public service." Unlike in *Abellera*, this discretion was exercised in *Yarcia*; consequently, the employee's separation from the service pending his appeal "remained valid and effective until it was set aside and modified with the imposition of the lesser penalty."[45]

The unjustified "second suspension" mentioned in *Abellera* actually refers to the period when the employee was dismissed from the service up to the time of his actual reinstatement.

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[43] See *Neeland v. Villanueva, Jr.*, A.M. No. P-99-1316, August 31, 2001, 364 SCRA 204, 217, where the Court awarded back salaries to a Clerk of Court and *Ex-officio* Provincial Sheriff, whom the Court ordered dismissed from the service for gross misconduct. The resolution of dismissal was immediately implemented. On reconsideration, however, the Court found him guilty of simple neglect of duty and imposed on him only the penalty of fine. In granting his subsequent request for back salaries from the time of his dismissal until his reinstatement, the Court considered, among others, the prematurity of the immediate execution of the resolution of dismissal as basis for the award.

[44] *Supra* note 42.

[45] Citing *Villamor, et al. v. Hon. Lacson, et al., supra* note 24, which was also cited in *Sales v. Mathay, Sr., etc., et al.*, 214 Phil. 153 (1984).

Under our present legal landscape, this period refers to "suspension pending appeal."[46]

In *Miranda v. Commission on Audit,*[47] the Court again had the occasion to consider the illegality of the suspension of the employee as a separate ground to award back salaries. Following the filing of several administrative charges against him, Engr. Lamberto Miranda was "preventively" suspended from June 2, 1978 to May 7, 1986. He was reinstated on May 22, 1986. On October 7, 1986, the administrative case against him was finally dismissed "for lack of evidence." When his claim for back salaries (from the time he was "preventively" suspended up to his actual reinstatement) was denied by the Commission on Audit, he brought a *certiorari* petition with this Court.

In granting the petition, the Court ruled that since the law[48] limits the duration of preventive suspension to a fixed period, Engr. Miranda's suspension for almost eight (8) years is "unreasonable and unjustified." Additionally, the Court observed that the dropping of the administrative case against Engr. Miranda for lack of evidence "is even an eloquent manifestation that the suspension is unjustified."[49] The Court held:

> This being so, Engineer Miranda is entitled to backwages during the period of his suspension as it is already settled in this jurisdiction that a government official or employee is entitled to backwages **not only** if he is exonerated in the administrative case **but also when** the suspension is unjustified.[50] (emphases and underscoring ours)

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[46] See *Bautista v. Peralta*, No. L-21967, September 29, 1966, 18 SCRA 223, where the Court considered the "second suspension" mentioned in *Abellera v. City of Baguio, et al., supra* note 41, as a "preventive suspension." At the time, R.A. No. 2260 allows the payment of back salaries for the entire period of suspension in the event of exoneration. At present, there is a clear legal distinction between preventive suspension (*i.e.*, suspension pending investigation) and suspension pending appeal.

[47] G.R. No. 84613, August 16, 1991, 200 SCRA 657.

[48] Section 35 of R.A. No. 2260 and Section 42 of P.D. No. 807.

[49] *Miranda v. Commission on Audit, supra* note 47, at 662.

[50] *Ibid.*

Jurisprudential definition of exoneration

The mere reduction of the penalty on appeal does not entitle a government employee to back salaries if he was not exonerated of the charge against him. This is the Court's teaching in *City Mayor of Zamboanga v. CA.*[51] In this case, the employee was initially found guilty of disgraceful and immoral conduct and was given the penalty of dismissal by the City Mayor of Zamboanga. On appeal, however, the CA limited the employee's guilt to improper conduct and correspondingly reduced the penalty to "six-months suspension without pay with a stern warning that repetition of the same or similar offense will be dealt with more severely."[52] The CA also awarded him "full backwages."[53]

We held that the CA erred in awarding back salaries by reiterating the principle that back salaries may be ordered paid to an officer or employee only if he is exonerated of the charge against him and his suspension or dismissal is found and declared to be illegal.[54]

The Court had the occasion to explain what constitutes "exoneration" in *Bangalisan v. Hon. CA,*[55] the respondent's cited case. In this case, the Secretary of Education found the public school teachers guilty as charged and imposed on them the penalty of dismissal. On appeal, the CSC affirmed the Secretary's ruling but reduced the penalty imposed to suspension without pay. However, the CSC found one of the teachers (Mariano) guilty only of violation of reasonable office rules

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[51] G.R. No. 80270, February 27, 1990, 182 SCRA 785.

[52] *Id.* at 788.

[53] *Ibid.*

[54] The Court also relied on Section 78 of *Batas Pambansa Bilang* 337 which required that an employee must be exonerated of the charges in order that he may be paid his back salaries. See also *Yarcia v. City of Baguio*, *supra* note 42, where the Court held that the mere reduction, on appeal, of the penalty imposed (from dismissal to a fine of six months pay), without however exonerating the employee from the charge (of dishonesty) against him, does not entitle him to back salaries.

[55] *Supra* note 8.

and regulations, and only penalized her with reprimand. None of the petitioning public school teachers were awarded back salaries.

On appeal to this Court, we awarded back salaries to Mariano. We explained that since the factual premise of the administrative charges against him — *i.e.*, his alleged participation in the illegal mass actions, and his suspension — was amply rebutted, then Mariano was in effect exonerated of the charges against him and was, thus, entitled to back salaries for the period of his suspension pending appeal.

> With respect to petitioner Rodolfo Mariano, payment of his back wages is in order. A reading of the resolution of the [CSC] will show that he was exonerated of the charges which formed the basis for his suspension. The Secretary of the DECS charged him with and he was later found guilty of grave misconduct x x x [and] conduct prejudicial to the best interest of the service x x x for his participation in the mass actions x x x. It was his alleged participation in the mass actions that was the basis of his preventive suspension and, later, his dismissal from the service.
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> However, the [CSC], in the questioned resolution, made [the] finding that Mariano was not involved in the "mass actions" but was absent because he was in Ilocos Sur to attend the wake and interment of his grandmother. Although the CSC imposed upon him the penalty of reprimand, the same was for his violation of reasonable office rules and regulations because he failed to inform the school or his intended absence and neither did he file an application for leave covering such absences.
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> However, with regard to the other petitioners, the payment of their back wages must be denied. Although the penalty imposed on them was only suspension, they were not completely exonerated of the charges against them. The CSC made specific findings that, unlike petitioner Mariano, they indeed participated in the mass actions. It will be noted that it was their participation in the mass actions that was the very basis of the charges against them and their subsequent suspension.[56]

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[56] *Id.* at 598-599.

Bangalisan clearly laid down the principle that if the exoneration of the employee is relative (as distinguished from complete exoneration), an inquiry into the factual premise of the offense charged and of the offense committed must be made. If the administrative offense found to have been actually committed is of lesser gravity than the offense charged, the employee cannot be considered exonerated if the factual premise for the imposition of the lesser penalty remains the same. The employee found guilty of a lesser offense may only be entitled to back salaries when the offense actually committed does not carry the penalty of more than one month suspension or dismissal.[57]

Bangalisan reiterated that the payment of back salaries, during the period of suspension of a member of the civil service who is subsequently ordered reinstated, may be decreed only if the employee is found innocent of the charges which caused the suspension ***and*** when the suspension is unjustified. This pronouncement was re-echoed in *Jacinto v. CA*,[58] *De la Cruz v. CA*,[59] and *Hon. Gloria v. CA*.[60] Taking off from *Bangalisan*, the Court in *De la Cruz* categorically stated:

> The issue of whether back wages may be awarded to teachers ordered reinstated to the service after the dismissal orders x x x were commuted by the CSC to six (6) months suspension is already settled.
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> In *Bangalisan v. Court of Appeals*, we resolved the issue in the negative on the ground that the teachers were neither exonerated

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[57] If the proper penalty imposable for the offense actually committed does not exceed one month, then there would have been no occasion for a suspension pending appeal since a decision imposing the penalty of suspension for not more than thirty days or fine in an amount not exceeding thirty days salary is final and not subject to appeal. (See Book V, Section 47, par. 2 of Executive Order No. 292; Section 7, Rule III of Administrative Order No. 7, Rules of Procedure of the Office of the Ombudsman, dated April 10, 1990, as amended by Administrative Order No. 17 dated September 15, 2003 which took effect on November 19, 2003.)

[58] *Supra* note 10.

[59] *Supra* note 11.

[60] *Supra* note 13.

nor unjustifiably suspended, **two (2) circumstances necessary for the grant of back wages** in administrative disciplinary cases.[61]

In *Hon. Gloria*, involving the same factual situation as *Bangalisan*, the CA awarded the public school teachers back salaries — for the period beyond the allowable period of preventive suspension — since they were ultimately exonerated. In affirming the CA, the Court distinguished *preventive suspension* from *suspension pending appeal* for the purpose of determining the extent of an employee's entitlement to back salaries. The Court ruled that under Executive Order (*E.O.)* No. 292, there are two kinds of preventive suspension of civil service employees who are charged with offenses punishable by removal or suspension: (i) preventive suspension pending investigation[62] and (ii) preventive suspension pending appeal;[63] compensation is due only for the period of preventive suspension *pending appeal* should the employee be ultimately exonerated.[64] Citing Floyd R. Mechem's *A Treatise on the Law of Public Offices and Officers*,[65] *Hon. Gloria* ruled:

Thus, **it is not enough that an employee is exonerated of the charges against him**. In addition, his suspension must be unjustified.

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[61] *De la Cruz v. CA, supra* note 11, at 797.

[62] Book V, Title I, Subtitle A, Section 51 of E.O. No. 292.

[63] Book V, Title I, Subtitle A, Section 47(4) of E.O. No. 292.

[64] The Court ruled that the absence of a provision in P.D. No. 807 and later in E.O. No. 292 allowing the payment of back salaries during the period of preventive suspension, unlike in Act No. 2711 and R.A. No. 2260, evidences a legislative intent to disallow payment of back salaries for the period of preventive suspension regardless of the employee's exoneration. But the payment of back salaries per se, that is, without regard to the duration of the payment, has been consistently recognized.

[65] §864. Officer not entitled to Salary during Suspension from Office. — An officer *who has been lawfully suspended* from his office is not entitled to compensation for the period during which he was so suspended, *even though it be subsequently determined that the cause for which he was suspended was insufficient*. The reason given is "that salary and perquisites are the reward of express or implied services, and therefore cannot belong to one who could not lawfully perform such services.

The case of *Bangalisan v. Court of Appeals* itself similarly states that "payment of salaries corresponding to the period [1] when an employee is not allowed to work may be decreed if he is found innocent of the charges which caused his suspension **and** [2] when the suspension is unjustified."[66] (emphases and underscoring ours)

A careful reading of these cases would reveal that a strict observance of the second condition for an award of back salaries becomes important only if the employee is not totally innocent of *any* administrative infraction. As previously discussed, where the employee is completely exonerated of the administrative charge or acquitted in the criminal case arising from the same facts based on a finding of innocence, the second requirement becomes subsumed in the first. Otherwise, a determination of the act/s and offense/s actually committed and of the corresponding penalty imposed has to be made.

Unjustified suspension

On the suspension/dismissal aspect, this second condition is met upon a showing that the separation from office is not warranted under the circumstances because the government employee gave no cause for suspension or dismissal. This squarely applies in cases where the government employee did not commit the offense charged, punishable by suspension or dismissal (total exoneration); or the government employee is found guilty of another offense for an act different from that for which he was charged.

Bangalisan, Jacinto and De la Cruz illustrate the application of the two conditions

Both the CA and the respondent applied *Bangalisan* to justify the award of back salaries. The CSC argues against this position with the claim that the rulings in *Jacinto* and *De la Cruz*, not *Bangalisan*, should apply. After due consideration, we see no reason why the cited rulings and their application should be pitted against one another; they essentially espouse the same conclusions after applying the two conditions for the payment of back salaries.

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[66] *Hon. Gloria v. CA, supra* note 13, at 762.

Bangalisan, Jacinto and *De la Cruz* all stemmed from the illegal mass actions of public school teachers in Metro Manila in 1990. The teachers were charged with grave misconduct, gross neglect of duty, and gross violation of civil service law, rules and regulations, among others. The then Secretary of Education found them guilty and dismissed them from the service. The CSC, on appeal, ordered the teachers reinstated, but withheld the grant of their back salaries. The CSC found the teachers liable for conduct prejudicial to the best interest of the service and imposed on them the penalty of suspension. The CSC reasoned that since the teachers were not totally exculpated from the charge (but were found guilty of a lesser offense), they could not be awarded back salaries.

When these cases reached the Court, the issue of the teachers' entitlement to back salaries was raised. The teachers claimed that they were entitled to back salaries from the time of their dismissal or suspension until their reinstatement, arguing that they were totally exonerated from the charges since they were found guilty only of conduct prejudicial to the best interest of the service.

Under this factual backdrop, we applied the two conditions and distinguished between the teachers who were absent from their respective classes because *they participated in the illegal mass action*, on one hand, and the teachers who were *absent for some other reason*, on the other hand.

With respect to the teachers who participated in the illegal mass actions, we ruled that they were not entitled to back salaries since they were not exonerated. We explained that liability for a lesser offense, carrying a penalty less than dismissal, is not equivalent to exoneration. On the second condition, we ruled that their suspension is not unjustified since they have given a ground for their suspension — *i.e.*, the unjustified abandonment of their classes to the prejudice of their students, the very factual premise of the administrative charges against them — for which they were suspended.

With respect to the teachers who were away from their classes but did not participate in the illegal strike, the Court awarded

them back salaries, considering that: *first*, they did not commit the act for which they were dismissed and suspended; and *second*, they were found guilty of another offense, *i.e.*, violation of reasonable office rules and regulations which is not penalized with suspension or dismissal. The Court ruled that these teachers were totally exonerated of the charge, and found their dismissal and suspension likewise unjustified since the offense they were found to have committed only merited the imposition of the penalty of reprimand.

These cases show the Court's consistent stand in determining the propriety of the award of back salaries. The government employees must not only be found innocent of the charges; their suspension must likewise be shown to be unjustified.

The Present Case

We find that the CA was correct in awarding the respondent his back salaries during the period he was suspended from work, following his dismissal until his reinstatement to his former position. The records show that the charges of grave misconduct and dishonesty against him were not substantiated. As the CSC found, there was no corrupt motive showing malice on the part of the respondent in making the complained utterance. Likewise, the CSC found that the charge of dishonesty was well refuted by the respondent's evidence showing that he rendered overtime work on the days in question.

We fully respect the factual findings of the CSC especially since the CA affirmed these factual findings. However, on the legal issue of the respondent's entitlement to back salaries, we are fully in accord with the CA's conclusion that the two conditions to justify the award of back salaries exist in the present case.

The first condition was met since the offense which the respondent was found guilty of (violation of reasonable rules and regulations) stemmed from an act (failure to log in and log out) different from the act of dishonesty (*claiming* overtime pay despite his *failure* to render overtime work) that he was charged with.

The second condition was met as the respondent's committed offense merits neither dismissal from the service nor suspension (for more than one month), but only reprimand.

In sum, the respondent is entitled to back salaries from the time he was dismissed by the CMWD until his reinstatement to his former position — *i.e.*, for the period of his preventive suspension pending appeal. For the period of his preventive suspension pending investigation, the respondent is not entitled to any back salaries per our ruling in *Hon. Gloria*.[67]

WHEREFORE, the petition is hereby *DENIED*. Costs against the petitioner.

SO ORDERED.

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

Del Castillo, J., no part.

Abad and *Mendoza, JJ.,* on leave.

[67] The preventive suspension pending the investigation of the charges is not imposed as a penalty but only to enable the disciplining authority to conduct an unhampered investigation; the preventive suspension in this regard is a necessary sacrifice, which holding a public office requires.

EN BANC

[G.R. No. 195953. August 9, 2011]

CERIACO BULILIS, *petitioner, vs.* **VICTORINO NUEZ, HON. PRESIDING JUDGE, 6TH MCTC, UBAY, BOHOL, HON. PRESIDING JUDGE, RTC, BRANCH 52, TALIBON, BOHOL,** *respondents*.

SYLLABUS

1. POLITICAL LAW; ELECTIONS; ELECTION CONTESTS; NOTICE OF PRELIMINARY CONFERENCE ISSUED IN THE ELECTION PROTEST IS CONSIDERED DEFECTIVE WHERE THE NOTICE ISSUED BY THE MCTC CLERK OF COURT WAS A GENERIC NOTICE OF HEARING AND IT WAS SERVED ON THE PARTY HIMSELF DESPITE BEING REPRESENTED BY COUNSEL.— It appears from the record that the questioned notice of preliminary conference issued in the instant election protest may have been defective in that (1) the notice issued by the MCTC clerk of court was a generic notice of hearing without any mention that it was for preliminary conference, and (2) it was served on the party himself despite being represented by counsel in contravention of Rule 9, Section 2 of A.M. No. 07-4-15-SC. For this reason we disagree with the RTC's finding that impliedly ascribed all fault to petitioner in failing to timely file his preliminary conference brief.

2. ID.; ID.; COMELEC; COMELEC RULES OF PROCEDURE; AN AGGRIEVED PARTY MAY FILE A PETITION FOR *CERTIORARI* WITH THE COMMISSION ON ELECTIONS WHENEVER A JUDGE HEARING AN ELECTION CASE HAS ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AND THERE IS NO APPEAL, NOR ANY PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.— There is no merit in petitioner's argument that Rule 28, Section 1 of the COMELEC Rules of Procedure limits the COMELEC's jurisdiction over petitions for *certiorari* in election cases to issues related to elections, returns and qualifications of elective municipal and

barangay officials. Said provision, taken together with the succeeding section, undeniably shows that an aggrieved party may file a petition for *certiorari* with the COMELEC whenever a judge hearing an election case has acted without or in excess of his jurisdiction or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.

3. ID.; ID.; ID.; HAS APPELLATE JURISDICTION OVER A PETITION FOR *CERTIORARI* QUESTIONING AN INTERLOCUTORY ORDER OF A TRIAL COURT IN AN ELECTORAL PROTEST.— Neither can petitioner take refuge in Rule 14, Section 12 of A.M. No. 07-4-15-SC x x x. Petitioner relies on the above-quoted provision to claim that the COMELEC only has appellate jurisdiction over decisions of the courts in election cases and not interlocutory orders. As the RTC correctly observed, the Court had in a subsequent issuance, A.M. No. 07-7-12-SC (which amended, among others, Rule 65 of the Rules of Court), clearly provided that: In election cases involving **an act or an omission** of a municipal or a regional trial court, the petition **shall be filed exclusively with the Commission on Elections,** in aid of its appellate jurisdiction. Plainly, from the foregoing, this Court recognizes the COMELEC's appellate jurisdiction over petitions for *certiorari* against all acts or omissions of courts in election cases. Indeed, in the recent case of *Galang v. Geronimo*, the Court had the opportunity to rule that a petition for *certiorari* questioning an interlocutory order of a trial court in an electoral protest was within the appellate jurisdiction of the COMELEC.

4. ID.; ID.; ID.; GALANG DOCTRINE; THE COMELEC HAS JURISDICTION OVER PETITIONS FOR *CERTIORARI* INVOLVING ACTS OF THE MUNICIPAL TRIAL COURTS IN *BARANGAY* ELECTION CASES.— Although *Galang* involved a petition for *certiorari* involving an interlocutory order of a regional trial court in a municipal election contest, the rationale for the ruling applies to an interlocutory order issued by a municipal trial court in a *barangay* election case. Under Rule 14, Section 8 of A.M. No. 07-4-15-SC, decisions of municipal trial courts in election contests involving *barangay* officials are appealed to the COMELEC. Following the *Galang* doctrine, it is the COMELEC which has jurisdiction over petitions for *certiorari* involving acts of the municipal trial courts in such election contests.

APPEARANCES OF COUNSEL

*Eliseo C. Boyle*s for petitioner.
David B. Tirol, Ph.D. for private respondent.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

On October 25, 2010, petitioner Ceriaco Bulilis (Bulilis) was proclaimed winner of the elections for *punong barangay* of Barangay Bulilis, Ubay, Bohol. He won over respondent Victorino Nuez (Nuez) by a margin of four (4) votes. On November 2, 2010, Nuez filed an Election Protest[1] (for judicial recount and annulment of proclamation) with the 6th Municipal Circuit Trial Court (MCTC) of Ubay, Bohol. It was inexplicably docketed as Civil Case No. 134-10.

On November 5, 2010, Bulilis, through counsel, filed an Answer,[2] denying the allegations in the protest and praying for its dismissal on the ground that the MCTC had no jurisdiction since the protest failed to implead the Chairman and the Members of the Board of Election Inspectors who were purportedly indispensable parties. On the same date, the Clerk of Court of the MCTC issued a **notice of "hearing"**[3] for November 9, 2010. However, counsel for Bulilis claimed that he never received said "notice" nor was he in any way informed that the November 9, 2010 hearing was a preliminary conference. He allegedly only learned that there was a hearing set on November 9, 2010 and it was for preliminary conference when he received a copy of respondent Nuez's Preliminary Conference Brief, the day before the scheduled hearing or on November 8, 2010.

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[1] *Rollo*, pp. 18-21.

[2] *Id.* at 22-23.

[3] *Id.* at 24.

At about 1:45 p.m., on November 9, 2010, counsel for Bulilis filed his Preliminary Conference Brief with the Clerk of Court and also furnished Nuez's counsel with a copy. However, when the case was called at 2:10 p.m., counsel for Nuez moved in open court to be allowed to present evidence *ex parte*. Noting that counsel for Bulilis failed to file his brief and to furnish a copy of the brief on the other party at least one (1) day prior to the preliminary conference as required by Section 4, Rule 9 of A.M. No. 07-4-15-SC, Judge Daniel Jose J. Garces (Judge Garces) granted Nuez's motion to present evidence *ex parte*.[4]

Counsel for Bulilis filed a motion for reconsideration on November 10, 2010, asserting the lack of proper notice to him of the preliminary conference. In an Order dated November 15, 2010,[5] the MCTC denied the motion for reconsideration on the grounds that the notice of hearing dated November 5, 2010 was received by petitioner Bulilis himself on said date and counsel for Bulilis was made aware of the November 9, 2010 preliminary conference when he received the brief for protestant Nuez the day before.

Bulilis filed a petition for *certiorari*[6] under Rule 65 of the Rules of Court with the Regional Trial Court (RTC) of Talibon, Bohol. However, in an Order[7] dated December 22, 2010, the RTC dismissed the petition on the ground that it is the Commission on Elections (COMELEC) that has exclusive appellate jurisdiction over petitions for *certiorari* in election cases involving municipal and *barangay* officials.

Bulilis's motion for reconsideration of the RTC Decision was denied in an Order[8] dated March 9, 2011. Hence, he filed the present petition for *certiorari* (under Rule 65) with prayer for writ of preliminary injunction with this Court (the Petition),

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[4] *Id.* at 27.

[5] *Id.* at 28-30.

[6] *Id.* at 31-38.

[7] *Id.* at 39-42.

[8] *Id.* at 43-44.

claiming that he is raising purely questions of law; that the MCTC had no jurisdiction for protestant's failure to implead indispensable parties; that the MCTC committed grave abuse of discretion in ordering reception of protestant's evidence *ex parte*; and that under the rules relied upon by the RTC, the COMELEC's appellate jurisdiction in election cases is allegedly limited to decisions of election courts and not interlocutory orders.

In a Resolution[9] dated March 29, 2011, this Court required respondent Nuez to comment. In his Comment dated June 13, 2011, Nuez alleged that Bulilis is "guilty of invoking a mistaken Remedy and using a wrong Venue, but also committing the same failure of compliance re filing fees."[10]

The Petition must fail.

It appears from the record that the questioned notice of preliminary conference issued in the instant election protest may have been defective in that (1) the notice issued by the MCTC clerk of court was a generic notice of hearing without any mention that it was for preliminary conference, and (2) it was served on the party himself despite being represented by counsel in contravention of Rule 9, Section 2[11] of A.M. No. 07-4-15-SC.[12] For this reason we disagree with the RTC's finding that impliedly ascribed all fault to petitioner in failing to timely file his preliminary conference brief. We, nonetheless, find that the RTC and even this Court have no jurisdiction to correct any error that may

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

[10] *Id.* at 51.

[11] Rule 9, Section 2 provides that "[t]he notice of preliminary conference shall be served on counsel or on the party who has no counsel. Notice to counsel is notice to the party, as counsel is charged with the duty to notify the party represented."

[12] Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials. Note, however, that in the case of municipal officials, election contests are now governed by A.M. No. 10-4-1-SC or the 2010 Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials.

have been committed by MCTC Judge Garces in his order to allow the protestant to present evidence *ex parte*.

Petitioner contends that the petition for *certiorari* that he filed with the RTC was "not an election case" (*i.e.*, not relating to elections, returns or qualifications of elective officials), but one imputing grave abuse of discretion on the part of the MCTC judge in his issuance of an interlocutory order. He further claims that the COMELEC's appellate jurisdiction is only limited to "decided barangay election cases."[13]

There is no merit in petitioner's argument that Rule 28, Section 1 of the COMELEC Rules of Procedure limits the COMELEC's jurisdiction over petitions for *certiorari* in election cases to issues related to elections, returns and qualifications of elective municipal and *barangay* officials. Said provision, taken together with the succeeding section,[14] undeniably shows that an aggrieved party may file a petition for *certiorari* with the COMELEC whenever a judge hearing an election case has

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[13] *Rollo,* pp. 12-13.

[14] Rule 28, Sections 1 and 2 of the COMELEC Rules of Procedure provide:

Sec. 1. *When Available.* — In aid of its appellate jurisdiction in election cases before courts of general jurisdiction relating to the elections, returns and qualifications of elective Municipal officials, and before courts of limited jurisdiction in cases relating to the elections, returns and qualifications of elective barangay officials, the Commission *en banc* may hear and decide petitions for *certiorari*, prohibition or *mandamus*.

Sec. 2. *Petition for Certiorari or Prohibition.* — When any court or judge hearing election cases has acted without or in excess of its or his jurisdiction or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a petition for *certiorari* or prohibition with the Commission alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such court or judge, or commanding it or him to desist from further proceeding with the action or matter specified therein, as the case may be.

The petition shall be accompanied by a certified true copy of the judgment or order subject thereof, together with all pleadings and documents relevant and pertinent thereto.

acted without or in excess of his jurisdiction or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.

Neither can petitioner take refuge in Rule 14, Section 12 of A.M. No. 07-4-15-SC which provides:

> SEC. 12. *Jurisdiction of the Commission on Elections in certiorari cases*. — The Commission on Elections has the authority to issue the extraordinary writs of *certiorari*, prohibition and *mandamus* only in aid of its appellate jurisdiction over **decisions** of the courts in election cases involving elective municipal and barangay officials. *(*Emphasis supplied.)

Petitioner relies on the above-quoted provision to claim that the COMELEC only has appellate jurisdiction over decisions of the courts in election cases and not interlocutory orders. As the RTC correctly observed, the Court had in a subsequent issuance, A.M. No. 07-7-12-SC[15] (which amended, among others, Rule 65 of the Rules of Court), clearly provided that:

> In election cases involving **an act or an omission** of a municipal or a regional trial court, the petition **shall be filed exclusively with the Commission on Elections,** in aid of its appellate jurisdiction. (Emphases supplied.)

Plainly, from the foregoing, this Court recognizes the COMELEC's appellate jurisdiction over petitions for *certiorari* against all acts or omissions of courts in election cases. Indeed, in the recent case of *Galang v. Geronimo*,[16] the Court had the opportunity to rule that a petition for *certiorari* questioning an interlocutory order of a trial court in an electoral protest was within the appellate jurisdiction of the COMELEC. To quote the relevant portion of that decision:

> The question then is, would taking cognizance of a petition for *certiorari* questioning an interlocutory order of the regional trial court in an electoral protest case be considered in aid of the appellate jurisdiction of the COMELEC? The Court finds in the affirmative.

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[15] Amendments to Rules 41, 45, 58 and 65 of the Rules of Court.

[16] G.R. No. 192793, February 22, 2011.

Interpreting the phrase "in aid of its appellate jurisdiction," the Court held in *J.M. Tuason & Co., Inc. v. Jaramillo, et al.* that if a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of *certiorari*, in aid of its appellate jurisdiction. This was reiterated in *De Jesus v. Court of Appeals*, where the Court stated that a court may issue a writ of *certiorari* in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court.

Note that Section 8, Rule 14 of the 2010 Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials states that:

> Sec. 8. Appeal. — An aggrieved party may appeal the decision to the COMELEC within five (5) days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or on the adverse party who is not represented by counsel.

Since it is the COMELEC which has jurisdiction to take cognizance of an appeal from the decision of the regional trial court in election contests involving elective municipal officials, then it is also the COMELEC which has jurisdiction to issue a writ of *certiorari* in aid of its appellate jurisdiction. Clearly, petitioner erred in invoking this Court's power to issue said extraordinary writ. (Emphasis supplied.)

Although *Galang* involved a petition for *certiorari* involving an interlocutory order of a regional trial court in a municipal election contest, the rationale for the above ruling applies to an interlocutory order issued by a municipal trial court in a *barangay* election case. Under Rule 14, Section 8 of A.M. No. 07-4-15-SC, decisions of municipal trial courts in election contests involving *barangay* officials are appealed to the COMELEC. Following the *Galang* doctrine, it is the COMELEC which has jurisdiction over petitions for *certiorari* involving acts of the municipal trial courts in such election contests.

In all, the RTC committed no grave abuse of discretion in dismissing the petition for lack of jurisdiction. This being the

case, the Court finds it unnecessary to resolve the other issues raised by petitioner.

WHEREFORE, the present Petition is *DISMISSED*.

SO ORDERED.

Corona, C.J., Velasco, Jr., Brion, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, and *Sereno, JJ.,* concur.

Carpio, J., no part. Close relation to counsel of party.

Abad and *Mendoza, JJ.,* on leave.

INDEX

INDEX

ADMINISTRATIVE LAW

Resignation — Divests the Ombudsman of its right to institute an administrative complaint against the resigned public official. (Office of the Ombudsman *vs*. Andutan, Jr., G.R. No. 164679, July 27, 2011) p. 169

AGGRAVATING CIRCUMSTANCES

Abuse of superior strength — When the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter. (People of the Phils. *vs*. Rebucan y Lamsin, G.R. No. 182551, July 27, 2011) p. 363

Evident premeditation — For evident premeditation to aggravate a crime, the following are the elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that he clung to his determination; and (3) sufficient lapse of time, between determination and execution, to allow himself to reflect upon the consequences of his act. (People of the Phils. *vs*. Rebucan y Lamsin, G.R. No. 182551, July 27, 2011) p. 363

ALTERNATIVE CIRCUMSTANCES

Intoxication — Accused is not entitled to the mitigating circumstance of intoxication since his own testimony failed to substantiate his claim of drunkenness during the incident in question. (People of the Phils. *vs*. Rebucan *y* Lamsin, G.R. No. 182551, July 27, 2011) p. 363

APPEALS

Appeal brief — Appeal brief belatedly filed without prior motion to extend time to file the same and without mention of good cause for the delay, not appreciated. (Villamor *vs*. People of the Phils., G.R. No. 172110, Aug. 01, 2011) p. 448

Appeal from the Regional Trial Court — Mode of appeal; elucidated. (Heirs of Nicolas S. Cabigas *vs*. Limbaco, G.R. No. 175291, July 27, 2011) p. 274

Appeal to the Court of Appeals — The Regional Trial Court retains jurisdiction to rule on pending incidents lodged before it where the party failed to perfect an appeal within the 15-day reglementary period. (Gonzales *vs*. Pe, G.R. No. 167398, Aug. 08, 2011) p. 597

— The trial court may, prior to the transmittal of the original records of the case to the Court of Appeals, issue orders for the protection and preservation of the rights of the prevailing party. *(Id.)*

— When an accused appeals from the sentence of the trial court, he waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court. (People of the Phils. *vs*. Mirandilla, Jr., G.R. No. 186417, July 27, 2011) p. 397

Findings of the Office of the Ombudsman — Conclusive upon the court; exception. (Tolentino *vs*. Atty. Loyola, G.R. No. 153809, July 27, 2011) p. 50

Petition for review on certiorari to the Supreme Court under Rule 45 — Covers only questions of law; exceptions are: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurb, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. (Masing and Sons Dev't. Corp. *vs*. Rogelio, G.R. No. 161787, July 27, 2011) p. 120

— Proper and adequate remedy to challenge the decision of the Court of Appeals. (Gonzales *vs*. Pe, G.R. No. 167398, Aug. 08, 2011) p. 597

— Re-examination of evidence in view of the variance in the factual findings of the labor arbiter and that of the NLRC and the CA, when proper. (Abosta Shipmanagement Corp. *vs*. NLRC [1st Div.] G.R. No. 163252, July 27, 2011) p. 136

ATTACHMENT

Writ of — Prayer thereof in an action for sum of money is not affected by the fact that chattel mortgage in issue is not notarized. (Union Bank of the Phils. *vs*. Juniat, G.R. No. 171569, Aug. 01, 2011) p. 438

ATTORNEYS

Disbarment — An exhaustive hearing is not necessary in disciplinary cases; the conduct of a full-blown hearing is also not mandatory. (Cadiz *vs*. Hon. Presiding Judge, Br. 48, RTC-Puerto Princesa, G.R. No. 178941, July 27, 2011; *Velasco, Jr., J, concurring opinion*) p. 330

— Determination of the necessity of conducting hearings is clearly within the discretion of the Integrated Bar of the Philippines. *(Id.)*

Excusable negligence — Counsel's filing of a notice of appeal without paying the appellate docket fees does not amount thereto. (Gonzales *vs*. Pe, G.R. No. 167398, Aug. 08, 2011) p. 597

BAIL

Application for bail — Duties of the trial judge in the event an application for bail is filed. (Mayor Humol *vs*. Judge Clapis, Jr., A.M. No. RTJ-11-2285, July 27, 2011) p. 36

CERTIFICATION ELECTION

Petition for — Proceedings for a certification election are quasi-judicial in nature. (San Miguel Foods, Inc. *vs*. San Miguel Corp. Supervisors and Exempt Union, G.R. No. 146206, Aug. 01, 2011) p. 421

CERTIORARI

Petition for — Attachment of the certified true copy of the assailed decision of the National Labor Relations Commission on the motion for reconsideration considered substantial compliance with the Rules. (Jobel Enterprises and /or Mr. Benedicto Lim *vs*. NLRC [7th Div. Q.C.], G.R. No. 194031, Aug. 08, 2011) p. 630

— The special civil action of certiorari under Rule 65, which is filed before the Court of Appeals, is the proper vehicle for judicial review of decisions of the National Labor Relations Commission. (Atok Big Wedge Co., Inc. *vs*. Gison, G.R. No. 169510, Aug. 08, 2011) p. 615

— To be filed not later than sixty (60) days from notice of judgment, order or resolution. (Masing and Sons Dev't. Corp. *vs*. Rogelio, G.R. No. 161787, July 27, 2011) p. 120

COMMISSION ON ELECTIONS (COMELEC)

COMELEC Rules of Procedure — An aggrieved party may file a petition for certiorari with the Commission on Elections whenever a judge hearing an election case has acted without or in excess of his jurisdiction or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law. (Bulilis *vs*. Nuez, G.R. No. 195953, Aug. 09, 2011) p. 665

Jurisdiction — COMELEC has appellate jurisdiction over a petition for certiorari questioning an interlocutory order of a trial court in an electoral protest. (Bulilis *vs*. Nuez, G.R. No. 195953, Aug. 09, 2011) p. 665

— Galang doctrine, explained. *(Id.)*

COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657)

Just compensation — Determination of just compensation is essentially a judicial function which is vested in the Regional Trial Court acting as a special agrarian court. (Land Bank of the Phils. *vs*. Listana, G.R. No. 168105, July 27, 2011) p. 190

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — Non-compliance 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. (People of the Phils. *vs*. Gregorio, G.R. No. 179344, Aug. 03, 2011) p. 511

Illegal sale of prohibited drugs — Elements: (1) that the transaction or sale took place; (2) the corpus delicti or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. (People of the Phils. *vs*. Gregorio, G.R. No. 179344, Aug. 03, 2011) p. 511

CORPORATIONS

Corporate rehabilitation — Stay order or claims therein has no effect or connection on replevin case. (Advent Capital and Finance Corp. *vs*. Young, G.R. No. 183018, Aug. 03, 2011) p. 538

DAMAGES

Attorney's fees — When proper. (Sps. Yap *vs*. Sps. Zosimo Dy, Sr. and Natividad Chiu Dy, G.R. No. 171868, July 27, 2011) p. 223

Award of — The Integrated Bar of the Philippines (IBP) board members cannot be held liable for damages for honest errors committed in the performance of their quasi-judicial function. (Cadiz *vs*. The Hon. Presiding Judge, Br. 48, RTC-Puerto Princesa, G.R. No. 178941, July 27, 2011) p. 330

Civil indemnity— Civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape. (People of the Phils. *vs*. Mirandilla, Jr., G.R. No. 186417, July 27, 2011) p. 397

— Even if the penalty of death is not to be imposed because of R.A. No. 9346, the civil indemnity *ex delicto* of ₱75,000.00 still applies because this indemnity is not dependent on the actual imposition of death, but on the fact that qualifying

circumstances warranting the penalty of death attended the commission of the offense. (People of the Phils. *vs*. Mirandilla, Jr., G.R. No. 186417, July 27, 2011) p. 397

Civil liability — When death occurs due to a crime, the following damages may be recovered: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. (People of the Phils. *vs*. Mirandilla, Jr., G.R. No. 186417, July 27, 2011) p. 397

Exemplary damages — When proper. (Sps. Francisco D. Yap and Whelma S. Yap *vs*. Sps. Zosimo Dy, Sr. and Natividad Chiu Dy, G.R. No. 171868, July 27, 2011) p. 223

Moral damages — May additionally be awarded to the victim in the criminal proceeding, in such amount as the Court deems just, without the need for pleading or proof of the basis thereof as has heretofore been the practice. (People of the Phils. *vs*. Mirandilla, Jr., G.R. No. 186417, July 27, 2011) p. 397

— When proper. (Sps. Francisco D. Yap and Whelma S. Yap *vs*. Sps. Zosimo Dy, Sr. and Natividad Chiu Dy, G.R. No. 171868, July 27, 2011) p. 223

Nominal damages — Violation of one's right to procedural due process warrants the payment of indemnity in the form of nominal damages. (Abosta Shipmanagement Corp. *vs*. NLRC [1st Div.], G.R. No. 163252, July 27, 2011) p. 136

DEBTS

Liquidated debts — When considered. (Montemayor *vs*. Millora, G.R. No. 168251, July 27, 2011) p. 209

DOCKET FEES

Payment of — Failure to pay correct appellate docket fees within the prescribed period warrants dismissal of the appeal. (Gonzales *vs*. Pe, G.R. No. 167398, Aug. 08, 2011) p. 597

— Payment thereof within the prescribed period is both mandatory and jurisdictional. *(Id.)*

DOCUMENTARY STAMP TAX (DST)

Imposition of — Savings Account Plus (SAP) is a certificate of deposit bearing interest and is subject to documentary stamp tax. (Prudential Bank *vs*. Commissioner of Internal Revenue, G.R. No. 180390, July 27, 2011) p. 339

ELECTIONS

Election protest — Notice of preliminary conference issued in the election protest is considered defective where the notice issued by the MCTC Clerk of Court was a generic notice of hearing and it was served on the party himself despite being represented by counsel. (Bulilis *vs*. Nuez, G.R. No. 195953, Aug. 09, 2011) p. 665

EMPLOYEES, KINDS OF

Confidential employees — Elucidated. (San Miguel Foods, Inc. *vs*. San Miguel Corp. Supervisors and Exempt Union, G.R. No. 146206, Aug. 01, 2011) p. 421

— Human resource assistant and personnel assistant are confidential employees excluded from the bargaining unit. *(Id.)*

— The prohibition for managerial employees to join, form and assist any labor organization extends to confidential employees. *(Id.)*

— The rule that confidential employees are excluded from the collective bargaining agreement does not apply to a payroll master. *(Id.)*

Regular employee — Length of service and the company's repeated act of assigning him some tasks to be performed did not result to his entitlement to the rights and privileges of a regular employee. (Atok Big Wedge Co., Inc. *vs*. Gison, G.R. No. 169510, Aug. 08, 2011) p. 615

EMPLOYER-EMPLOYEE RELATIONSHIP

Concept — Absent employer-employee relationship, the termination of the party's services after due notice will not constitute illegal dismissal. (Atok Big Wedge Co., Inc. *vs*. Gison, G.R. No. 169510, Aug. 08, 2011) p. 615

Control test — Absence of element of control on the part of the employer engenders a conclusion that no employer-employee relationship exists between the parties. (Atok Big Wedge Co., Inc. *vs*. Gison, G.R. No. 169510, Aug. 08, 2011) p. 615

Existence of — The determination of the existence of employer-employee relationship between the parties is well within the province of the Labor Arbiter and the National Labor Relations Commission. (Atok Big Wedge Co., Inc. *vs*. Gison, G.R. No. 169510, Aug. 08, 2011) p. 615

Management prerogative — Employer's prerogative to change assignments of employees, respected. (Nippon Housing Phil. Inc. and/or Kasuhiro Kawata *vs*. Leynes, G.R. No. 177816, Aug. 03, 2011) p. 495

EMPLOYMENT

Floating status — Considered constructive dismissal only when such status continues for more than six months. (Nippon Housing Phil. Inc. and/or Yasuhiro Kawata *vs*. Leynes, G.R. No. 177816, Aug. 03, 2011) p. 495

EMPLOYMENT, TERMINATION OF

Back wages — To be awarded backwages, the government employee must not only be found innocent of the charges; his suspension must likewise be shown to be unjustified. (CSC *vs*. Cruz, G.R. No. 187858, Aug. 09, 2011) p. 638

Constructive dismissal — Defined. (Bello *vs*. Bonifacio Security Services, Inc., G.R. No. 188086, Aug. 03, 2011) p. 563

(Nippon Housing Phil. Inc. and/or Yasuhiro Kawata *vs*. Leynes, G.R. No. 177816, Aug. 03, 2011) p. 495

— The management's prerogative of transferring and reassigning employees from one area of operation to another in order to meet the requirements of the business is generally not constitutive of constructive dismissal. (Bello *vs*. Bonifacio Security Services, Inc., G.R. No. 188086, Aug. 03, 2011) p. 563

Just causes — Violation of company rules that was intentional, willful and serious is a just cause. (Mapili *vs*. Phil. Rabbit Bus Lines, Inc., G.R. No. 172506, July 27, 2011) p. 252

Redundancy — Elucidated. (Nippon Housing Phil. Inc. and/or Kasuhiro Kawata *vs.* Leynes, G.R. No. 177816, Aug. 03, 2011) p. 495

— Employer is required to serve written notice of termination on the worker and DOLE, at least one month from the intended date thereof; violation here warrants payment of ₱50,000 in damages as dismissal process was initiated by the employer's exercise of its management prerogative. *(Id.)*

— Terminated employee entitled to separation pay. *(Id.)*

EVIDENCE

Proof beyond reasonable doubt — Any proof against the accused must survive the test of reason for it is only when the conscience is satisfied that the perpetrator of the crime is the person on trial should there be a judgment of conviction. (People of the Phils. *vs*. Rebucan y Lamsin, G.R. No. 182551, July 27, 2011) p. 363

— Required to overcome presumption of innocence. (People of the Phils. *vs*. Gregorio, G.R. No. 179344, Aug. 03, 2011) p. 511

Quantum of — Administrative cases distinguished from criminal cases. (Tolentino *vs*. Atty. Loyola, G.R. No. 153809, July 27, 2011) p. 50

Substantial evidence — Defined. (Abosta Shipmanagement Corp. *vs*. NLRC [1st Div.], G.R. No. 163252, July 27, 2011) p. 136

Testimonial evidence — For testimonial evidence to be believed, it must not only come from a credible witness but must be credible in itself, tested by human experience, observation, common knowledge and accepted conduct that has evolved through the years. (People of the Phils. *vs*. Mirandilla, Jr., G.R. No. 186417, July 27, 2011) p. 397

Weight and sufficiency — Substantial evidence is sufficient to establish the existence of an employer-employee relationship. (Masing and Sons Dev't. Corp. *vs.* Rogelio, G.R. No. 161787, July 27, 2011) p. 120

JUDGES

Administrative complaint against judges — Filing of an administrative complaint against judges is not an alternative to judicial remedies. (Mayor Humol *vs*. Judge Clapis, Jr., A.M. No. RTJ-11-2285, July 27, 2011) p. 36

Gross ignorance of the law — Imposable penalties. (Nat'l. Power Corp. *vs*. Judge Adiong, A.M. No. RTJ-07-2060, July 27, 2011) p. 21

Undue delay in rendering an order — Imposable penalties. (Mayor Humol *vs*. Judge Clapis, Jr., A.M. No. RTJ-11-2285, July 27, 2011) p. 36

JUDGMENTS

Execution of — A mortgaged property may still be levied upon by the sheriff to satisfy the judgment debtor's obligation. (Golden Sun Finance Corp. *vs.* Albano, A.M. No. P-11-2888, July 27, 2011) p. 5

— Satisfaction and effect thereof. (Sps. Francisco D. Yap and Whelma S. Yap *vs*. Sps. Zosimo Dy, Sr. and Natividad Chiu Dy, G.R. No. 171868, July 27, 2011) p. 223

Immutability of final judgment — Application. (Montemayor *vs*. Millora, G.R. No. 168251, July 27, 2011) p. 209

Law of the case doctrine — A question once decided on appeal becomes the law of the case at the lower court and in any subsequent appeal. (Tolentino *vs*. Atty. Loyola, G.R. No. 153809, July 27, 2011) p. 50

— Not applicable where the question settled on appeal involved a criminal proceeding while the case before the lower court is an administrative case. *(Id.)*

JUDICIAL NOTICE

Mandatory judicial notice — Criminal activities claimed to be part of judicial knowledge are not found in the Rules. (New Sun Valley Homeowners' Assn., Inc. *vs*. Sangguniang Barangay, G.R. No. 156686, July 27, 2011) p. 67

KIDNAPPING AND SERIOUS ILLEGAL DETENTION WITH RAPE

Commission of — For the crime of kidnapping with rape, the offender should not have taken the victim with lewd designs. (People of the Phils. *vs*. Mirandilla, Jr., G.R. No. 186417, July 27, 2011) p. 397

LABOR ORGANIZATIONS

Appropriate bargaining unit — Definition. (San Miguel Foods, Inc. *vs*. San Miguel Corp. Supervisors and Exempt Union, G.R. No. 146206, Aug. 01, 2011) p. 421

Single bargaining unit — Formation thereof, factors to consider. (San Miguel Foods, Inc. *vs*. San Miguel Corp. Supervisors and Exempt Union, G.R. No. 146206, Aug. 01, 2011) p. 421

Union affiliation — Court has previously upheld the government's implementing policy expressed in the old rules that the intent of the law in imposing lesser requirements in the case of a branch or local of a registered federation or national union is to encourage the affiliation of a local union with a federation or national union in order to increase the local union's bargaining powers respecting terms and conditions of labor. (Electromat Manufacturing and Recording Corp. *vs*. Hon. Lagunzad, G.R. No. 172699, July 27, 2011) p. 263

LAND REGISTRATION

Free patent — Free patent issued over a private land is a nullity. (Heirs of Margarito Pabaus *vs*. Heirs of Amanda Yutiamco, G.R. No. 164356, July 27, 2011) p. 151

Survey — Defined. (Heirs of Margarito Pabaus *vs*. Heirs of Amanda Yutiamco, G.R. No. 164356, July 27, 2011) p. 151

Torrens system — A title registered under the torrens system becomes indefeasible and incontrovertible after the lapse of the period allowed by law and it also renders the title immune from collateral attack. (Casimiro Dev't. Corp. *vs*. Mateo, G.R. No. 175485, July 27, 2011) p. 311

— One who deals with property registered under the Torrens System need not go beyond the certificate of title. *(Id.)*

LAND SURVEYS IN THE PHILIPPINES, MANUAL FOR

Rules in conducting relocation surveys— Not complied with in case at bar. (Heirs of Margarito Pabaus *vs*. Heirs of Amanda Yutiamco, G.R. No. 164356, July 27, 2011) p. 151

LAND TITLES AND DEEDS

Land title — Incontrovertibility thereof does not preclude a rightful claimant to a property from seeking other remedies. (PNB *vs*. Jumanoy, G.R. No. 169901, Aug. 03, 2011) p. 472

MITIGATING CIRCUMSTANCES

Immediate vindication of a grave offense — Not applicable when the accused had sufficient time to recover his equanimity; a period of four days was sufficient enough time within which accused could have regained his composure and self-control. (People of the Phils. *vs*. Rebucan y Lamsin, G.R. No. 182551, July 27, 2011) p. 363

Voluntary surrender — The following elements must concur: (1) the offender has not been actually arrested; (2) the offender surrenders himself to a person in authority or to the latter's agent; and (3) the surrender is voluntary. (People of the Phils. *vs*. Rebucan y Lamsin, G.R. No. 182551, July 27, 2011) p. 363

MORTGAGES

Doctrine of indivisibility of mortgage — Does not apply once the mortgage is extinguished by a complete foreclosure thereof. (Sps. Francisco D. Yap and Whelma S. Yap *vs*. Sps. ZDy, Sr., G.R. No. 171868, July 27, 2011) p. 223

MURDER

Commission of — Accused should be held liable for two (2) separate counts of murder, not the complex crime of double murder; complex crime, elucidated. (People of the Phils. *vs*. Rebucan y Lamsin, G.R. No. 182551, July 27, 2011) p. 363

OBLIGATIONS, EXTINGUISHMENT OF

Compensation — Requirements. (Montemayor *vs*. Millora, G.R. No. 168251, July 27, 2011) p. 209

OMBUDSMAN ACT OF 1989 (R.A. NO. 6770)

Resignation — The possibility of imposing accessory penalties does not negate the Ombudsman's lack of jurisdiction. (Office of the Ombudsman *vs*. Andutan, Jr., G.R. No. 164679, July 27, 2011) p. 169

Section 20(5) — The Office of the Ombudsman is not prohibited from conducting an investigation a year after the supposed act was committed. (Office of the Ombudsman *vs.* Andutan, Jr., G.R. No. 164679, July 27, 2011) p. 169

OWNERSHIP

Accion reivindicatoria — Requisites. (Del Fierro *vs*. Seguiran, G.R. No. 152141, Aug. 08, 2011) p. 577

— 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. *(Id.)*

Claim of — Tax receipts and tax declarations may become a basis of a claim of ownership when coupled with proof of actual possession. (Luga *vs*. Sps. Elena and Rogelio Arciaga, G.R. No. 175343, July 27, 2011) p. 294

PARTITION

Complaint for — The action for partition cannot be acted upon where the claimant failed to establish any rightful interest in the properties. (Co Giok Lun *vs*. Co, G.R. No. 184454, Aug. 03, 2011) p. 551

— The existence of co-ownership must first be established before the court can order a division of the property. *(Id.)*

PLEADINGS

Verification — The requirement is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct. (Bello *vs*. Bonifacio Security Services, Inc., G.R. No. 188086, Aug. 03, 2011) p. 563

PLEDGE

Contract of — Pledge presumed over dacion en pago in the absence of evidence to show properties were sold by way of a *dacion en pago*. (Union Bank of the Phils. *vs*. Juniat, G.R. No. 171569, Aug. 01, 2011) p. 438

POSSESSION

Possessory rights — Possession may be exercised in one's own name or in that of another and it is not necessary for the owner or holder of the thing to personally exercise his possessory rights. (Luga *vs*. Sps. Elena and Rogelio Arciaga, G.R. No. 175343, July 27, 2011) p. 294

PRELIMINARY INJUNCTION

Writ of — A valid writ of preliminary injunction rests on the weight of evidence submitted by the plaintiff establishing: (a) a present and unmistakable right to be protected; (b) the acts against which the injunction is directed violate such right; and (c) a special and paramount necessity for the writ to prevent serious damages. (Sps. Dela Rosa *vs*. Heirs of Juan Valdez, G.R. No. 159101, July 27, 2011) p. 97

— Defined. *(Id.)*

— Findings and opinion of a court when issuing the writ are interlocutory in nature. *(Id.)*

— No court can compel a party to agree to a contract through the instrumentality of a writ of preliminary injunction; a contract can be renewed, revived or extended only by mutual consent of the parties. (Thunder Security and Investigation Agency *vs*. National Food Authority, G.R. No. 182042, July 27, 2011) p. 351

— Requisites before an injunction may be issued: (1) The applicant must have a clear and unmistakable right to be protected, that is a right in esse; (2) there is a material and substantial invasion of such right; (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury. *(Id.)*

PRE-TRIAL

Concept — Mandatory character thereof, sustained in case at bar. (Nat'l. Power Corp. *vs*. Judge Adiong, A.M. No. RTJ-07-2060, July 27, 2011) p. 21

Non-appearance at pre-trial conference — Importance of substitute counsel attending pre-trial conference to be well-versed on the facts of the case, considered. (Atty. Garayblas *vs*. Hon. Ponferrada, G.R. Nos. 174507-30, Aug. 03, 2011) p. 484

— That counsel was suffering from hyperglycemia and hypertension and thus failed to attend or find a substitute counsel to attend pre-trial conference, appreciated. *(Id.)*

PUBLIC OFFICERS AND EMPLOYEES

Compensation — Public officials and employees are only entitled to compensation if they render service; exception. (CSC *vs*. Cruz, G.R. No. 187858, Aug. 09, 2011) p. 638

Exoneration — Defined and explained. (CSC *vs*. Cruz, G.R. No. 187858, Aug. 09, 2011) p. 638

Habitual tardiness — Imposable penalty. (OAS, QCAD *vs*. Uri, A.M. No. P-10-2852, July 27, 2011) p. 1

— Performance of household chores, traffic problems, health conditions, domestic and financial concerns are not sufficient reasons to excuse habitual tardiness. *(Id.)*

QUALIFYING CIRCUMSTANCES

Treachery — Requisites are: (1) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (2) the said means, method and manner of execution were deliberately adopted. (People of the Phils. *vs*. Rebucan *y* Lamsin, G.R. No. 182551, July 27, 2011) p. 363

— The abruptness of the unexpected assault rendered the victim, who was carrying his grandson, defenseless and deprived him of any opportunity to repel the attack. *(Id.)*

— The killing of the child is also characterized by treachery even if the manner of the assault is not shown for the weakness of the child due to his tender years results in the absence of any danger to the accused. *(Id.)*

RAPE

Force — Relative in rape cases. (People of the Phils. *vs*. Funesto *y* Llospardas, G.R. No. 182237, Aug. 03, 2011) p. 530

Statutory rape — Minority of the victim, not established by independent evidence; guidelines in appreciating the element of age, cited. (People of the Phils. *vs*. Funesto *y* Llospardas, G.R. No. 182237, Aug. 03, 2011) p. 530

Sweetheart theory — To be credible, it must be corroborated by documentary, testimonial, or other evidence. (People of the Phils. *vs.* Mirandilla, Jr., G.R. No. 186417, July 27, 2011) p. 397

RECONVEYANCE

Action for reconveyance based on implied trust — Prescription of ten years when the person enforcing the trust is not in possession of the property; no prescription when the

claimant is in actual possession of the property. (PNB *vs*. Jumanoy, G.R. No. 169901, Aug. 03, 2011) p. 472

REDEMPTION

Legal redemption — Proper time and manner of redemption. (Sps. Francisco D. Yap and Whelma S. Yap *vs*. Sps. Zosimo Dy, Sr. and Natividad Chiu Dy, G.R. No. 171868, July 27, 2011) p. 223

— Requisites of a valid redemption. *(Id.)*

— Successors-in-interest have the legal personality to redeem the subject properties. (Sps. Yap *vs*. Sps. Dy, Sr., G.R. No. 171868, July 27, 2011) p. 223

REPLEVIN

Action for — Claim for damages against surety bond must be filed before termination of the main action. (Advent Capital and Finance Corp. *vs*. Young, G.R. No. 183018, Aug. 03, 2011) p. 538

— Return of the seized car proper upon the dismissal of replevin case for failure to prosecute. *(Id.)*

RETIREMENT

Retirement benefits — Basis. (Masing and Sons Dev't. Corp. *vs*. Rogelio, G.R. No. 161787, July 27, 2011) p. 120

SALES

Contract of sale — The as-is, where-is clause contained in a deed of sale does not affect title of the property because it is related only to the condition of the property upon its purchase and could not be considered as proof or manifestation of bad faith on the part of the buyer. (Casimiro Dev't. Corp. *vs*. Mateo, G.R. No. 175485, July 27, 2011) p. 311

Good faith or bad faith of the buyer — At the time of sale to petitioners, the land was not registered in the seller's name, but in another's name, which fact should have put petitioners on guard and prompted them to check with the registry of deeds as to the most recent certificates of title

to discover if there were any liens, encumbrances, or other attachments covering the lots in question. (Heirs of Nicolas S. Cabigas *vs*. Limbaco, G.R. No. 175291, July 27, 2011) p. 274

Innocent purchaser for value — Defined; a banking institution is not an innocent purchaser for value. (PNB *vs*. Jumanoy, G.R. No. 169901, Aug. 03, 2011) p. 472

SECURITIES REGULATION CODE (R.A. NO. 8799)

Application — Public company, defined. (Phil. Veterans Bank *vs*. Callangan, G.R. No. 191995, Aug. 03, 2011) p. 570

— Reportorial requirements for public company; elucidated. *(Id.)*

— The Philippine Veterans Bank is considered a public company that must comply with the reportorial requirements set forth in 17.1 of the Securities Regulation Code. *(Id.)*

SHERIFFS

Duties — Not allowed to receive any voluntary payment from parties in the course of the performance of their duties. (Anico *vs.* Pilipina, A.M. No. P-11-2896, Aug. 02, 2011) p. 460

Gross inefficiency and dishonesty — Revealed by the long delay in the execution of judgment, neglecting to make periodic reports, and failure to turn over the amount received in official capacity. (Anico *vs*. Pilipina, A.M. No. P-11-2896, Aug. 02, 2011) p. 460

Implementation of court process — Requirement to secure the court's prior approval of the estimated expenses and fees needed to implement the court process; procedure therein. (Anico *vs.* Pilipina, A.M. No. P-11-2896, Aug. 02, 2011) p. 460

Misconduct — Imposable penalty. (Abadiano *vs*. Regalado, A.M. No. P-11-2944, July 27, 2011) p. 14

Moonlighting activity — Conflict of interest, present in case at bar. (Abadiano *vs*. Regalado, A.M. No. P-11-2944, July 27, 2011) p. 14

— Constitutes an act of impropriety. *(Id.)*

Return of writ of execution — Sheriffs must execute and make a return on the writ of execution within 30 days from receipt of the writ, and every 30 days thereafter until satisfied in full or its effectivity expires. (Anico *vs.* Pilipina, A.M. No. P-11-2896, Aug. 02, 2011) p. 460

STATUTES

Interpretation of — No room exists for construction or interpretation where the law is very clear and free from any doubt or ambiguity. (Phil. Veterans Bank *vs.* Callangan, G.R. No. 191995, Aug. 03, 2011) p. 570

SUMMARY JUDGMENT

Application — Proper in case at bar since there is no genuine issue of fact as petitioners do not have any legally enforceable right to the properties in question. (Heirs of Nicolas S. Cabigas *vs.* Limbaco, G.R. No. 175291, July 27, 2011) p. 274

TAX LAWS

Improved Voluntary Assessment Program (IVAP) — The Court of Tax Appeals (CTA) En Banc's denial of petitioner's motion to withdraw petition is proper for failure to comply with the requirements of the Improved Voluntary Assessment Program (IVAP). (Prudential Bank *vs.* Commissioner of Internal Revenue, G.R. No. 180390, July 27, 2011) p. 339

WITNESSES

Credibility of — Assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling examination. (People of the Phils. *vs.* Gregorio, G.R. No. 179344, Aug. 03, 2011) p. 511

(People of the Phils. *vs.* Mirandilla, Jr., G.R. No. 186417, July 27, 2011) p. 397

(People of the Phils. *vs*. Rebucan *y* Lamsin, G.R. No. 182551, July 27, 2011) p. 363

Testimony of — Where the contradictions cannot be reconciled, the court has to reject the testimonies and apply the maxim, *falsus in uno, falsus in omnibus*; requisites are the following: (1) that the false testimony is as to one or more material points; and (2) that there should be a conscious and deliberate intention to falsify. (People of the Phils. *vs*. Mirandilla, Jr., G.R. No. 186417, July 27, 2011) p. 397

CITATION

Page

I. LOCAL CASES

Abacast Shipping and Management Agency, Inc. *vs.* NLRC, 245 Phil. 487, 490 (1988) 148
Abad *vs*. Sps. Guimba, 503 Phil. 321, 331-332 (2005) 291
Abante, Jr. *vs*. Lamadrid Bearing & Parts Corp., G.R. No. 159890, May 28, 2004, 430 SCRA 368, 378 626-627
Abdo, et al. *vs*. Court of Appeals and National Power Corporation, G.R. No. 177288, Feb. 28, 2006 28
Abejaron *vs*. Nabasa, 411 Phil. 552, 564 (2001) 310
Abel *vs*. Philex Mining Corporation, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 692-693 144
Abellera *vs*. City of Baguio, et al., G.R. No. L-23957, March 18, 1967, 19 SCRA 600 ..... 653, 656
Agabon *vs*. National Labor Relations Commission, 485 Phil. 248 (2004) 150
Agcaoili *vs*. Ramos, A.M. No. MTJ-92-6-251, Feb. 7, 1994, 229 SCRA 705, 710 29
Agne *vs*. Director of Lands, G.R. Nos. 40399 & 72255, Feb. 6, 1990, 181 SCRA 793, 803 167
Agricultural and Home Extension Development Group *vs*. Court of Appeals, G.R. No. 92310, Sept. 3, 1992, 213 SCRA 563 327
Almodiel *vs.* National Labor Relations Commission, G.R. No. 100641, June 14, 1993, 223 SCRA 341, 348 509
Aloria *vs*. Clemente, G.R. No. 165644, Feb. 28, 483 SCRA 634, 646 308
Altres *vs.* Empleo, G.R. No. 180986, Dec. 10, 2008, 573 SCRA 583, 596 568
Alviola *vs*. Avelino, A.M. No. MTJ-P-08-1697, Feb. 29, 2008, 547 SCRA 160 33
AMA Computer College *vs*. Garcia, G.R. No. 166703, April 14, 2008, 551 SCRA 254, 264 508 508
Amerol *vs.* Bagumbaran, 154 SCRA 396, Sept. 30, 1987 310
Asian Construction and Development Corporation *vs*. Philippine Commercial International Bank, G.R. No. 153827, April 25, 2006, 488 SCRA 192, 203 289

Page

Asset Privatization Trust *vs*. T.J. Enterprises,
G.R. No. 167195, May 8, 2009, 587 SCRA 481, 487-488 329
Austria *vs.* Auditor General, G.R. No. L-21918,
Jan. 24, 1967, 19 SCRA 79 648
B.F. Goodrich Philippines, Inc. *vs*. B.F. Goodrich
(Marikina Factory) Confidential & Salaried Employees
Union-NATU, 151 Phil. 585 (1973) 436
Bacarra *vs*. National Labor Relations Commission,
G.R. No. 162445, Oct. 20, 2005, 473 SCRA 581, 586 610
Baculi *vs*. Belen, A.M. No. RTJ-09-2176,
April 20, 2009, 586 SCRA 69, 79 34
Badoles-Algodon *vs*. Zaldivar, A.M. No. P-04-1818,
Aug. 3, 2006, 497 SCRA 446, 458 470
Bago *vs.* People, G.R. No. 135638, Jan. 20, 2003,
395 SCRA 404, 405-406 457
Bailon-Casilao *vs*. Court of Appeals, G.R. No. 78178,
April 15, 1988, 160 SCRA 738 327
Balanag, Jr. *vs*. Osita, 437 Phil. 453, 458 (2002) 468
Bangalisan *vs*. Hon. CA, 342 Phil. 586 (1997) 643, 657, 659
Barbizon Philippines, Inc. *vs*. Nagkakaisang Supervisor
ng Barbizon Philippines, Inc., 330 Phil. 472, 493 (1996) 436
Basco *vs*. Rapatalo, 336 Phil. 214 (1997) 45
Bascos, Jr. *vs*. Taganahan, G.R. No. 180666,
Feb. 18, 2009, 579 SCRA 653, 674-675 64
Batungbakal *vs*. National Development Company,
93 Phil. 182 (1953) 648
Bautista *vs*. Negado, 108 Phil. 283 (1960) 186
Peralta, G.R. No. L-21967, Sept. 29, 1966, 18 SCRA 223 656
Silva, G.R. No. 157434, Sept. 19, 2006, 502 SCRA 334 286
Bayas *vs.* Sandiganbayan, G.R. Nos. 143689-91,
Nov. 12, 2002, 391 SCRA 415 492
Bello *vs*. Diaz, 459 Phil. 214, 221-222 (2003) 49
Beltran *vs.* Garcia, G.R. No. L-30868, Sept. 30, 1971,
41 SCRA 158 28
Benitez *vs*. Acosta, 407 Phil. 687, 694 (2001) 469
Bercasio *vs*. Benito, 341 Phil. 404, 410 (1997) 468
Biñan Steel Corporation *vs*. Court of Appeals,
G.R. Nos. 142013 & 148430, Oct. 15, 2002, 391 SCRA 90 361

Page

Bisig Manggagawa sa Tryco *vs*. NLRC, G.R. No. 151309, Oct. 15, 2008, 569 SCRA 122, 130 569
Biyaheros Mart Livelihood Association, Inc. *vs*. Cabusao, Jr., A.M. No. P-93-811, June 2, 1994, 232 SCRA 707 19
Blue Dairy Corporation *vs*. NLRC, 373 Phil. 179, 186 507
Board of Liquidators *vs*. Court of Appeals, 248 Phil. 275, 278-279 (1988) 305
Bongcac *vs*. Sandiganbayan, G.R. Nos. 156687-88, May 21, 2009, 588 SCRA 64, 71 217
Bulletin Publishing Corporation *vs*. Sanchez, 228 Phil. 600, 608-609 (1986) 434
Cadiao-Palacios *vs*. People, G.R. No. 168544, Mar. 31, 2009, 582 SCRA 713, 727 61
Caja *vs*. Nanquil, 481 Phil. 488 (2004) 11
Calaunan *vs*. Madolaria, A.M. No. P-10-2810, Feb. 8, 2011 19
Calo *vs*. Dizon, A.M. No. P-07-2359, Aug. 11, 2008, 561 SCRA 517, 532 470
Cambridge Realty and Resources Corp. *vs*. Eridanus Development, Inc., G.R. No. 152445, July 4, 2008, 557 SCRA 96, 117 ..... 163-164, 167
Capitol Subdivision *vs*. Province of Negros Occidental, G.R. No. L-16257, Jan. 31, 1963, 7 SCRA 60, 70 328
Carlos *vs*. Sandoval, 508 Phil. 260, 277 549
Castillo *vs*. Nagtalon, G.R. No. L-17079, Jan. 29, 1962, 4 SCRA 48, 54 248
Castillo *vs*. National Labor Relations Commission, 367 Phil. 605 (1999) 270
Centeno *vs*. Court of Appeals, G.R. No. L-40105, Nov. 11, 1985, 139 SCRA 545, 555 329
Cequena *vs*. Bolante, 330 SCRA 216 (2000) 309
China Banking Corporation *vs*. Commissioner of Internal Revenue, G.R. No. 172359, Oct. 2, 2009, 602 SCRA 316, 332 348
City Mayor of Zamboanga *vs*. CA, G.R. No. 80270, Feb. 27, 1990, 182 SCRA 785 657

Page

Coca-Cola Bottlers Philippines, Inc. *vs*. Del Villar, G.R. No. 163091, Oct. 6, 2010, 632 SCRA 293, 312 506
Commissioner of Internal Revenue *vs.* Marubeni Corp., 423 Phil. 862, 874 (2001) 351
Community Rural Bank of San Isidro (N.E.), Inc. *vs*. Paez, G.R. No. 158707, Nov. 27, 2006, 508 SCRA 245, 257-258 144
Cortes *vs*. Bartolome, 188 Phil. 148 (1980) 66
Crisostomo *vs*. Garcia, Jr., G.R. No. 164787, Jan. 31, 2006, 481 SCRA 402, 413 483
Cristobal *vs*. Melchor, 189 Phil. 658 (1980) 651
Cruz *vs*. Bancom Finance Corporation, 429 Phil. 225, 239 (2002) 481
Cruz *vs*. Court of Appeals, 346 Phil. 506 (1997) 290
Cu-Unjieng *vs*. Court of Appeals, G.R. No. 139596, Jan. 24, 2006, 470 SCRA 594, 603-604 610
De Guzman *vs*. Agbagala, G.R. No. 163566, Feb. 19, 2008, 546 SCRA 278 167
De Guzman *vs*. CSC, G.R. No. 101105, Mar. 11, 1994, 231 SCRA 169 651
De la Cruz *vs*. CA, 458 Phil. 929, 941 (2003) 309
De la Cruz *vs*. CA, 364 Phil. 786 (1999) 645, 659
Del Castillo *vs*. CSC, 343 Phil. 734 (1997) 651
Dela Cruz *vs*. Dela Cruz, 464 Phil. 812, 823 (2004) 481
Democratic Labor Association *vs*. Cebu Stevedoring Company, Inc., et al., 103 Phil. 1103 (1958) 431
Development Bank of the Philippines *vs*. Court of Appeals, G.R. No. 129471, April 28, 2000, 331 SCRA 267 324
Director of Lands *vs.* Abad, 61 Phil. 479, 487(1935) 327
DOLE Philippines, Inc. *vs*. National Labor Relations Commission, 417 Phil. 428, 440 (2001) 508
Dulay *vs*. Carriaga, G.R. No. 52831, July 29, 1983, 123 SCRA 794 248
Edge Apparel, Inc. *vs*. National Labor Relations Commission, G.R. No. 121314, Feb. 19, 1998, 286 SCRA 302, 311 508
Emcor Incorporated *vs*. Sienes, G.R. No. 152101, Sept. 8, 2009, 598 SCRA 617, 626-627 613

Page

Endico *vs*. Quantum Foods Distribution Center,
G.R. No. 161615, Jan. 30, 2009, 577 SCRA 299, 310 507
Espino, et al. *vs*. Hon. Ismael Salubre, 405 Phil. 331 (2001) 46
Esqueda *vs*. People, G.R. No. 170222, June 18, 2009,
589 SCRA 489 415
Estate of Edward Miller Grimm *vs*. Estate of Charles
Parsons and Patrick C. Parsons, G.R. No. 159810,
Oct. 9, 2006, 504 SCRA 67, 75-76 163
Estioca *vs*. People, G.R. No. 173876, June 27, 2008,
556 SCRA 300 411
Far Corporation *vs*. Magdaluyo, G.R. No. 148739,
Nov. 19, 2004, 443 SCRA 218, 226-227, 229 610
Far East Bank and Trust Company *vs*. Querimit,
424 Phil. 721, 730 (2002) 348
Far East Marble (Philippines), Inc. *vs*. Court of Appeals,
G.R. No. 94093, Aug. 10, 1993, 225 SCRA 249 288
Fil-Estate Properties, Inc. *vs*. Homena-Valencia,
G.R. No. 173942, Oct. 15, 2007, 536 SCRA 252, 259-260 610
Finasia Investments and Finance Corporation *vs*.
Court of Appeals, G.R. No. 107002, Oct. 7, 1994,
237 SCRA 446, 450 548
Flexo Manufacturing Corporation *vs*. Columbus
Foods, Inc., 495 Phil. 254, 260 (2005) 34
Florendo *vs.* Paramount Insurance Corp., G.R. No. 167976,
Jan. 20, 2010, 610 SCRA 377, 384-385 34
Flores *vs*. Abesamis, 341 Phil. 299 (1997) 49
Fort Bonifacio Development Corporation *vs*. Yllas
Lending Corporation, G.R. No. 158997, Oct. 6, 2008,
567 SCRA 454, 465, 471 ..... 11, 447
Francisco, Jr. *vs*. Desierto, G.R. No. 154117,
Oct. 2, 2009, 602 SCRA 50, 125 66
Fule *vs*. Legare, G.R. No. L-17951, Feb. 28, 1963,
7 SCRA 351 329
Galang *vs*. Geronimo, G.R. No. 192793, Feb. 22, 2011 671
Gallardo-Corro *vs*. Gallardo, 403 Phil. 498 (2001) 217
Gallardo-Corro *vs*. Gallardo, G.R. No. 136228,
Jan. 30, 2001, 350 SCRA 568, 578 209
Garcia *vs*. Alejo, A.M. No. P-09-2627, Jan. 26, 2011 20

Page

Aportadera, G.R. No. L-34122, Aug. 29, 1988,
164 SCRA 705 587
Chairman, Commission on Audit, G.R. No. 75025,
Sept. 14, 1993, 226 SCRA 356, 362-363 651
Court of Appeals, G.R. No. 133140, Aug. 10, 1999,
312 SCRA 180, 190 324
Gloria *vs*. CA, 365 Phil. 744 (1999) 646, 659
Go *vs*. Court of Appeals, G.R. No. 158922,
May 28, 2004, 430 SCRA 358, 364 162
Go *vs*. Villanueva, Jr., G.R. No. 154623, Mar. 13, 2009,
581 SCRA 126, 133-134 361
Golden Farms, Inc. *vs*. Ferrer-Calleja,
256 Phil. 903, 909 (1989) 433
Golden Farms, Inc. *vs*. Secretary of Labor, G.R. No. 102130,
July 26, 1994, 234 SCRA 517, 523 436
Gonzales *vs*. Hon. Hernandez, etc. and Fojas,
112 Phil. 160, 166 (1961) 648
Gonzales *vs*. Intermediate Appellate Court,
G.R. No. 69622, Jan. 29, 1988, 157 SCRA 587, 595 328-329
Gozun *vs*. Liangco, 393 Phil. 669, 681 (2000) 46
Gutierrez *vs*. Secretary of the Department of Labor
and Employment, 488 Phil. 110 (2004) 636
Habaluyas Enterprises, Inc. *vs*. Japson, 142 SCRA 208,
May 30, 1986 456
Hanjin Engineering and Construction Co., Ltd. *vs*.
Court of Appeals, G.R. No. 165910, April 10, 2006,
487 SCRA 78, 99 613
Hanopol *vs*. Shoemart, Incorporated, G.R. Nos. 137774
& 148185, Oct. 4, 2002, 390 SCRA 439, 447 162
Haverton Shipping Ltd., et al. *vs*. NLRC, et al.,
220 Phil. 356 (1985) 148
Heirs of Marcelino Cabal *vs*. Cabal, G.R. No. 153625,
July 31, 2006, 497 SCRA 301, 312 162
Heirs of Pedro De Guzman *vs*. Perona, G.R. No. 152266,
July 2, 2010, 622 SCRA 653, 661 94
Heirs of Spouses Dela Cruz and Magdalena Tuazon
vs. Heirs of Quintos, Sr., 434 Phil. 708, 719 (2002) 309

Page

Heirs of Teodoro Dela Cruz *vs*. Court of Appeals,
G.R. No. 117384, Oct. 21, 1998, 298 SCRA 172, 180 324
Heirs of Clemente Ermac *vs*. Heirs of Vicente Ermac,
G.R. No. 149679, May 30, 2003, 403 SCRA 291, 298 324
Heirs of Florentino Remetio *vs*. Villaruel, G.R. No. 132357,
May 31, 2006, 490 SCRA 43, 47 535
Heirs of Macabangkit Sangkay *vs*. National Power Corp.,
G.R. No. 141447, May 4, 2006, 489 SCRA 401, 417 34
Heirs of Simplicio Santiago *vs*. Heirs of Mariano E. Santiago,
G.R. No. 151440, June 17, 2003, 404 SCRA 193, 199 168
Hermanos *vs*. Yap Tico, 24 Phil. 504 (1913) 576
Hutchinson *vs*. Buscas, 498 Phil. 257, 262 (2005) 589, 592
Hutchison Ports Philippines Ltd. *vs*. Subic Bay
Metropolitan Authority, G.R. No. 131367,
Aug. 31, 2000, 339 SCRA 434 361
Inonog *vs*. Ibay, A.M. No. RTJ-09-2175, July 28, 2009,
594 SCRA 168 494
Insular Life Assurance Co., Ltd. *vs*. NLRC,
G.R. No. 119930, Mar. 12, 1998, 287 SCRA 476 627
Insular Life Assurance Co., Ltd. Employees
Association-NATU *vs*. Insular Life Assurance Co., Ltd.,
G.R. No. L-25291, March 10, 1977, 76 SCRA 50 133
International Exchange Bank *vs*. Commissioner of
Internal Revenue, G.R. No. 171266, April 4, 2007,
520 SCRA 688, 697 ..... 341, 346
Intestate Estate of the late Don Mariano San Pedro *y* Esteban
vs. Court of Appeals, 333 Phil. 597 (1996) 117
Jacinto *vs*. CA, 346 Phil. 656 (1997) 645, 659
Jaka Food Processing Corporation *vs*. Pacot,
G.R. No. 151378, Mar. 28, 2005, 454 SCRA 119, 125-126 509
Jao *vs*. Royal Financing Corporation, G.R. No. L-16716,
April 28, 1962, 4 SCRA 1210, 1215-1216 550
Javier *vs*. CA, 231 SCRA 498, 504 (1994) 309
Jimenez *vs*. National Labor Relations Commission,
G.R. No. 116960, April 2, 1996, 256 SCRA 84, 89 133
JPL Marketing Promotions *vs*. Court of Appeals,
501 Phil. 440, 449 (2005) 506

Page

KLT Fruits, Inc. *vs*. WSR Fruits, Inc., G.R. No. 174219, Nov. 23, 2007, 538 SCRA 713, 727-728 610
La Rosa *vs*. Ambassador Hotel, G.R. No. 177059, Mar. 13, 2009, 581 SCRA 340, 346-347 569
Ladiana *vs*. People, 441 Phil. 733, 756-757 (2002) 393
Lambert Pawnbrokers & Jewelry Corporation *vs*. Binamira, G.R. No. 170464, July 12, 2010, 624 SCRA 705, 720-721 510
Land Bank of the Philippines *vs*. Heirs of Severino Listana, G.R. No. 182758, May 30, 2011 197
Listana, Sr., G.R. No. 152611, Aug. 5, 2003, 408 SCRA 328 193-195
Martinez, G.R. No. 169008, July 31, 2008, 560 SCRA 776 203
Suntay, G.R. No. 157903, Oct. 11, 2007, 535 SCRA 605 203
Umandap, G.R. No. 166298, Nov. 17, 2010 ..... 203, 205
Wycoco, G.R. Nos. 140160 & 146733, Jan. 13, 2004, 419 SCRA 67, 75 199
Lao *vs*. Special Plans, Inc., G.R. No. 164791, June 29, 2010, 622 SCRA 27, 36 219
Lasquite *vs.* Victory Hills, Inc., G.R. No. 175375, June 23, 2009, 590 SCRA 616, 631 484
Lee Tek Sheng *vs*. Court of Appeals, G.R. No. 115402, July 15, 1998, 292 SCRA 544, 548 324
Lejano *vs*. People, G.R. No. 176389, Dec. 14, 2010 409
Leung Yee *vs*. F.L. Strong Machinery Co. & Williamson, 37 Phil. 644 (1918) 329
Leung Yee *vs*. Strong Machinery Co., 37 Phil. 644 290
Levi Strauss & Co. & Levi Strauss (Phils.) Inc. *vs*. Clinton Apparelle, Inc., G.R. No. 138900, Sept. 20, 2005, 470 SCRA 236, 252 109
Levi Strauss (Phils.) Inc. *vs*. Vogue Traders Clothing Company, 500 Phil. 438 (2005) 118
Light Rail Transit Authority *vs*. Court of Appeals, G.R. Nos. 139275-76 and 140949, Nov. 25, 2004, 444 SCRA 125, 139 362
Litonjua *vs*. L & R Corporation, G.R. No. 130722, Dec. 9, 1999, 320 SCRA 405 244

Page

Lontoc *vs*. People, 74 Phil. 513, 519 (1943) 415
Lopez *vs*. Bodega City, G.R. No. 155731, Sept. 3, 2007,
532 SCRA 56, 64 129-130
Court of Appeals, 200 Phil. 150, 164 (1982) 448
Court of Appeals, 379 Phil. 743, 752 (2000) 118
Lowe, Inc. *vs*. Court of Appeals, G.R. Nos. 164813 &
174590, Aug. 14, 2009, 596 SCRA 140, 154 509
M.A. Santander Construction, Inc. *vs*. Villanueva,
G.R. No. 136477, Nov. 10, 2004, 441 SCRA 525, 528 614
Madrid *vs*. Mapoy, G.R. No. 150887, Aug. 14, 2009,
596 SCRA 14, 26 326
Mañacop *vs*. Cansino, 111 Phil. 166 290
Mañacop, Jr. *vs*. Cansino, G.R. No. L-13971, Feb. 27, 1961,
1 SCRA 572 329
Manila International Airport Authority *vs*. Olongapo
Maintenance Services, Inc., G.R. Nos. 146184-85, 161117
and 167827, Jan. 31, 2008, 543 SCRA 269, 288-289 361-362
Manila Water Company, Inc. *vs*. Peña, G.R. No. 158255,
July 8, 2004, 434 SCRA 53, 58-59 129-130
Manotok Realty, Inc. *vs*. CLT Realty Development
Corporation, G.R. Nos. 123346, 134385 & 148767,
Nov. 29, 2005, 476 SCRA 305, 335-336 163
Martinez *vs*. National Labor Relations Commission,
G.R. No. 117495, May 29, 1997, 272 SCRA 793, 801 133
Mateo *vs*. Court of Appeals, G.R. No. 128392,
April 29, 2005, 457 SCRA 549, 551 ..... 318, 325
Megaforce Security and Allied Services, Inc. *vs*. Lactao,
G.R. No. 160940, 21 July 2008, 559 SCRA 110, 117 507
Melchor *vs*. Gironella, G.R. No. 151138, Feb. 16, 2005,
451 SCRA 476, 481 186
Mendizabel *vs*. Apao, G.R. No. 143185, Feb. 20, 2006,
482 SCRA 587, 609 483-484
Mendoza *vs*. Rural Bank of Lucban, G.R. No. 155421,
July 7, 2004, 433 SCRA 756, 766 507
Mercado *vs*. Court of Appeals, G.R. No. 150241,
Nov. 4, 2004, 441 SCRA 463, 469 613
Metrolab Industries, Inc. *vs*. Roldan-Confesor,
G.R. No. 108855, Feb. 28, 1996, 254 SCRA 182, 197 433

Page

Metropolitan Manila Development Authority *vs*. Bel-Air Village Association, Inc., 385 Phil. 586 (2000) 92
Miranda *vs*. Commission on Audit, G.R. No. 84613, Aug. 16, 1991, 200 SCRA 657 656
Morong Water District *vs*. Office of the Deputy Ombudsman, 385 Phil. 45, 58 (2000) 66
Mutilan *vs*. Adiong, 433 Phil. 26, 32 (2002) 46
Natalia Realty Corporation *vs*. Vallez, G.R. Nos. 78290-94, May 23, 1989, 173 SCRA 534, 542 324
Natino *vs*. Intermediate Appellate Court, G.R. No. 73573, May 23, 1991, 197 SCRA 323, 332 244
National Association of Free Trade Unions *vs*. Mainit Lumber Development Company Workers Union — United Lumber and General Workers of the Phils., G.R. No. 79526, Dec. 21, 1990, 192 SCRA 598 431
National Association of Trade Unions — Republic Planters Bank Supervisors Chapter *vs*. Torres, G.R. No. 93468, Dec. 29, 1994, 239 SCRA 546, 551 436
National Development Company *vs*. Madrigal Wan Hai Lines Corporation, G.R. No. 148332, Sept. 30, 2003, 412 SCRA 375, 387 329
National Food Authority *vs*. Court of Appeals, G.R. Nos. 115121-25, Feb. 9, 1996, 253 SCRA 470, 479 362
National Power Corporation *vs*. Laohoo, G.R. No. 151973, July 23, 2009, 593 SCRA 564, 591 ..... 611, 614
National Rice and Corn Corp. *vs*. NARIC Workers' Union, 98 Phil. 563 (1956) 648
Nationwide Security and Allied Services, Inc. *vs*. Valderama, G.R. No. 186614, Feb. 23, 2011 506
Neeland *vs*. Villanueva, Jr., A.M. No. P-99-1316, Aug. 31, 2001, 364 SCRA 204, 217 655
Ney *vs*. Sps. Quijano, G.R. No. 178609, Aug. 4, 2010, 626 SCRA 800, 808 483
OCA *vs*. Juan, 478 Phil. 823 (2004) 184
OCA *vs*. Ramano, A.M. No. P-90-488, Jan. 25, 2011 ..... 19, 471
Ocampo *vs*. Ocampo, 471 Phil. 519 (2004) 558
Office of the Court Administrator *vs*. Juan, A.M. No. P-03-1726, July 22, 2004, 434 SCRA 654, 658 187

Page

Office of the Court Administrator *vs*. Lerma,
A.M. No. RTJ-07-2076, Oct. 12, 2010 48
Office of the Ombudsman *vs*. De Sahagun, G.R. No. 167982,
Aug. 13, 2008, 562 SCRA 122, 128 ..... 179-180, 186
Olympia International, Inc. *vs*. Court of Appeals,
259 Phil. 841 (1989) 547
Oporto, Jr. *vs*. Monserate, 408 Phil. 561 (2001) 46
Opulencia Ice Plant and Storage *vs*. NLRC,
G.R. No. 98368, Dec. 15, 1993, 228 SCRA 473, 478 129
Orbase *vs*. Office of the Ombudsman, G.R. No. 175115,
Dec. 23, 2009, 609 SCRA 111, 126 61
Oro Enterprises, Inc. *vs*. National Labor Relations
Commission, G.R. No. 110861, Nov. 14, 1994,
238 SCRA 105, 112 ..... 128, 135
Orocio *vs*. Roxas, A.M. Nos. 07-115-CA-J and
CA-08-46-J, Aug. 19, 2008, 562 SCRA 347, 353 49
P.T. Cerna Corporation *vs*. Court of Appeals,
G.R. No. 91622, April 6, 1993, 221 SCRA 19, 25 133
Pagano *vs*. Nazarro, Jr., G.R. No. 149072, Sept. 21, 2007,
533 SCRA 622, 628 ..... 183-184, 186-187
Pagpalain Haulers, Inc. *vs*. Trajano,
369 Phil. 617, 628 (1999) 273
Pancho *vs*. Aguirre, Jr., A.M. No. RTJ-09-2196,
April 7, 2010, 617 SCRA 486, 489 35
Panlilio *vs*. Regional Trial Court, G.R. No. 173846,
Feb. 2, 2011 548
Paramount Insurance Corp. *vs*. Court of Appeals,
369 Phil. 641 (1999) 550
People *vs*. Aguilar, G.R. No. 185206, Aug. 25, 2010,
629 SCRA 437, 450 537
Ayuda, G.R. No. 128882, Oct. 2, 2003, 412 SCRA 538 412
Badriago, G.R. No. 183566, May 8, 2009,
587 SCRA 820, 833 385
Baldogo, G.R. Nos. 128106-07, Jan. 24, 2004,
396 SCRA 31, 57 417
Bandang, G.R. No. 151314, June 3, 2004,
430 SCRA 570, 579 520
Bermas, 369 Phil. 191, 237-238 (1999) 392
Bisda, 454 Phil. 194, 224 (2003) 389

Page

Buban, G.R. No. 172710, Oct. 9, 2009,
603 SCRA 205, 223-224 537
Caballero, 448 Phil. 514, 536 (2003) 391
Cabalquinto, G.R. No. 167693, Sept. 19, 2006,
502 SCRA 419 ..... 403, 532
Cabarrubias, G.R. Nos. 94709-10, June 15, 1993,
223 SCRA 363, 369 389
Capuno, G.R. No. 185715, Jan. 19, 2011 528
Chua, G.R. Nos. 136066-67, Feb. 4, 2003,
396 SCRA 657, 664 521
Combate, G.R. No. 189301, Dec. 15, 2010 396
Cual, 384 Phil. 361, 380 (2000) 390
Dalisay, G.R. No. 188106, Nov. 25, 2009,
605 SCRA 807 396
Dasig, 93 Phil. 618 (1953) 414
De Guzman, G.R. No. 76742, Aug. 7, 1990,
188 SCRA 407 386
De La Cruz, 358 Phil. 513, 519 (1998) 384
Del Mundo, G.R. No. 169141, Dec. 6, 2006,
510 SCRA 554, 562 520
Dela Cruz, G.R. No. 177222, Oct. 29, 2008,
570 SCRA 273, 283 529
Flores, 466 Phil. 683, 696 (2004) 395
Gaffud, Jr., G.R. No. 168050, Sept. 19, 2008,
566 SCRA 76, 88 392
Garcia, G.R. No. 141125, Feb. 28, 2002,
378 SCRA 266 418
Gonzales, Jr., 424 Phil. 336, 352-353 (2002) 521
Gutierrez, G.R. No. 179213, Sept. 3, 2009,
598 SCRA 92, 101 520
Gutierrez, 393 Phil. 863, 874 (2000) 386
Hajili, 447 Phil. 283, 296 (2003) 521
Hernani, G.R. No. 122113, Nov. 27, 2000,
346 SCRA 73, 84 409
Iligan, 369 Phil. 1005, 1038 (1999) 389
Jimenez, G.R. No. 128364, Feb. 4, 1999,
302 SCRA 607, 617 412
Larrañaga, 466 Phil. 324 (2004) 417
Latupan, 412 Phil. 477, 487-488 (2001) 392

Page

Lusabio, Jr., G.R. No. 186119, Oct. 27, 2009,
604 SCRA 565, 592 ..... 395, 397
Macapanas, G.R. No. 187049, May 4, 2010,
620 SCRA 54, 76 537
Madsali, G.R. No. 179570, Feb. 4, 2010,
611 SCRA 596, 613-614 415
Magpayo, G.R. No. 187069, Oct. 20, 2010 526
Mapa, G.R. No. L-22301, Aug. 30, 1967, 20 SCRA 11 576
Marasigan, et al., 55 O.G. 8297 (1959) 417
Mateo, G.R. Nos. 147678-87, July 7, 2004,
433 SCRA 640 ..... 381, 535
Miranda, G.R. No. 174773, Oct. 2, 2007,
534 SCRA 552, 567 520
Nazareno, G.R. No. 174771, Sept. 11, 2007,
532 SCRA 630, 636-637 520
Nogpo, Jr., G.R. No. 184791, April 16, 2009,
585 SCRA 725, 744-745 ..... 412, 418, 537
Novio, G.R. No. 139332, June 20, 2003,
404 SCRA 462, 474 412
Orteza, G.R. No. 173051, July 31, 2007,
528 SCRA 750, 757 520
Pacpac, 248 SCRA 77 (1995) 414
Palabrica, 409 Phil. 618, 630 (2001) 394
Pantoja, 134 Phil. 453, 455-456 (1968) 392
Prades, G.R. No. 127569, July 30, 1998,
293 SCRA 411 ..... 418, 420
Pruna, 439 Phil. 440 (2002) 535
Quiachon, G.R. No. 170236, Aug. 31, 2006,
500 SCRA 704 419
Racho, G.R. No. 186529, Aug. 3, 2010 521
Reyes and Llaguno, 349 Phil. 39, 58 (1998) 384
Sabella, G.R. No. 183092, May 30, 2011 396
Salome, G.R. No. 169077, Aug. 31, 2006,
500 SCRA 659 419
Sanchez, G.R. No. 175832, Oct. 15, 2008,
569 SCRA 194, 222 ..... 524, 528
Tabones, 364 Phil. 439, 449 (1999) 521
Tagud, Sr., G.R. No. 140733, Jan. 30, 2002,
375 SCRA 291, 309-310 418

Page

Ticalo, 425 Phil. 912, 917 (2002) 521
Tilos, 141 Phil. 428, 431 (1969) 392
Tolentino, G.R. No. 176385, Feb. 26, 2008, 546 SCRA 671, 699 395
Torejas, 150 Phil. 179, 195-196 (1972) 390
Vallador, 327 Phil. 303, 311 (1996) 411
Victor, G.R. No. 127903, July 8, 1998 418-419
Zeng Hua Dian, G.R. No. 145348, June 14, 2004, 432 SCRA 25, 34 520
People's Broadcasting (Bombo Radyo Phils., Inc.) *vs*. Secretary of the Department of Labor and Employment, G.R. No. 179652, May 8, 2009, 587 SCRA 724, 753 129
Pepsi-Cola Products Philippines, Inc. *vs*. Secretary of Labor, G.R. No. 103300, Aug. 10, 1999, 312 SCRA 104, 116 432
Perez *vs*. Abiera, A.C. No. 223-J, June 11, 1975, 64 SCRA 302 ..... 177, 184
Perez *vs*. Judge Abiera, 159-A Phil. 575 (1975) 178
Philippine Bank of Communications *vs*. Torio, 348 Phil. 74, 84 (1998) 12
Philippine Banking Corporation (Now: Global Business Bank, Inc.) *vs*. Commissioner of Internal Revenue, G.R. No. 170574, Jan. 30, 2009, 577 SCRA 366, 380 347-348
Philippine Global Communication, Inc. *vs*. De Vera, G.R. No. 157214, June 7, 2005, 459 SCRA 260, 268 627-629
Philippine National Bank *vs*. Court of Appeals, G.R. No. 57757, Aug. 31, 1987, 153 SCRA 435, 442 329
De los Reyes, G.R. Nos. L-46898-99, Nov. 28, 1989, 179 SCRA 619 246
RJ Ventures Realty & Development Corporation, G.R. No. 164548, Sept. 27, 2006, 503 SCRA 639, 658 .. 109-110
Philippine Ports Authority *vs*. Cipres Stevedoring & Arrastre, Inc., G.R. No. 145742, July 14, 2005, 463 SCRA 358 360
Philippine Rabbit Bus Lines, Inc. *vs*. National Labor Relations Commission, 344 Phil. 522, 531 (1997) 262
Philippine Telegraph and Telephone Corp. *vs*. Laguesma, G.R. No. 101730, June 17, 1993, 223 SCRA 452, 456-457 436

Page

Philippine Veterans Bank *vs.* Court of Appeals,
G.R. No. 132767, Jan. 18, 2000, 322 SCRA 139 ..... 201, 206
Philippine Veterans Bank *vs*. National Labor Relations
Commission (Fourth Division), G.R. No. 188882,
Mar. 30, 2010, 617 SCRA 204, 212 508
Philips Industrial Development, Inc. *vs*. NLRC,
G.R. No. 88957, June 25, 1992, 210 SCRA 339, 348 433
Pino *vs*. Court of Appeals, G.R. No. 94114, June 19, 1991,
198 SCRA 434 329
Progressive Development Corporation *vs*. Secretary,
Department of Labor and Employment,
G.R. No. 96425, Feb. 4, 1992, 205 SCRA 802 270-271
Purefoods Corporation (now San Miguel Purefoods
Company, Inc.) *vs*. National Labor Relations Commission,
G.R. No. 172241, Nov. 20, 2008, 571 SCRA 406, 412 629
Quiambao *vs*. Manila Electric Company, G.R. No. 171023,
Dec. 18, 2009, 608 SCRA 511, 518 261
Quimson *vs*. Suarez, 45 Phil. 901, 906 (1924) 327
Ramirez *vs*. Corpuz-Macandog, A.M. Nos. R-351-RTJ,
Sept. 26, 1986, 144 SCRA 462 28
Ramirez *vs*. Court of Appeals, G.R. No. 182626,
Dec. 4, 2009, 607 SCRA 752, 766 468
Re: Imposition of Corresponding Penalties,
456 Phil. 183 (2003) 4
Remolona *vs*. Civil Service Commission,
414 Phil. 590, 601 (2001) 186
Republic of the Philippines *vs.* Court of Appeals,
398 Phil. 911, 923 (2000) 308
Court of Appeals, G.R. No. 116111, Jan. 21, 1999,
301 SCRA 366 324
Court of Appeals, G.R. No. 122256, Oct. 30, 1996,
263 SCRA 758 200
Court of Appeals, G.R. No. 122256, Oct. 30, 1996,
263 SCRA 758, 763 199
Court of Appeals, G.R. Nos. L-46626-27,
Dec. 27, 1979, 94 SCRA 865, 874 323
Guerrero, G.R. No. 133168, Mar. 28, 2006,
485 SCRA 424 323

Page

Heirs of Angeles, 439 Phil. 349, 357 (2002) 310
Villarama, Jr., G.R. No. 117733, Sept. 5, 1997,
278 SCRA 736, 749 361
Revilla *vs*. Galindez, 107 Phil. 480 (1960) 291
Reyes *vs*. Grey, 21 Phil. 73, 76 (1911) 10
Reyes, Jr. *vs*. Belisario, G.R. No. 154652, Aug. 14, 2009,
596 SCRA 31 62
RFC *vs*. Javillonar, 107 Phil. 664 290
Roman Catholic Archbishop of Manila *vs*. CA,
327 Phil. 810, 826 (1996) 285
Rosales *vs*. Yboa, G.R. No. L-42282, Feb. 28, 1983,
120 SCRA 869, 874 246
Rosario *vs*. Court of Appeals, G.R. No. 127005,
July 19, 1999, 310 SCRA 464 324
Ruiz *vs*. Delos Santos, G.R. No. 166386, Jan. 27, 2009,
577 SCRA 29, 44 611
Rural Bank of the Seven Lakes (S.P.C.), Inc. *vs*. Dan,
G.R. No. 174109, Dec. 24, 2008, 575 SCRA 476, 488-489 610
Sabello *vs*. Department of Education, Culture and Sports,
259 Phil. 1109, 1114 (1989) 651
Sacdalan *vs*. Court of Appeals, G.R. No. 128967,
May 20, 2004, 428 SCRA 586, 599 209
Salcedo vs. Bollozos, A.M. No. RTJ-10-2236,
July 5, 2010, 623 SCRA 27, 42 49
Sales *vs*. Mathay, Sr., etc., et al., 214 Phil. 153 (1984) 655
Sampayan *vs*. Court of Appeals, G.R. No. 156360,
Jan. 14, 2005, 448 SCRA 220, 229 163
San Miguel Corporation Supervisors and Exempt Union *vs*.
Laguesma, G.R. No. 110399, 343 Phil. 143 (1997) 425, 432
Sandoval *vs*. Court of Appeals, G.R. No. 106657,
Aug. 1, 1996, 260 SCRA 283 ..... 327, 329
Santos *vs*. Court of Appeals, G.R. No. 90380, Sept. 13, 1990,
189 SCRA 550 327-328
Santos *vs*. Manalili, 512 Phil. 324, 331 (2005) 308
Sarmiento *vs*. Yu, G.R. No. 141431, Aug. 3, 2006,
497 SCRA 513, 517 162
Sasan, Sr. *vs*. National Labor Relations Commission,
4th Division, G.R. No. 176240, Oct. 17, 2008,
569 SCRA 670, 696 507

Page

Secretary of Justice *vs*. Marcos, A.C. No. 207-J, April 22, 1997, 76 SCRA 301 184
Seno *vs*. Mangubat, G.R. No.L-44339, Dec. 2, 1987, 156 SCRA 113, 128 328
Serrano *vs*. National Labor Relations Commission, 380 Phil. 416, 439 (2000) 509
Smart Communications, Inc. *vs*. Astorga, G.R. Nos. 148132, 151079, 151372, Jan. 28, 2008, 542 SCRA 434, 452 509
Soliman Security Services, Inc. *vs*. Court of Appeals, 433 Phil. 902, 910 (2002) 507
Solinap *vs*. Hon. Del Rosario, 208 Phil. 561, 565 (1983) 219
Soriano *vs*. People, G.R. No. 148123, June 30, 2008, 556 SCRA 595, 611 411
Spouses Chu, Sr. *vs*. Benelda Estate Development Corporation, 405 Phil. 936, 947 (2001) 292-293, 481
Spouses De Ocampo *vs*. Arlos, 397 Phil. 799, 811 (2000) 310
Spouses Anthony L. Ngo and So Hon K. Ngo *vs*. Allied Banking Corporation, G.R. No. 177420, Oct. 6, 2010 110
St. James College of Parañaque *vs*. Equitable PCI Bank, G.R. No. 179441, Aug. 9, 2010, 627 SCRA 328, 344 361
St. Martin Funeral Home *vs*. NLRC, 356 Phil. 811 (1998) 626
St. Michael's Institute *vs*. Santos, G.R. No. 145280, Dec. 4, 2001, 371 SCRA 383, 396 162
Standard Chartered Bank Employees Union (SCBEU-NUBE) *vs*. Standard Chartered Bank, G.R. No. 161933, April 22, 2008, 552 SCRA 284, 291-292 433
State Investment House, Inc. *vs*. Court of Appeals, G.R. No. 115548, March 5, 1996, 254 SCRA 368 328
Strait Times, Inc. *vs*. Court of Appeals, G.R. No. 126673, Aug. 28, 1998, 294 SCRA 714, 726 324
Sugbuanon Rural Bank, Inc. *vs*. Laguesma, G.R. No. 381 Phil. 414, 424 (2000) 432
Tabora *vs*. Montelibano, et al., 98 Phil. 800 (1956) 648
Tan *vs*. Gimenez, etc., and Aguilar, etc., 107 Phil. 17 (1960) 646, 648, 650
Tan *vs*. Paredes, A.M. No. P-04-1789, July 22, 2005, 464 SCRA 47, 55 468

Page

Tan, Jr. *vs*. Office of the President, G.R. No. 110936, Feb. 4, 1994, 229 SCRA 677 651-653
Tañala *vs*. Legaspi, et al., 121 Phil. 541 (1965) 650
Tenio-Obsequio *vs*. Court of Appeals, G.R. No. 107967, Mar. 1, 1997, 230 SCRA 550 324
Tenorio *vs*. Perlas, A.M. No. P-10-2817, Jan. 26, 2011 20
Teresa T. Gonzales La'o & Co., Inc. *vs*. Sheriff Hatab, 386 Phil. 88, 92-93 470
Tiu *vs*. Pasaol, Sr., G.R. No. 139876, April 30, 2003, 402 SCRA 312, 319 130
Tuliao *vs*. Judge Ramos, 348 Phil. 404, 416 (1998) 184
Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery *vs*. Asia Brewery, Inc., G.R. 162025, Aug. 3, 2010, 626 SCRA 376, 387 432-433
U.S. *vs*. Abijan,1 Phil. 83 (1902) 415
Unchuan *vs*. Court of Appeals, G.R. No. 78775, May 31, 1988, 161 SCRA 710 327
United Pepsi-Cola Supervisory Union (UPSU) *vs*. Laguesma, 351 Phil. 244, 261 (1998) 436
Universal Robina Corp. (Corn Division) *vs*. Laguna Lake Development Authority, G.R. No. 191427, May 30, 2011 94
University of the Philippines *vs*. Calleja-Ferrer, 211 SCRA 464 (1992) 430
Uniwide Sales Warehouse Club *vs*. National Labor Relations Commission, G.R. No. 154503, Feb. 29, 2008, 547 SCRA 220, 236 508
Ushio Marketing *vs*. NLRC, G.R. No. 124551, Aug. 28, 1998, 294 SCRA 673 627
Valdez *vs*. People, G.R. No. 170180, Nov. 23, 2007, 538 SCRA 611, 621-622 521
Vda. De Arroyo *vs*. El Beaterio del Santissimo Rosario de Molo, G.R. No. L-22005, May 3, 1968, 23 SCRA 525 285
Vda. de Cabrera *vs*. Court of Appeals, 335 Phil. 19 (1997) 483
Vda. de Recinto *vs*. Inciong, 167 Phil. 555, 559 (1977) 482
Vidar *vs*. People, G.R. No. 177361, Feb. 1, 2010, 611 SCRA 216, 230 535
Villamor, et al. *vs*. Hon. Lacson, et al., 120 Phil. 1213 (1964) 649, 655

Page

Villanueva *vs*. Buaya, A.M. No. RTJ-08-2131,
Nov. 22, 2010 46
Vios *vs*. Pantangco, Jr., G.R. No. 163103, Feb. 6, 2009,
578 SCRA 129, 143 60
William H. Anderson and Co. *vs.* Garcia,
64 Phil. 506 (1937) 329
Yambao v. Court of Appeals, G.R. No. 140894,
Nov. 27, 2000, 346 SCRA 141 609
Yarcia *vs*. City of Baguio, etc.,
144 Phil. 351 [1970] 654-655, 657
Zarate *vs*. Director of Lands, 39 Phil. 747 (1919) 60

II. FOREIGN CASES

Daggers *vs*. Van Dyck, 37 N.J. Eq. 130, 132 409
Westinghouse Electric Corp. *vs*. NLRB (CA6)
398 F2d. 689 (1968) 432

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

1987 Constitution
Art. XI, Sec. 13 176

B. STATUTES

Act
Act No. 2711 660
Administrative Code of 1987
Sec. 47, Book V 646
Administrative Code of 1917
Sec. 260 647-648
Sec. 695 649
Batas Pambansa
B.P. Blg. 22 7
B.P. Blg. 337 657

Page

Civil Code, New
Art. 12 559
Art. 21 250
Art. 434 588
Art. 484 558
Art. 1144 283
Arts. 1278-1279 218
Art. 1293 241
Art. 1456 483
Art. 1544 ..... 292, 446
Art. 2085(1) 10
Art. 2088 11
Art. 2096 447
Art. 2125 446
Arts. 2194-2207 419
Art. 2208 419
par. 1 251
Arts. 2209-2215 419
Art. 2219 420
par. 10 250
Art. 2224 396
Art. 2229 ..... 250, 395-396
Art. 2230 395-396
Code of Judicial Conduct
Canon 1, Rules 1.01, 1.02 42
Canon 2, Rules 2.01, 2.03 42
Canon 3, Rule 3.05 42-43
Executive Order
E.O. No. 29 ..... 299, 304
E.O. No. 40, series of 2001 ..... 353-355, 357-358
E.O. No. 99 ..... 299, 304
E.O. No. 292 660
Book V, Sec. 47, par. 2 659-660
Book V, Title I, subtitle A, Sec. 51 660
Labor Code
Art. 5 268
Art. 212(h) 271
Art. 221, par. 1 147

Page

Art. 234 ..... 267, 269
Art. 245 433
Art. 258 437
Art. 280 ..... 623, 625, 629
Art. 282 569
Art. 286 ..... 504, 506
Art. 287, as amended by R.A. No. 7641 133-134
Local Government Code
Sec. 21 ..... 91, 95
Sec. 32 ..... 84, 93
Sec. 57 93
National Internal Revenue Code (old)
Sec. 180, as amended by R.A. No. 7660 ..... 343-345, 347, 349
Negotiable Instruments Law
Sec. 14 605
Penal Code, Revised
Art. 13, par. 5 394
Art. 14, par. 16, as amended 385
Art. 15 393
Art. 48 392
Art. 63, par. 3 394
Arts. 104-107 419
Art. 246 385
Art. 248 ..... 384, 394
Art. 266-A, par. 1(a) 416
Art. 267 ..... 416-417, 421
Art. 335 ..... 532, 534
(2) 537
Presidential Decree
P.D. No. 807 660
Sec. 42 ..... 652, 656
P.D. No. 967 304
Sec. 3 305
P.D. No. 1529 327
Sec. 32 481
Sec. 44 327
Republic Act
R.A. Nos. 8, 1970 304
R.A. No. 477 ..... 298, 304-305, 308

Page

Sec. 1 304
R.A. No. 2260 ..... 652, 656, 660
Sec. 35 ..... 652, 656
R.A. No. 3019, Sec. 3(a), (j) 174, 189
Sec. 3 (e) 174, 189, 487
Sec. 9 189
Sec. 13 652
R.A. No. 6657 ..... 192, 198, 320
Sec. 17 ..... 193, 199, 208
Sec. 57 196
R. A. No. 6770, Sec. 20 ..... 175-176, 181
Sec. 20(5) 177-179, 181-182
Sec. 27 62
R.A. No. 7610 532
R.A. No. 7641 ..... 127-128, 135
in relation to Art. 287 of the Labor Code 123, 127
R.A. No. 7659 ..... 385, 417, 421, 537
R.A. No. 7660 344
R.A. No. 8353 537
R.A. No. 9165, Sec. 5, Art. II 513-514
Sec. 21 526
par. 1, Art. II 524
R.A. No. 9184 ..... 353, 355, 357-358
R.A. No. 9243 345-346
R.A. No. 9262 532
Sec. 40 of A.M. No. 04-10-11-SC 532
R.A. No. 9346 418-419
Secs. 2-3 418
R.A. No. 9481 269
Rules of Court, Revised
Rule 15, Secs. 5 -6 215
Rule 18, Sec. 2 32
Rule 35, Sec. 3 289
Rule 39 12
Sec. 2 ..... 31, 34
Sec. 9(b) 9, 11
Secs. 12, 16 12
Sec. 14 469
Sec. 31 243

Page

Rule 41 671
Sec. 2 ..... 284, 609
Sec. 4 ..... 605, 609, 610
Sec. 9 ..... 608, 612
Sec. 13 612
Rule 42 285
Rule 43 ..... 63, 643
Rule 45 ..... 70, 100, 138, 192, 215, 341, 439, 565, 671
Sec. 1 143
Rule 46, Sec. 3, in relation to Sec. 1, Rule 65 ..... 634, 636
Rule 50, Sec. 1(c) 610
Sec. 2 285
Rule 57, Sec. 20 549
Rule 58 671
Secs. 1, 3 109
Rule 60, Sec. 10 549
Rule 65 ..... 63, 142, 486, 657, 622, 625, 671
Sec. 4 129
Sec. 6 142
Rule 71 26
Rule 112, Sec. 6 41
Rule 114, Sec. 7 39
Rule 124, Sec. 8 458
Sec. 11 415
Rule 129, Sec. 1 ..... 89, 96
Rule 133, Sec. 2 ..... 61, 384
Sec. 5 129
Rule 139-B 338
Sec. 8 337
Rule 140, Sec. 8 34
Sec. 8, as amended by A.M. No. 01-8-10-SC, effective Oct. 1, 2001 46
Sec. 9 (as amended by A.M. No. 01-8-10-SC, effective Oct. 1, 2001) 48
Sec. 11 (as amended by A.M. No. 01-8-10-SC, effective Oct. 1, 2001) 47
Sec. 11(B) (as amended by A.M. No. 01-8-10-SC, effective Oct. 1, 2001) 48
Rule 141, Sec. 9 467-468

Page

Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials (A.M. No. 07-4-15-SC)
Rule 9, Sec. 2 669
Sec. 4 668
Rule 14, Sec. 8 672
Sec. 12 671
Rules on Civil Procedure, 1997
Rule 10, Secs. 2, 5 83
Rule 39, Sec. 29 243
Rule 45 ..... 298, 353, 498, 553
Rule 58, Sec. 3 359
Rule 65 ..... 356, 626
Rules on Criminal Procedure
Rule 110, Secs. 8-9 391
Rule 112, Sec. 6 47
Rule 118, Sec. 3 ..... 491, 494
Rule 124, Sec. 3 459
Rules on Evidence, Revised
Rule 129, Sec. 4 593
Securities Regulation Code (SRC)
Sec. 17.1 572-574
Sec. 17.2 in relation to Rule 3(1)(m) of the Amended Implementing Rules and Regulations of the SRC 572, 574

C. OTHERS

Civil Service Commission Memorandum Circular
No. 38, Sec. VI (1) 176, 182, 185
Civil Service Rules Implementing R.A. No. 2260 (CSC Act of 1959)
Sec. 28 654
COMELEC Rules of Procedure
Rule 28, Sec. 1 670
DAR Administrative Order
No. 5, series of 1998 ..... 196, 208
No. 11, series of 1994 as amended by DAR AO No. 5, series of 1998 ..... 193, 199

Page

DARAB New Rules of Procedure
Rule XIII, Sec. 11 ..... 199, 202-203, 205
Implementing Rules and Regulations of R.A. No. 9165 525
Sec. 21(a) 526
Implementing Rules and Regulations of R.A. No. 9184 354-356
Sec. 77 358
Interim Rules on Corporate Rehabilitation (Interim Rules)
Sec. 6 548
Ombudsman Administrative Order
No. 7, series of 1990, Rule III, Sec. 7 51
No. 17, series of 2003 62
POEA Standard Employment Contract
Sec. 15 149
Sec. 31 143
Sec. 33(5)(a), (e), (g) 150
(13) 149
2005 Revised Rules of Procedure of the NLRC
Rule VI, Sec. 6 635
Revised Rules on Administrative Cases in the Civil Service
Rule IV, Sec. 52 (A) (1) 471
Sec. 55 471
Rules Implementing Labor Code
Sec. 3, Rule II, Book V 270-271
Rules of Procedure of the Commission on Bar Discipline of the IBP
Sec. 3, Rule V 337
Rules of Procedure of the Office of the Ombudsman, dated April 10, 1990, as amended by Administrative Order No. 17
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(Local)

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Page

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